ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

PERMATREAT OF ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 93-159
	)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

STEPHEN HEDIGER OF MOHAN, ALEWELT, PRILLAMAN & ADAMI APPEARED ON BEHALF OF THE PETITIONER; and

RICHARD C. WARRINGTON, JR. APPEARED ON BEHALF OF RESPONDENT.

OPINION & ORDER OF THE BOARD (by G. T. Girard):

On August 27, 1993, petitioner, PermaTreat of Illinois (PermaTreat) filed a petition contesting certain conditions imposed by the Illinois Environmental Protection Agency (Agency) on a permit for closure of a waste facility regulated under the Resource Conservation and Recovery Act (RCRA). Hearing was held on November 8, 1993. Briefs were filed by mail by both parties on November 19, 1993 (petitioner's brief was received on November 23, 1993, and respondent's brief was received November 24, 1993). Petitioner filed its reply on November 29, 1993, with a motion to file instanter. That motion is hereby granted.

The Board's responsibility in this matter arises from Section 40 of the Environmental Protection Act (Act). (415 ILCS 5/40 (1992).) The Board is charged, by the Act, with a broad range of adjudicatory duties. Among these is adjudication of contested decisions made pursuant to the permit process. More generally, the Board's functions are based on the series of checks and balances integral to Illinois' environmental system: the Board has responsibility for rulemaking and principal adjudicatory functions, while the Illinois Environmental Protection Agency (Agency) is responsible for carrying out the principal administrative duties, inspections, and permitting.

BACKGROUND

PermaTreat operates a wood treatment facility in Marion, Williamson County, Illinois, which uses a solution of copper, chromium and arsenic (hereinafter "CCA") to treat raw wood products to increase their useable life span. (R. at 50; R. at

58; R. at 182; R. at 316-317).[1] PermaTreat's facility is located on approximately 14 acres of land (R. at 316), bordered to the east by commercial properties, including warehouses and service stations, to the south by other commercial property, including a railroad property and Central Illinois Public Service Company facilities, to the east with vacant land, and to the north by other industrial property, including an industrial park and warehouses. (R. at 91; Tr. at 15; Tr. at 37-39.) The property was formerly the site of the City of Marion's municipal sanitary sewage lagoon. (R. at 216; Tr. at 64-65.)

The wood treatment process utilized by PermaTreat entails the pressurized injection of the CCA solution into raw wood products. (R. at 50; R. at 58; R. at 316-317.) The raw wood is loaded into a large cylindrical treatment vessel, the treatment vessel doors are closed and sealed, and the air is removed from the treatment vessel. (R. at 317.) The vessel is then filled with the CCA solution, and the pressure of that solution is increased and held until the treatment process is completed. (R. at 317.) Following treatment, the solution is drained from the treatment vessel into the work tank, and any residual CCA solution is drained from the treatment vessel into a collection sump directly under the treatment vessel (R. at 317; R. at 318). Finally, the treated wood is removed from the cylinder and taken to a drip pad, where it is held for as long as 48 hours, until all residual CCA solution has dripped from the treated lumber. (R. at 317; R. at 58.) Following the dripping process, the treated lumber is moved to the service yard. (R. at 58.)

The drip pad is sloped to return the drippage from the treated lumber products at all locations of the drip pad to the collection sump underneath the treatment vessel. (Tr. at 58; R. at 181; R. at 323; Tr. at 27-28; Tr. at 45; Tr. at 64.) Liquid accumulation in the sump is pumped back into the process and re-used. (R. at 3.) The entire drip pad is covered with a roof, which extends several feet beyond the perimeter of the drip pad. (R. at 328.) A curb along the south and east edges of the drip pad serves both as a stop for forklifts operating on the pad, and as a splash guard for CCA solution from treated lumber. (R. at 319; Tr. at 53-54.)

In addition to the CCA solution returning from the drip pad and draining from the treatment vessel, the collection sump also accumulates mud, sawdust, and other foreign material during normal process. (R. at 319-320.) Periodically, PermaTreat must clean these materials from the collection sump to maintain the

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[1] The Board has cited the transcript as "Tr. at "; the petitioner's brief as "P. Br. at "; the petitioner's response brief as "P. Res. Br. at "; the record on appeal as "R. at "; and the Agency's brief as "Ag. Br. at ".

proper tank working volume. (R. at 320.) The cleanout of this accumulated waste material is accomplished manually, by scooping the mud and bark from the sump and preparing it for shipment to a hazardous waste facility in Valparaiso, Indiana, and ultimately to Emelle, Alabama. (R. at 182.)

