

ILLINOIS POLLUTION CONTROL BOARD  
September 17, 1998

|                        |   |                   |
|------------------------|---|-------------------|
| CITY OF SALEM,         | ) |                   |
|                        | ) |                   |
| Petitioner,            | ) |                   |
|                        | ) |                   |
| v.                     | ) | PCB 98-1          |
|                        | ) | (Variance - Land) |
| ILLINOIS ENVIRONMENTAL | ) |                   |
| PROTECTION AGENCY,     | ) |                   |
|                        | ) |                   |
| Respondent.            | ) |                   |

ORDER OF THE BOARD (by M. McFawn):

Before the Board is a "Motion to Reconsider" filed by petitioner, the City of Salem, Illinois (Salem), seeking reconsideration of the Board's order of July 8, 1998, denying Salem's petition for a variance. The Board is unconvinced by Salem's arguments that its decision in the July 8 order was in error. Accordingly, the Board denies the motion and affirms its order of July 8, 1998.

Salem owns and operates a municipal solid waste landfill, located within the city. 35 Ill. Adm. Code 814.401(a) requires landfills which will not meet the strict operating requirements of 35 Ill. Adm. Code 814.Subpart C to initiate closure on or before September 18, 1997. Salem's variance petition which was the subject of the Board's July 8, 1998 order sought relief from Section 814.401(a) or, in the alternative, from the requirements of Subpart C to the extent they exceed the requirements of 35 Ill. Adm. Code 814.Subpart D (under which Salem was already operating). The purpose of the variance was to allow Salem to continue operating the southern unit of its landfill until a northern unit, then under development, was ready to receive waste. Salem stated in its petition that, absent relief, it would be forced to purchase an additional truck at a cost of approximately \$75,000 and to transport waste to another landfill 50 miles away; it would additionally lose tipping fees and be forced to raise the cost of service.

A variance is, by its nature, a temporary reprieve from compliance with the Board's regulations and compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter. Monsanto Co. v. IPCB, 67 Ill. 2d 276, 367 N.E.2d 684 (1977). Accordingly, except in certain special circumstances, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance. In its order of July 8, 1998, the Board denied Salem's variance petition because there was no compliance plan. In fact, Salem sought variance relief for a landfill unit which would never come into compliance. Effective September 18, 1997, municipal solid waste landfills which had not

begun closure were required to meet Subpart C standards. Salem did not propose to bring its south unit up to Subpart C standards by the end of the variance period.

Salem asserts that the Board erred by not considering Salem's statement "that during the period of the variance, Salem would adhere to the significant-modification permit and its conditions, and would maximize efforts to timely develop the northern unit." Mot. at 3. Salem argues, apparently, that these activities constitute a compliance plan. The Board disagrees. Neither adherence to the significant-modification permit (which was required anyway) nor development of the northern unit would have resulted in compliance, *i.e.*, upgrading of the southern unit to Subpart C standards. The Board concludes that its finding of no compliance plan was not in error. Without a compliance plan, Salem cannot get a variance. Accordingly, the Board affirms the denial of Salem's variance petition.

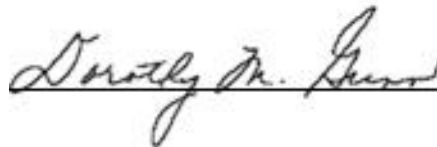
For the foregoing reasons, the Board denies Salem's motion and affirms its decision of July 8, 1998.

IT IS SO ORDERED.

Board Member R.C. Flemal dissented.

Board Member G.T. Girard abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of September 1998 by a vote of 5-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board