

ILLINOIS POLLUTION CONTROL BOARD
February 20, 1997

VILLAGE OF LAKE ZURICH,)
)
 Petitioner,)
)
 v.) PCB 97-77
) (Variance - Public Water Supply)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on the Village of Lake Zurich's (Lake Zurich) petition for variance filed on October 23, 1996. Lake Zurich is seeking an extension of variance from the requirements of 35 Ill. Adm. Code 602.105(a), "Standards for Issuance" and 35 Ill. Adm. Code 611.106(b) "Restricted Status", to the extent these requirements involve 35 Ill. Adm. Code 611.330(a) which establishes the maximum contaminant level (MCL) for combined radium-226 and radium-228 of 5.0 picocuries per liter (pCi/L), and gross alpha particle activity level of 15.0 pCi/L, respectively. Lake Zurich's prior variance expired December 19, 1996. (Rec. at 4, Pet. at 8.)¹

Lake Zurich requests to extend its prior variance until the earliest of the following three dates: (1) three years following the effective date of any regulation promulgated by the United States Environmental Protection Agency (USEPA) which amends the MCL for combined radium; (2) three years after the USEPA publishes notice that no amendments of the 5.0 pCi/L combined radium standard will be promulgated; or (3) when Lake Zurich's public water supply is determined by appropriate methodology, to be in compliance with all radium standards then in effect. (Pet. at 10.)

On November 23, 1996 the Illinois Environmental Protection Agency (Agency) filed its variance recommendation. The Agency recommends that an extension of variance be granted for two years following USEPA action or five years from the date of this order subject to certain conditions. (Rec. at 1, 14.)

The Board's responsibility in this matter arises from the Illinois Environmental Protection Act (Act). (415 ILCS 5/1 *et seq.* (1994).) The Board is charged with the responsibility of granting variance from Board regulations whenever it is found that immediate compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner. (415 ILCS 5/35(a).) The Agency is required to appear at hearings on variance

¹ Lake Zurich's Petition for Extension of Variance will be cited as (Pet. at __); the Agency's Recommendation will be cited as (Rec. at __).

petitions (415 ILCS 5/4(f)), and is charged, among other things, with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. (415 ILCS 5/37(a).)

For the following reasons, the Board finds that Lake Zurich has presented adequate proof that immediate compliance with the Board's regulations for "Standards for Issuance" and "Restricted Status" would impose an arbitrary or unreasonable hardship. The Board further finds that Lake Zurich has made satisfactory progress toward achieving compliance during the term of its prior variance. Accordingly, the request for a variance from the Board's "Standards of Issuance" and "Restricted Status" is granted, beginning on the date of this opinion and subject to the conditions set forth in the attached order.

BACKGROUND

The Village of Lake Zurich is a municipality located in Lake County, Illinois. (Rec. at 3.) Lake Zurich provides a potable water supply and distribution system to a population of approximately 17,250 people, representing approximately 6,400 residents, 300 commercial and 25 industrial utility businesses. (Pet. at 2.) Lake Zurich's water supply and distribution system consists of six deep wells, four storage tanks, and a pumping and distribution system consisting of approximately 85 miles of pipe. (Pet. at 3.) Lake Zurich is not part of a regional public water supply. (*Id.*)

Lake Zurich is requesting an extension of its prior variance to allow for expansion or extension of its water supply and distribution system. The most recent analyses of its water supply was completed at the following locations:

Tap 1, Well 7: Combined radium content of 11.4 pCi/L taken 8/8/96;

Tap 2, Well 8: Combined radium content of 8.9 pCi/L taken 12/1/95;

Tap 4, Well 10: Combined radium content of 11.7 pCi/L taken 8/1/95;

Tap 6, Well 11 Combined radium content of 10.6 pCi/L taken 11/15/95.

The results were obtained from analyses of composite samples compiled over four consecutive quarterly samples. (Rec. at 5.) Lake Zurich states it has made substantial improvements to its public water supply system since its original variance period. *Id.* Lake Zurich has built a 750,000 gallon and 1.5 million gallon elevated storage tanks; installed 16,000 lineal feet of water main; and constructed two new wells (Well No. 11 and Well No. 12). (Rec. at 6, Pet. at 4.) Since 1991, Lake Zurich has spent approximately \$5.4 million on improving its water system. (Pet. at 4.)