Because of this collection sump waste material, PermaTreat is a hazardous waste generator, and has been given USEPA generator number ILD063698971. (R. at 58-59.) The sump waste materials have been identified as D004-D007 wastes (R. at 182); this waste accumulates at the rate of approximately 300 to 400 pounds (180 kilograms) per month (R. at 279). On June 20, 1991, when Gerald Steele conducted his RCRA generator inspection at PermaTreat's facility, he observed that some of the accumulated waste materials had been placed on pallets at the southeast quarter of the southwest section of the drip pad. (R. at 183; R. at 430.) PermaTreat from time to time loaded barrels with these materials to manifest off site. (R. at 182-183.) The Agency has taken the position that these materials constitute a "waste pile" subject to RCRA permitting and/or closure, and have demanded that PermaTreat take those steps. (R. at 276.) Although PermaTreat denies that this is a "waste pile" subject to such regulatory requirements (R. at 278-285), it did submit a closure plan (R. at 315-335) which was ultimately denied by the Agency (R. at 309-313). PermaTreat submitted a timely revised closure plan (R. at 315-335), which was approved with conditions by the Agency (R. at 366-375). Pursuant to 35 Ill. Adm. Code 725.212(c) and 35 Ill. Adm. Code 703.280, PermaTreat then requested a modification of that closure plan approval (R. at 377-388). In response to this request, the Agency agreed to modify the closure plan approval conditions in some respects, but denied modifications in other respects (R. at 417-427). This appeal of the Agency's refusal to modify those aspects of the closure plan approval subsequently ensued.

REGULATORY FRAMEWORK

This is a permit appeal under the Board's RCRA Subtitle C provisions. The specific provisions which apply in this proceeding are 35 Ill. Adm. Code 725.358, 725.211, and 725.214. Section 725.358 provides:

> a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(d) applies; or

b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures and equipment as required in paragraph (a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, it must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (Section 725.410).

Section 725.211 provides:

a) Minimizes the need for further maintenance; and

b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

c) Complies with the closure requirements of this Part, including, but not limited to, the requirements of Section 725.297, 725.328, 725.358, 725.380 725.410, 725.451, 725.481 and 725.504.

Section 725.214 provides:

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in Section 725.297, 725.328, 725.358, 725.380 or 725.410. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that hazardous waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722.

APPLICABLE STANDARD

As a preliminary matter, it should be noted that the Board has long held that, in permit appeals the burden of proof rests with the petitioner. The petitioner bears the burden of proving that the closure plan, absent the contested conditions imposed by

the Agency, would not violate the Environmental Protection Act (Act) (415 ILCS 5/1 et. seq.) or the Board's regulations.

This standard of review was enunciated in Browning-Ferris Industries of Illinois, Inc. v. Pollution Control Board, 179 Ill. App. 3d 598, 534 N.E.2d 616, (Second District 1989) and reiterated in John Sexton Contractors Company v. Illinois Environmental Protection Agency, PCB 88-139, February 23, 1989 (Sexton). (Ag. Br. at 5.) In Sexton the Board held:

> that the sole question before the Board is whether the applicant proves that the application, as submitted to the Agency, demonstrated that no violations of the Environmental Protection Act would have occurred if the requested permit had been issued. (Ag. Br. at p. 5.)

Therefore, petitioner must establish to the Board that the closure plan the petitioner submitted to the Agency would not violate the Act or the Board's rules if issued without the contested conditions.

ISSUES

According to the petitioner, this permit appeal raises two broad issues which are:

(1) Whether the Agency's Conditions number 6 and 7, requiring PermaTreat to inspect the drip pad for cracks and nonsecure construction joints, are necessary to ensure compliance with the clean-closure requirements of 35 Ill. Adm. Code 725.111, 725.214, and 725.358(a); and

(2) Whether the Agency's Conditions number 8 and 9, requiring PermaTreat to test soils south and east of the drip pad, are necessary to ensure compliance with the clean-closure requirements of 35 Ill. Adm. Code 725.111, 725.214, and 725.358(a). A subissue to this second issue is whether, if the soil sampling requirement is an appropriate condition, the cleanup objectives established by the Agency (premised upon Class 1 groundwater standards, rather than upon soil standards) are necessary to establish compliance with the clean-closure requirements of 35 Ill. Adm. Code 725.111, 725.214, and 725.358(a). (P.Br. at 6.)

DISCUSSION

Conditions 6 and 7.

