## ILLINOIS POLLUTION CONTROL BOARD October 1, 1987

NESCO	STEEL	BARREL	COMPANY,	)		
			Petitioner,	)		
			v.	)	PCB	84-81
		VIRONMEI AGENCY,	NTAL	) )		
			Respondent.	í		

DISSENTING OPINION (by B. Forcade):

I dissent from today's action allowing the "late" filing of the Certificate of Acceptance to be bound by conditions of variance.

The Board is allowed to grant temporary exclusions (variances) from compliance with environmental laws and to impose appropriate conditions which must be adhered to by the variance petitioner. However, the variance conditions are not enforceable until the variance petitioner agrees to be bound to those conditions by signing and filing an acceptance (Citizens Utilities Co. v. IPCB, 289 N.E.2d 642 (1972)). By accepting a certificate to be bound after the process of enforcement had begun, the Board provides a profound incentive for variance petitioners to wait and see if they will "end up in court" before deciding whether to sign the certificate. If no enforcement action is brought, they have a variance but the conditions of the variance are unenforceable. If enforcement is brought, the variance petitioner can decide which presents the greater complying with the conditions or defending the burden: enforcement action.

To me, this is neither good law nor good policy. The Illinois Environmental Protection Agency will now have no reasonable method to determine who intends to comply with variance conditions except by bringing an enforcement action. Accordingly, I dissent.

Bill S. Porcade Member of the Board I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 9th day of October, 1987.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board