Lake Zurich is requesting a variance to allow for expansion or extension of its water supply and distribution system. Lake Zurich foresees extending its water mains to serve the following: (1) the Lake Zurich Industrial Park (1996-2001); (2) the Terrestris Subdivision (residential) (1996-1998); and (3) the Village Square II Shopping Center (1996-1997). (Pet. at 7-8.) Lake Zurich has filed previous variance petitions in 1986 and 1991. (Pet. at Exhibit

A, page 2.) (Village of Lake Zurich v. IEPA, (December 19, 1991), PCB 91-188, 128 PCB 287.) Lake Zurich is not listed on restricted status for exceeding any other contaminant. (Rec. at 5.)

REGULATORY FRAMEWORK

In determining whether any variance is to be granted, the Act requires the Board to ascertain whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a).) Furthermore, the burden is upon 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, 135 Ill.App.3d 343, 481 N.E.2d 1032 (1st Dist. 1977).) The petitioner must establish this burden in order for the claimed hardship rise to the level of arbitrary or unreasonable hardship.

A variance, by its very nature, is a temporary reprieve from compliance with the Board's regulations, and compliance is to be pursued regardless of the hardship which eventual compliance presents an individual petitioner. (Monsanto Co. v. Pollution Control Board, 67 Ill.2d 276, 367 N.E.2d 684 (1977).) Accordingly, as a condition to the granting of variance, a variance petitioner is required to commit to a plan which is reasonably designed to achieve compliance within the term of the variance, unless certain special circumstances exist. A request for extension of a variance can be granted on a year to year basis, but only upon a showing of substantial progress towards achieving compliance. (415 ILCS 36(b).)

The instant variance request concerns two features of the Board's public water supply regulations: Standards for Issuance and Restricted Status. These features are found at 35 Ill. Adm. Code 602.105 and 602.106, respectively, and in pertinent part read:

Section 602.105 Standards for Issuance

- a) The Agency shall not grant any construction or operating permit required by this Part unless the applicant submits adequate proof that the public water supply will be constructed, modified or operated so as not to cause a violation of the Environmental Protection Act...or of this chapter.

(35 Ill. Adm. Code 602.105.)

Section 602.106 Restricted Status

- a) Restricted status shall be defined as the Agency determination pursuant to Section 39(a) of the Act and Section 602.105, that a public water supply facility may no longer be issued a construction permit without causing a violation of the Act or this Chapter.

b) The Agency shall publish and make available to the public, at intervals of not more than six months, a comprehensive and up-to-date list of supplies subject to restrictive status and the reasons why.

(35 Ill. Adm. Code 602.106.)

The principal effect of these regulations is that public water suppliers are prohibited from extending water service due to their inability to obtain the requisite permits, unless and until their water meets all the standards for finished water supplies. A grant of variance from "Standards for Issuance" and "Restricted Status" neither absolves a petitioner from compliance with the drinking water standards at issue, nor insulates a petitioner from possible enforcement actions for violating those standards. The underlying standards remain applicable to the petitioner regardless of whether the variance is granted or denied.

Standards for combined radium in drinking water were first adopted as National Interim Primary Drinking Water Regulations by the United States Environmental Protection Agency (USEPA) in 1976. The standard adopted was 5.0 pCi/L for the sum of two isotopes of radium: radium-226 and radium-228 ("combined radium"). Shortly thereafter Illinois adopted the same limits. Although characterized as "interim" limits, these standards are the MCLs under both federal and Illinois law, and will remain so unless modified by the USEPA. In anticipation of USEPA's revision of the radium standard, the Illinois legislature amended the Act at Section 17.6 in 1988 to provide that any new federal radium standard will immediately supersede the current Illinois standard. The state standard is therefore inexorably tied to the federal standard, and cannot be greater than or less than the federal limit.

