ILLINOIS POLLUTION CONTROL BOARD April 8, 1976

ILLINOIS NATURAL HISTORY SURVEY,)		
Petitioner,)		
v.)	PCB	76-43
ENVIRONMENTAL PROTECTION AGENCY,)		
Respondent.)		

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

The Illinois Natural History Survey filed a variance petition on February 13, 1976, seeking relief from Rule 203(h) of Chapter 3: Water Pollution Regulations. Petitioner seeks to apply rotenone on sections of Lake Shelbyville to obtain a "standing crop" survey. The Environmental Protection Agency (Agency) Recommendation to grant the variance was filed on March 17, 1976. No hearing was held.

Lake Shelbyville has a surface acreage of 11,100 acres and discharges to the Kaskaskia River. The lake is not a public water supply source although Vandalia, thirty miles downstream, uses the Kaskaskia River for its water supply. Petitioner proposes to treat only two small (3-5 acre) bays (average depth of 5 feet) without tributary streams. waters of these bays are to be isolated from the reservoir by polyethylene sheeting. Petitioner states that the rotenone will be applied at a concentration of 1 part per million and will remain toxic for approximately six hours. Petitioner states that as soon as the dead fish are processed, the area will be detoxified with potassium permanganate. Petitioner also indicates that the plastic barrier may be allowed to remain in place for three or four days as a safety precaution. Petitioner proposes that the application be made by its assistant aquatic biologist, Dr. John Tranquilli.

Petitioner alleges that Rule 203(h) of Chapter 3 constitutes an arbitrary and unreasonable hardship on Petitioner's research activities as there is no feasible alternative sampling procedure to determine fish populations.

The Agency Recommendation agrees with Petitioner, that given Petitioner's research functions and the lack of feasible alternative fish census techniques, a denial of the variance would work an unreasonable hardship.

Petitioner has provided letters approving the treatment from the U.S. Corps of Engineers and the Illinois Department of Conservation. The Agency believes that these two approvals constitute approval by all the holders of interest in Lake Shelbyville.

The Agency also notes that this petition for variance is essentially similar to Petitioner's request for a variance in PCB 75-322, in which the Board allowed Petitioner to apply rotenone to Lake Shelbyville. The Agency projects no downstream environmental harm from the application.

The Board finds that Petitioner would be subject to an unreasonable hardship by a variance denial, as no suitable alternative means exist to obtain the information it requires. In addition the application procedure reflects sufficient safeguards for the protection of non-subject portions of the lake and its aquatic populations. Lastly, there appears to be no inherent hazard to a public water supply. Therefore, a variance from Rule 203(h) is granted to the Natural History Survey.

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

ORDER

The Pollution Control Board hereby grants the Natural History Survey a variance from Rule 203(h) of Chapter 3, during the Fall of 1976, subject to the following conditions:

- 1. That the toxicants be applied by Dr. John Tranquilli, Assistant Aquatic Biologist of the Illinois Natural History Survey, such application to be made with all proper safety precautions taken by applicator;
- 2. That the Petitioner use polyethylene sheeting to retain the water in the bays while the chemicals remain toxic;
- 3. That the embayed areas will be detoxified with potassium permanganate upon completion of the study;
- 4. That within seven days after the date of this Board Order the Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Manager, Variance Section, Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706 and to the Pollution Control Board a Certification of Acceptance and Agreement to be bound to all terms and conditions of the variance. The form of said Certification shall be as follows:

$\underline{\mathtt{C}} \ \underline{\mathtt{E}} \ \underline{\mathtt{R}} \ \underline{\mathtt{T}} \ \underline{\mathtt{I}} \ \underline{\mathtt{F}} \ \underline{\mathtt{I}} \ \underline{\mathtt{C}} \ \underline{\mathtt{A}} \ \underline{\mathtt{T}} \ \underline{\mathtt{I}} \ \underline{\mathtt{O}} \ \underline{\mathtt{N}}$

I (We),	having read
and fully understanding the Order of the Pollution	Control Board
in PCB 76-43 hereby accept said Order and agree to	be bound
by all of the terms and conditions thereof.	
Signed	
Title	
Date	
Mr. Dumelle concurs.	
I, Christan L. Moffett, Clerk of the Illinois I Control Board, hereby certify the above Opinion and were adopted on the day of by a vote of	Pollution d Order , 1976

Christan L. Moffett, Clerk
Illinois Pollution Control Board