

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

ILLINOIS LANDFILL, INC.,)
)
 Petitioner,)
)
 v.) PCB 94-200
) (Variance)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on an amended petition for variance filed by Illinois Landfill, Inc. (ILI). ILI seeks a 12-month variance from the requirements of 35 Ill. Adm. Code 814.104(c). Section 814.104 requires owners or operators of all landfills permitted pursuant to Section 21(d) of the Illinois Environmental Protection Act (Act) to file an application for significant modification of existing municipal solid waste landfill units. This application must demonstrate how the facility will comply with the operating requirements set forth in Part 814. Section 814.104(c) requires that the application be filed within 48 months of the September 1990 effective date of Part 814 of the Illinois Administrative Code, i.e., by September 18, 1994.

In its original petition filed July 25, 1994, ILI had requested a variance until 12 months after the date its pending local siting decision request decision becomes final, or if this request is denied, for a period of 12 months. The Illinois Environmental Protection Agency (Agency) filed its recommendation and response on August 25, 1994, recommending that the variance be granted for a period of 12 months, extending the filing date for the application for significant modification until September 18, 1995. On October 26, 1994, ILI filed an amended petition, wherein ILI requests that the variance be granted for a period of 12 months, as recommended by the Agency.

ILI had included in its original July 25, 1994 petition a waiver of hearing, with supporting affidavit. Additionally, ILI filed a motion for expedited decision on August 26, 1994. However, on September 2, 1994, Larry Slates, Lonnie Seymour, James Klaber, Faye Mott, and Hoopston Community Memorial Hospital (Objectors) filed an objection to the petition for variance, and a hearing was scheduled for October 27, 1994. Accordingly, the motion for expedited consideration was denied by the Board on September 15, 1994.

On October 26, 1994, Objectors withdrew their objection and request for hearing. Also on October 26th, ILI waived any

objection to cancellation of the hearing scheduled in this matter. No other requests for hearing had been received, and there was no other need for a hearing in this matter. The hearing was cancelled.

The amended petition filed on October 26, 1994 restarted the Board's decision timeclock making the decision deadline February 23, 1995. However, in consideration of ILI's motion for expedited consideration originally filed, the Board is deciding this matter well in advance of that decision due date. For the reasons set forth below, we grant ILI the requested variance for a period of 12 months.

BACKGROUND

ILI is the owner of the ILI Landfill, which is located in Hoopeston, Vermilion County, Illinois. The facility has a permitted area of 39.2 acres and a waste boundary area of 33 acres. (Pet. Br. at 4.) ILI estimates that the landfill has approximately 1,402,044 cubic yards of remaining airspace volume. (Pet. Br. at 5.) The facility has 18 full-time employees, and utilizes additional part-time personnel on an as-needed basis. (Id.) The existing service area encompasses an approximate 100-mile radius from the landfill, including Vermilion, Iroquois, and Ford counties, with an approximate 1990 population of 6,000,000. (Id.) During February to December 1993, the facility received an average of 161.78 tons of non-hazardous waste per day, including municipal solid waste and special waste, for a total of 43,193 tons of waste.

On November 25, 1992, pursuant to Section 39.2 of the Act, ILI submitted an application for expansion of this facility to the City of Hoopeston (Hoopeston), seeking both a lateral and vertical expansion. Under the proposed expansion, the total facility area would be 160 acres, and the total remaining airspace would be 13,000,000 cubic yards. (Pet. Br. at 5.)

Hoopeston granted siting approval for the proposed expansion. However, the Board reversed Hoopeston's approval of the application, holding that Hoopeston's finding that the proposed expansion was necessary to accommodate the waste needs of the intended service area did not comport with the requirements of the statute. (Slates v. Illinois Landfills, (September 23, 1993) PCB 93-106.) ILI submitted a motion for reconsideration, which was denied. (Slates v. Illinois Landfills, (December 16, 1993) PCB 93-106.) Subsequently, ILI appealed the Board's decision to the Fourth District Appellate Court. This appeal, docketed as case #4-94-0041, is still pending before the district court.

STATUTORY FRAMEWORK

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulation at issue would pose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a) (1992).) Furthermore, the burden is on petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v. Pollution Control Board (1st Dist. 1977), 135 Ill.App.3d 343, 481 N.E.2d 1032.) Only with such showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship. (We Shred It, Inc. v. Illinois Environmental Protection Agency (November 18, 1993) PCB 92-180 at 3.)

A further feature of a variance is that it 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. Pollution Control Board (1977), 67 Ill.2d 276, 367 N.E.2d 684.) Accordingly, except in certain special circumstances, a variance petitioner is required as a condition to the grant of a variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

HARDSHIP

Under Section 814.104(c), ILI is required to file an application for significant modification by September 18, 1994. If ILI is required to comply with this deadline, it would have to file its application based on the facility as it currently exists. If ILI is then successful in its appeal of the Board's decision and ultimately obtains siting approval for the proposed expansion, ILI would be required to file a second application for the expanded facility. ILI seeks a variance from the filing deadline in order to allow it to complete the appeal process for the proposed expansion prior to filing its application for significant modification, thus avoiding the expense and effort of preparing and filing an application which could soon become obsolete. (Pet. Br. at 3.) ILI asserts that the variance would also avoid wasting the Agency's resources and time in needlessly reviewing a second application that would soon become obsolete. (Pet. Br. at 9, 12.)