Since their original promulgation, the current radium standards have been under review at the federal level. The USEPA has been evaluating the interim radium standards pursuant to Sections 1412(b)(1)(B) and 1412(b)(2) of the Safe Drinking Water Act that require USEPA to propose and promulgate the National Revised Primary Drinking Water Regulations. On October 5, 1983 USEPA announced its intention to revise the interim radionuclides standards in an Advanced Notice of Proposed Rulemaking (ANPR). (48 Fed.Reg. 45502). In that notice, USEPA stated that it would perform a comprehensive reassessment of the interim standards in order to optimize public health protection without unnecessary economic burdens on states and communities. It later republished this ANPR in September 1986, establishing MCL goals for radionuclides and providing information related to establishing MCLs for radionuclides. (51 Fed.Reg. 34836).

On July 18, 1991 the USEPA published a rulemaking proposal which included a revision of the interim standards for radium-226 and radium-228. (56 Fed.Reg. 33050). USEPA proposes to replace the 5.0 pCi/L combined radium standard with separate MCLs of 20.0 pCi/L each for radium-226 and radium-228. In proposing the revised MCLs, USEPA gave consideration to available technologies and associated costs, analytical capabilities and health risks associated with the contaminants. USEPA determined that alternatives at the 10^{-4} lifetime risk level, approximately 20.0 pCi/L for both radium-226 and radium-228, are

protective to human health. Hence, the USEPA concluded that it was not cost effective to set MCLs for radium at the technically feasible level of 5.0 pCi/L.

This change in the radium standard was to be promulgated by April 1995, but the deadline was later extended to September 1995. However, Congress prohibited funds for the promulgation of final radionuclide standards for fiscal year 1994 and 1995. Mr. Joseph Harrison, Chief of the Safe Drinking Water Division, USEPA Region V, announced that in light of the projected proposal for the relaxed standard, the USEPA would not force any municipality to spend funds to comply with the federal combined standard.

COMPLIANCE PLAN

Past Compliance Plan

On May 16, 1991 Lake Zurich was first advised by the Agency that its water supply currently exceeded the maximum allowable concentration for combined radium. (Pet. Exhibit A at page 2.) (Village of Lake Zurich v. IEPA, (December 19, 1991), PCB 91-188, 128 PCB 287.) An analysis showed a combined radium content of 12.7 pCi/L for only Well No. 7. *Id.* The Agency stated that Lake Zurich was granted a prior variance in PCB 86-41 which expired May 1, 1991 at which time Lake Zurich was in compliance with the radium standards. *Id.* Lake Zurich asserted in its 1991 petition that since 1986 its public water supply system achieved full compliance with the applicable combined radium standard. *Id.*

Lake Zurich has undertaken concrete steps to find alternative water supplies that do not exceed applicable radium standards. For example, Lake Zurich has retained an outside consultant, Rezek, Henry, Meisenheimer and Genede, Inc. (RHM & G) to analyze potential supply and demand treatment options. (Pet. at 4.) In addition, Lake Zurich has placed its operating Well No. 10 on emergency stand-by status because Well No. 10 has the highest level of radium of all of Lake Zurich's wells. *Id.*

Lake Zurich has also made massive sanitary sewer system improvements in addition to the improvements in the public water supply mentioned *supra*. (Pet. at 4.) Pursuant to its Consent Order with the Agency, Lake Zurich constructed an eleven-mile sewer main to connect Lake Zurich's collection and transmission to Lake County's Pekara Treatment Plant at a cost of over \$23 million. (Pet. at 6-7.)

Additionally, Lake Zurich has drilled two new wells in an attempt to locate one or more shallow aquifers to draw water. (Pet. at 4.) However, based on all available information Lake Zurich derived from its attempt to locate one or more shallow aquifers, Lake Zurich has no viable shallow source of water to utilize. *Id.*

Future Compliance Plan

In the event the 5.0 pCi/L standard for combined radium-226 and radium-228 remain unchanged, Lake Zurich proposes two alternatives to resolve the apparent radium contamination problems: (1) construct treatment facilities to properly treat all water supplied

by the existing deep wells; and (2) continue to search for alternative sources of supply, such as construction of shallow wells. (Rec. at 6, Pet. at 4, 5.) Lake Zurich intends to retain its outside consultant, RHM & G to assist in reviewing and evaluating the radium levels in the water and to prepare recommendations for resolving the problem. (Rec. at 6, Pet. at 4.)