Petitioner begins its arguments by asserting that PermaTreat is a "totally enclosed treatment facility" as defined at Section 720.110 of the Board's regulations. Thus, petitioner argues that PermaTreat is exempt from any permit requirements as Section 703.123(d) specifically exempts "totally enclosed treatment facilities" from the permit requirements. In support of its position, petitioner states that the drip pad is sloped to return all liquids from the pad to the wood treatment process and the "waste pile" was placed on the drip pad to insure that any liquids from the pile would return to the sump pit. (P.Br. at 7-8.) Further, the petitioner states:

> the entirety of the drip pad is covered with a roof, which extends several feet beyond the perimeter of the drip pad. (R. 328). [sic] A curb along the south and east edges of the drip pad serves both as a stop for forklifts operating on the pad, and as a splash guard for CCA solution from the treated lumber. (R. 319; Tr. 53- Tr. 54). [sic] (P.Br. at 4.)

Petitioner also argues that any cracks or nonsecure joints in the drip pad, if any exist, could have no bearing on clean closure of the "waste pile". (P.Br. at 8.) Petitioner asserts that implicit in the requirements of Section 725.358(a) is an assumption that any "contamination" would have resulted from the "waste pile" and not some other source. The petitioner argues that the "RCRA closure requirements have never been intended to allow the Agency to probe into aspects of the site wholly unrelated to the hazardous waste management unit at issue." (P. Br. at 8-9.) Petitioner states that on a daily basis the CCA solution drips off of treated lumber onto the drip pad including the location where the "waste pile" was located. (P.Br. at 9.) The petitioner assert that any CCA material present on the drip pad is the result of the daily operations of the facility rather than "the isolated and temporary location of the 'waste pile'". (P. Br. at 9.)

Petitioner continues its argument by pointing to several pages in the transcript of this hearing where "all parties agree that the materials on this 'waste pile' were dry, and so did not drip any CCA solution onto the drip pad". (P.Br. at 9 citing to Tr. at 19, 25, 27, and 45-48.) Thus, petitioner maintains the inspection of the drip pad required by the Agency would have no bearing on the certification of closure for this "waste pile", "but in fact would require PermaTreat to comply with the new Subpart W standards, 35 Ill. Adm. Code 725.540-725.545, at a date substantially sooner than is required by those recent regulations." (P.Br. at 9.) The Subpart W regulations require independent assessment of drip pad integrity as well as specifying the manner of construction and materials to be used.

However, any existing drip pads may stay in service for up to 15 years. (P.Br. at 9.)

The petitioner also puts forward the following argument:

> Parenthetically, PermaTreat would add that this mandated liner inspection is not necessary to meet the clean closure requirements of 35 Ill. Adm. Code §703.159(d), either. That provision, of course, states that if a waste pile clean closure is to be accomplished pursuant to Part 725 regulations, nevertheless the closure by removal standards of Part 724 must be complied with, in the absence of which a post-closure permit must also be obtained. In turn, 35 Ill. Adm. Code §724.358(c) provides that even if a Part 724 "clean closure" is accomplished, nevertheless a contingent post-closure plan still must accompany the closure plan if the facility's [sic] does not comply with the liner requirements of 35 Ill. Adm. Code §724.351(a). PermaTreat has informed the Agency of its intention to obtain the equivalency determination of §703.159(d) (see R. 295-R. 296), and the Agency has never required the submittal of any such contingent post-closure plan. Accordingly, the Agency agrees that the drip pad, which was underneath the "waste pile" identified by the Agency, complies with these liner requirements. Clearly this is a correct determination, inasmuch as the Record reveals that the liner is protected from precipitation by a roof which extends well over its edges (see R. 328), no liquids or free liquids were in the "waste pile" (Tr. 19; Tr. 25; Tr. 27; Tr. 45-Tr. 48), or alternatively no moist materials were ever in direct contact with the pad (R. 384; R.379), the pad is elevated well above the ground level, thereby prohibiting the run-on of any liquids, and is sloped and bermed as well (see Resp. Ex. 1, photo #4; R.323, ¶5.a), the placement of the "waste pile" was such as to protect the materials from wind dispersal (R.242), and the dry materials on the "waste pile" were not subject to any leachate generation through decomposition of other reactions, but instead were held for manifesting off-site. See 35 Ill. Adm. Code §724.350(c) (providing an express exemption to the otherwise-applicable liner requirements of §724.351(a)). Moreover, the new Subpart W regulations recognize that the drip pad utilized by PermaTreat in its daily operations easily meets the design requirements of §724.351(a). See 35 Ill. Adm. Code §725.543(a).

