

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1994

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

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a July 25, 1994 petition for variance filed by Illinois Landfill, Inc. (ILI). The petition included a waiver of hearing, with supporting affidavit. Additionally, ILI filed a motion for expedited decision on August 26, 1994. The Illinois Environmental Protection Agency (Agency) filed its recommendation and response on August 25, 1994. On September 2, 1994, an objection to the petition for variance was filed by Larry Slates, Lonnie Seymour, James Klaber, Faye Mott, Hoopeston Community Memorial Hospital, and representative members of C.A.R.E. Subsequently, on September 12, 1994, ILI filed a waiver of the decision deadline until December 16, 1994.

Section 104.141(a) of the Board's procedural rules provides:

Any person may file with the Clerk, within 21 days after the filing of the petition, a written objection to the grant of the variance. Such objection may or may not be accompanied by a petition to intervene in accordance with Section 103.220. A copy of such objection shall be mailed to the petitioner and the Agency by the Clerk.

Therefore, in order to be timely, an objection to a variance petition must be filed within 21 days of the variance petition.

Pursuant to Section 104.140 of the Board's procedural rules, within 10 days after a petition for variance is filed, the Agency must publish notice of the petition in a newspaper of general circulation in the county in which the installation or property is located for which the variance is sought. The Agency published notice of the instant variance petition on August 12, 1994, 18 days after the petition was filed. The published notice stated that objections to the variance petition could be filed within "21 days from publication of this notice."

Because the objectors filed their objection 21 days after notice of the petition was published, we will construe the objection as timely filed, despite the fact that it was filed 39

days after the petition. We therefore accept this matter for hearing.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by a waiver (petitioner may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). A hearing officer shall be assigned to conduct hearings. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

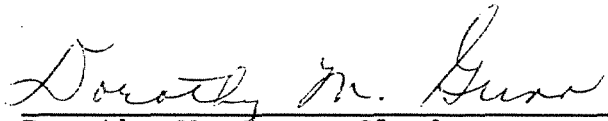
The assigned hearing officer shall inform the Clerk of the Board as soon as possible of the time and location of the hearing since the public notice of hearing must be published at least 21 days in advance thereof. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. Absent any future waivers of the decision deadline, the statutory decision deadline is now December 16, 1994; the Board meeting immediately preceding the due date is scheduled for December 15, 1994.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

At the time the variance petition was filed, the regulatory deadline, September 18, 1994, from which petitioner seeks variance preceded the Board's decision deadline. Petitioner therefore requested expedited relief to avoid the need for retroactive relief. Given the subsequent objection and petitioner's waiver of the original decision deadline, the premise underlying the motion is moot. Therefore, the motion is denied. Recognizing, however, that the regulatory deadline will have passed by the time this matter is ripe for decision, the Board will consider this matter as quickly thereafter as possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15th day of September, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board