ARBITRARY OR UNREASONABLE HARDSHIP

Lake Zurich states that denial of its request for a variance would pose an arbitrary or unreasonable hardship because significant development would be delayed or precluded. (Pet. at 7.) In addition, Lake Zurich states that denial of its requested variance would be an arbitrary or unreasonable hardship because it would require the Agency to keep Lake Zurich on its restricted status list. Placing Lake Zurich on restricted status requires the Agency to reject construction and operating permits until compliance with the standards is achieved, which in turn means that no new water main extensions could be constructed, and further development would be obstructed. (Pet. at 7.) In addition, Lake Zurich contends that it would be an unreasonable and arbitrary hardship to require Lake Zurich to expend valuable and limited public resources to bring its water supply distribution system into compliance with the current 5.0 pCi/L standard for combined radium at the time it is being reconsidered by the USEPA when there would be no corresponding benefit to the public. (Pet. at 6.)

ENVIRONMENTAL IMPACT

In its recommendation, the Agency stated its belief that granting the requested variance would impose no significant injury to the public or the environment. (Rec. at 7-11.) The Agency asserts that the proposed variance should cause no significant health risk for the population served by any new water main extensions for the time period of the recommended variance. (Rec. at 11.) The Agency relies on testimony presented by Richard E. Toohey, Ph.D., of Argonne National Laboratory, at hearings held on July 30 and August 2, 1985 in R85-14, Proposed Amendments to Public Water Supply Regulations, 35 Ill. Adm. Code 602.105 and 602.106. (Rec. at 8.)

CONSISTENCY WITH FEDERAL LAW

The parties believe the Board can grant the requested variance consistent with the Safe Drinking Water Act, PL 93-523, as amended by PL 96-502, 42 U.S.C. 300(f) and the USEPA drinking water regulations (40 CFR 141 (1993)). The requested variance, which would allow construction of water main extensions, would not be a variance from federal drinking water regulations, but only a variance from the state's regulations regarding Restricted Status and Standards of Issuance. Since only state criteria are relevant in this request for variance, there is no conflict with federal law. The parties point out that granting the variance will not insulate Lake Zurich from possible enforcement actions for violations of the radium standards. However, the USEPA has indicated that it will not intervene in variances which trigger final design and construction of compliance equipment by the date on which USEPA revises the MCL for radium set forth at 40 CFR 141.15(a). (Rec. at 8-9.)

ANALYSIS

Since this matter involves a petition for extension of a prior variance, the Board will first consider whether the conditions which existed to justify the first variance still exist to justify an extension. Specifically, the Board will review the environmental impact and the alleged hardship justifying delayed compliance with the standards, and whether the stated hardship continues to outweigh any environmental impact of the requested variance. The Board will then discuss whether Lake Zurich has demonstrated satisfactory progress toward achieving compliance by reviewing its compliance efforts and the reasonableness of its future compliance plan.

Environmental Impact

The Board finds that Lake Zurich's divergence from the radium standard is not great, and that the proposed variance would cause no significant health risk for the population served by water main extensions for the time period of the recommended variance. The Board agrees with the parties that a granting of the requested variance would not result in a significant injury to the public or to the environment for the limited time period requested.

Alleged Hardship

The Board finds that the circumstances which prevented Lake Zurich's compliance with the radium standard continues to exist. The same federal regulatory uncertainty which existed in 1991 continues to exist today: continued pendency of USEPA action to promulgate new standards for radionuclides in drinking water. USEPA's 1991 proposal of separate 20.0 pCi/L standards for radium-226 and radium-228, if adopted, could significantly alter or eliminate Lake Zurich's need for variance from the Board's rules, or its need for alternatives to achieving compliance with the underlying radium limitations.

