

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1991

R. LAVIN & SONS, INC.,)
)
 Petitioner,)
) PCB 90-31
 v.) (Variance)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. C. Marlin):

On September 11, 1991 the Illinois Environmental Protection Agency ("Agency") filed a Motion to Dismiss or in the alternative a Motion for Summary Judgement. On September 18, 1991, the Board received a response to the Motion from R. Lavin and Sons ("Lavin").

The Agency states that the Lake County Circuit Court entered a consent order on October 12, 1990, which sets forth interim and final compliance limits. Therefore, the Agency asserts that the need for the variance has been mooted. The Agency further maintains that the court has retained jurisdiction and the court is the proper venue for determining temporary relief for Lavin.

Lavin correctly points out in its response that the Board's procedural rules do not provide for summary judgement in variance proceedings. The Board's rules at 35 Ill. Adm. Code 101.244 specifically allow for summary judgement motions only in permit appeals and enforcement proceedings. Therefore, the Motion for Summary Judgement is denied.

With regard to the Motion to Dismiss, Lavin asserts that the scope of relief sought in this Petition is beyond the scope of the relief granted in the consent decree. Lavin cites to specific paragraphs of its petition which seek relief not discussed in the consent decree. In addition, Lavin argues that the Board can grant relief to Lavin for up to five years while the relief in the consent decree expires on May 4, 1992. Lavin also asserts that the jurisdictional argument by the Agency is untimely.

The Board does not dispute that the Circuit Court has sole jurisdiction over the terms of the consent decree. However, the relief sought in the petition for variance is beyond the scope of the consent decree. Further, "the Circuit Courts have no jurisdiction to grant variances; that power is reserved by law to this Board pursuant to Title IX of the Environmental Protection Act." Container Corporation of America v. IEPA, PCB 87-183, 98 PCB 25 (April 6, 1989).

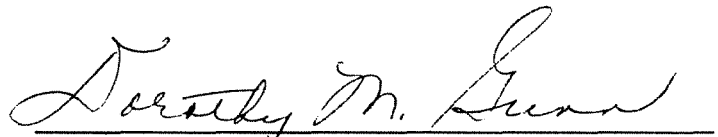
The filings received by the Board on the alternative Motions

make clear that there are questions of material fact and questions of law to be resolved in this proceeding. Therefore, the Motions are denied.

IT IS SO ORDERED.

B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 10th day of October, 1991, by a vote of 5-7.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board