ILI has included cost estimates of preparing an application for significant modification. ILI asserts that the baseline cost of preparing an application for significant modification, if the variance is approved and siting approval for the expansion is not obtained, is approximately \$125,500. (Pet. Br. at 9.) ILI then asserts that denial of the variance would result in costs which

are "significantly more." (Id.) ILI then asserts that "denial of the variance could cost ILI several hundred thousand dollars," although it supplies no supporting calculations or information for this statement. (Id.)

ILI also states that certain materials prepared for its siting application could be used as elements of the application for significant modification if siting approval is ultimately granted. These materials would have to be redone if appeal on siting is unsuccessful, since they were prepared based on the proposed expanded facility. (Pet. Br. at 8.)

COMPLIANCE WITH OTHER REGULATIONS; ENVIRONMENTAL IMPACT

Petitioner asserts that the proposed variance will be fully consistent with federal law. (Pet. Br. at 12.) Furthermore, petitioner asserts that the facility has a state-of-the-art liner and leachate collection system (Pet. Br. at 9), and that the requested variance will have no impact on the environment, since it will only extend the filing deadline set forth in Section 814.104(c) (Pet. Br. at 10).

AGENCY RECOMMENDATION

The Agency also believes that requiring petitioner to prepare and the Agency to review an unnecessary second application would needlessly waste the time and resources of both parties (Ag. Rec. at 3), and generally concurs with the factual representations in petitioner's variance petition (Ag. Rec. at 2), and agrees that the proposed variance will be fully consistent with federal law (Ag. Rec. at 4). The Agency therefore recommends that the variance be granted for a period of 12 months commencing September 18, 1994, the period which ILI now requests. (Ag. Rec. at 4.) The Agency asserts that the appellate court's decision should be forthcoming in early 1995, which will allow ILI sufficient time to prepare its application by September 18, 1995. (Ag. Rec. at 4.)

CONCLUSION

As discussed above, a variance is a temporary reprieve from the Board's regulations for which a petitioner agrees to commit to a plan to achieve compliance within the term of the variance. ILI has agreed to submit a complete permit application, known as an application for significant permit modification, satisfying the requirements of Section 830.104(c) and thereby demonstrating compliance with Section 830.302, upon expiration of the variance which, if granted as requested, will be a year from the date such application was originally due by Board rule. The Agency has recommended that the variance be granted. The Agency agrees that absent the requested variance, the Agency would have to review a second, largely duplicative

application if ILI is ultimately successful on appeal in the Fourth District. According to the Agency and ILI, such subsequent application and review would unnecessarily waste the time and resources of ILI and the Agency.

ILI has presented no evidence about the actual monetary cost it may suffer if the requested variance is denied. We know only that both it and the Agency would suffer some inconvenience if each is forced to prepare and review, respectively, a second application. However, ILI has represented that there will be no environmental impact if the variance is granted since the landfill is a state of the art landfill which satisfies the requirements of Section 814.302, the underlying regulations with which the application for significant modification is intended to demonstrate compliance. Therefore, the variance sought is one for an extension of time to file such documentation, not from compliance *per se* with the underlying regulations.

Based upon this and the Agency's support of the same, we find that ILI has demonstrated that its claimed hardship outweighs the public interest in having ILI complying with the September 18, 1994 filing date. That date was established to protect the public by requiring landfills such as ILI to demonstrate compliance with the requirements of Section 830.302. ILI has represented to the Board that the existing landfill currently does so. Therefore, public interest is best served by deferring the submission of the actual proof until after resolution of the pending appeal, but only for one year from the original filing date.

On this basis we grant ILI a variance from the deadline set forth in 35 Ill. Adm. Code 814.104(c), and, as requested by ILI and recommended by the Agency, the variance will be for a period of 12 months, commencing September 18, 1994. ILI now has until September 18, 1995 to file its application for significant modification, at which time it must demonstrate facility-wide compliance with Section 814.302.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Illinois Landfill, Inc. (ILI) is hereby granted a variance from 35 Ill. Adm. Code 814.104(c) which terminates September 18, 1995.

Within forty-five days of the date of this order, ILI shall execute and forward to:

John Kim
Division of Legal Counsel
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

a certificate of acceptance and agreement to be bound by all the terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

I (We), _____,
hereby accept and agree to be bound by all terms and conditions of the opinion and order of the Pollution Control Board in PCB 94-200, dated December 1, 1994.

Petitioner

Authorized Agent

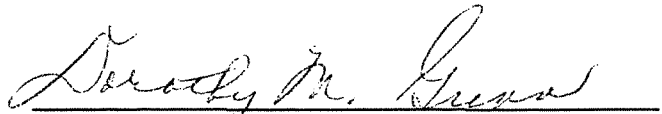
Title

Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246. "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of December 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board