Lake Zurich presented considerable evidence of the economic and fiscal hardship it would suffer should its request for variance extension be denied. Specifically, Lake Zurich states that numerous residential and commercial developments would be halted if the variance request is denied, resulting in loss of tax income for the city and loss of job opportunities for Lake Zurich residents. (Pet. at 7.) In addition, Lake Zurich contends that the water system and sewer system improvements have severely taxed Lake Zurich's resources. *Id.* The Board notes that economic costs are not themselves sufficient to warrant a finding of arbitrary or unreasonable hardship, unless balanced by a finding of no or minimal environmental impact. (City of Streator v. IEPA (September 20, 1985), PCB 84-181, 65 PCB 146.) In this case, we find that the loss of tax income and job opportunities coupled with the federal regulatory uncertainty would be an arbitrary or unreasonable hardship which outweighs the minimal environmental impact of a variance extension.

In addition, while it is undisputed that a speculative change in law is not grounds for establishing arbitrary or unreasonable hardship, the Board believes that in some circumstances a prospective change in law may be appropriately reflected in the conditions upon which a

variance is granted. (City of Genoa v. IEPA (December 20, 1990) PCB 90-166, 117 PCB 135.) In the instant case, since USEPA is expected to announce a decision as to radium standards, the Board finds it appropriate to tailor the grant of variance so that Lake Zurich will achieve compliance with whatever standard is ultimately applicable while ensuring that Lake Zurich will not need to prematurely return to this Board to request another variance extension.

Future Compliance

Lake Zurich states that, during the term of the extended variance, it will continue to monitor its radium levels, and report its findings to the Agency. Lake Zurich states its willingness to construct treatment facilities to properly treat all water supplied by the existing deep wells; and continue to search for alternative sources of supply, such as construction of shallow wells. (Rec. at 6, Pet. at 4, 5.) Lake Zurich intends to retain its outside consultant, RHM & G to assist in reviewing and evaluating the radium levels in the water and to prepare recommendations for resolving the problem. (Rec. at 6, Pet. at 4, 5.) The Board finds these future compliance efforts to be reasonable. The Board is concerned, however, that to date Lake Zurich has found no viable shallow source of water to utilize. (Pet. at 4.) Therefore, the Board stresses the importance of Lake Zurich's proposal to construct treatment facilities to properly treat all water supplied by the existing deep wells in the event USEPA does not raise its current 5.0 pCi/L standard for combined radium-226 and radium-228.

Having found that Lake Zurich has substantially complied with the Board's previous order, and that Lake Zurich's future compliance plans are reasonable, the Board also finds that Lake Zurich has made satisfactory progress toward achieving compliance during its prior variance. Lake Zurich has accomplished all compliance efforts short of final design and construction; to require more while the radium standard is in flux would be unreasonable.

CONCLUSION

Based on the above findings, the Board holds that Lake Zurich's alleged hardship, due to the loss of economic and fiscal income should a variance be denied, and due to the ongoing scrutiny of the federal radium standard, outweighs the minimal environmental impact of the requested variance. Therefore, the Board finds the hardship to be an arbitrary or unreasonable one. The Board finds that Lake Zurich has made satisfactory progress toward achieving compliance during the term of its prior variance. Accordingly, the Board grants Lake Zurich a variance subject to the conditions stated below.

Today's action is solely a grant of variance from standards of issuance and restricted status. The effect of this variance is to allow Lake Zurich to extend water service to new customers. As Lake Zurich acknowledged in its petition, Lake Zurich is not granted variance from compliance with the combined radium standard, nor does today's action insulate Lake Zurich in any manner from enforcement for violation of that standard.

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

ORDER

The Village of Lake Zurich (Lake Zurich) is hereby granted a variance from 35 Ill. Adm. Code 602.105(a), "Standards of Issuance" and 602.106(b), Restricted Status, only as they relate to the standards for combined radium-226 and radium-228 in drinking water as set forth in 35 Ill. Adm. Code 611.330(a), subject to the following conditions:

- (A) For purposes of this order, the date of United States Environmental Protection Agency (USEPA) action shall be the earlier date of the following:
 - (1) Date of promulgation by the USEPA of the regulation which amends the maximum contaminant level (MCL) for combined radium, either of the isotopes of radium, or the method by which compliance with a radium MCL is demonstrated; or
 - (2) Date of publication of notice by USEPA that no amendments to the 5.0 pCi/L combined radium standard or the method for demonstrating compliance with the 5.0 pCi/L will be promulgated.
- (B) The variance shall terminate on the earlier of the following dates:
 - (1) Five years from the date of this order; or
 - (2) Two years following the date of USEPA action.
- (C) In consultation with the Illinois Environmental Protection Agency (Agency), Lake Zurich shall continue a sampling program to determine as accurately as possible the level of radioactivity in its wells and finished water. Until this variance terminates, Lake Zurich shall collect quarterly water samples from its distribution system at locations approved by the Agency. Lake Zurich shall composite quarterly samples from each location separately and shall have them analyzed annually by a laboratory certified by the State of Illinois for radiological analysis so as to determine the concentration of radium-226 and radium-228. At its own option, Lake Zurich may have the quarterly samples analyzed when collected. The results of the analyses shall be sent to:

Illinois Environmental Protection Agency
Compliance Assurance Section
Drinking Water Quality Unit, Bureau of Water
P.O. Box 19276
Springfield, Illinois 62794-9276
- (D) Within 30 days of receiving the most recent quarterly sample, Lake Zurich shall also send to the address in paragraph (C) the running average results of the most recent four quarterly samples.

- (E) Within three months of USEPA action, Lake Zurich shall apply to the Agency at the address below for all permits necessary for construction, installation, changes, or additions to its public water supply needed for achieving compliance with the MCL for combined radium or with any other standard for radium in drinking water then in effect:

Illinois Environmental Protection Agency
Public Water Supply Program
Permit Section
2200 Churchill Road
Springfield, Illinois 62794-9276

- (F) Within three months of the issuance of each construction permit by the Agency, petitioner shall advertise for bids, to be submitted with 60 days, from contractors to do the necessary work described in the construction permit. Lake Zurich shall accept appropriate bids within a reasonable time. Lake Zurich shall notify the Agency, Division of Public Water Supplies (DPWS), within 30 days, of each of the following actions: 1) advertisements for bids; 2) names of successful bidders; and 3) whether Lake Zurich accepted the bids.
- (G) Construction allowed on said construction permits shall begin within a reasonable time of bids being accepted, but in any case, construction of all installations, changes or additions necessary to achieve compliance with the MCL in question, shall be completed no later than two years following USEPA action. One year will be necessary to prove compliance.
- (H) Pursuant to 35 Ill. Adm. Code 611.851(b), in its first set of water bills, or within three months after the date of this order, whichever occurs first, and every three months thereafter, Lake Zurich will send to each user of its public water supply a written notice to the effect that Lake Zurich is not in compliance with the standard in question. The notice shall state the average content of the contaminants in samples taken since the last notice period during which samples were taken.
- (I) Pursuant to 35 Ill. Adm. Code 611.851(b), in its first set of water bills, or within three months after the date of this order, whichever occurs first, and every three months thereafter, Lake Zurich will send to each user of its public water supply a written notice to the effect that Lake Zurich has been granted by the Illinois Pollution Control Board a variance from 35 Ill. Adm. Code 602.105(a), Standards of Issuance, and 601.106(b), Restricted Status, as it relates to the MCL standard in question.
- (J) Until full compliance is achieved, Lake Zurich shall take all reasonable measures with its existing equipment to minimize the level of contaminants in its finished drinking water.

- (K) Lake Zurich shall provide written progress reports to the Agency at the address below, every six months concerning steps taken to comply with paragraphs C, D, E, F, G, H, and, I. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph. Progress reports shall be sent to:

Illinois Environmental Protection Agency
 Division of Public Water Supply
 Field Operations Section
 2200 Churchill Road
 Springfield, Illinois 62794-9276

IT IS SO ORDERED.

If Lake Zurich chooses to accept this variance subject to the above order, within forty-five days of the grant of the variance, Lake Zurich must execute and forward the attached certificate of acceptance and agreement to:

Stephen C. Ewart
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 P.O. Box 19276
 2200 Churchill Road
 Springfield, Illinois 62794-9276

Once executed and received, that certificate of acceptance and agreement shall bind Lake Zurich to all 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:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all the terms of the Order of the Pollution Control Board in PCB 97-77, February 20, 1997.

 Petitioner

 Authorized Agent

 Title

Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) 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 ____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board