(P. Br. at 10-11.)

The Agency states that the petitioner's engineer, Roger Walker, provided a description of the operation of the "waste pile" in the record. Mr. Walker's description included an explanation that the CCA "was allowed to drain from the material directly onto the floor and then drain back into the sump for recovery". (Ag. Br. at 6, citing R. at 322.) The Agency further states that although Mr. Bond, owner of the facility, stated that he had no knowledge of the "waste pile" containing free liquids; "[t]he description of the operation by Mr. Walker is confirmed by his testimony of accuracy (Tr. p. 88)". (Ag. Br. at 6.)

The Agency also argues that the testimony by Agency employee, Mr. Gerald Steele, indicated that the material had been resting at least in some areas directly on the concrete. (Ag. Br. at 6, citing to Tr. at 18 and Resp. Exh. 1 at 5 and 6.) The Agency then states that "[w]ith the presence of the CCA chemicals confirmed on the concrete it became important to the Agency that the base was impermeable" as required by the Board's regulations. (Ag. Br. at 6.) The Agency further states that the presence of an "apparent" expansion joint constructed under the location of the waste pile with an apparent crack in it caused concern the that the hazardous constituents had leached into the subsoil and closure standards of Section 725.358(a) could not be met. (Ag. Br. at 7.)

PermaTreat has consistently maintained that RCRA requirements do not mandate RCRA closure of the "waste pile". PermaTreat cites subsection 721.102(e)(1)(A) which is part of the definition of solid waste found at Section 721.102. Subsection 721.102(e)(1)(A) specifies:

> e) Materials that are not solid waste when recycled.
>
> 1) Materials are not solid wastes when they can be shown to be recycled by being:
>
> A) Used or reused as ingredients in an industrial process to make a product....

The Board notes that the RCRA exclusions at 721.104[2] can also assist in this determination. The hazardous waste exclusion at subsection 721.104(c) states:

> c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment manufacturing unit, is not subject to regulation under 35 Ill. Adm. Code 702, 703, 705 and 722 through 725 and 728 or the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

A plain reading of the regulations at subsections 721.104(e)(1)(A) and 721.104(c), when applied to the PermaTreat operation, does not appear to support the Agency's contention that the "waste pile" should be classified as a RCRA hazardous waste while it is on the drip pad. PermaTreat has shown that the drip pad is an integral component of the manufacturing process. The purpose of the drip pad is to collect unused CCA solution for return to the pressure treatment vessel where wood is impregnated with the CCA solution. The drip pad is clearly a component of the "manufacturing process unit" and materials on the drip pad would not seem to be hazardous wastes because of the exclusion at subsection 721.104(c). Additionally, this exclusion continues up to 90 days after the unit ceases to be operated for manufacturing. There is no evidence in the record that PermaTreat is ceasing operation. The Board observes that the waste pile does not appear to be subject to the RCRA closure requirements, based on the record before the Board, in this proceeding.

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[2] The Board notes that in August of 1991, the Board adopted an additional exclusion in Section 721.104(a)(9)(A) which excludes "spent wood preserving solutions that have been used and are reclaimed and reused for their original intended purpose". Thus, the CCA which runs off the lumber and the "waste pile" on the drip pad is excluded from the definition of solid waste, because it is reused.

If the "waste pile" at issue is not subject to RCRA closure requirements, then PermaTreat should not be required to have a closure plan for the "waste pile". However, while PermaTreat has maintained throughout this process that the waste pile was not subject to RCRA closure requirements (R. at 278, 279), the subject of this permit appeal only contests the imposition of Conditions #6, 7, 8 and 9, not the underlying permit. Therefore, the Board will decide the issues presented as if a closure plan is required.

The Board first notes with regard to conditions 6 and 7 that PermaTreat has agreed to steam clean the concrete pad, which is discussed in condition 6. (P.Res.Br. at 2-3.) Therefore, the Board will uphold the first paragraph of condition 6. The remaining portion of condition 6 requires an inspection of the drip pad to insure the integrity of the drip pad. (R. at 419-420.) Condition 7 requires PermaTreat undertake soil testing if the drip pad is not sound.

The record in this case establishes that a crack was discovered in the drip pad during a 1993 inspection. (Tr. at 53.) Further, Mr. Steele indicated that after the July 1993 inspection he reviewed the photographs from June of 1991 and noticed the crack. (Tr. at 21 and 31-32.) However, the record also indicates that the waste pile had been removed in 1991. (R. at 4, 9-18.) Thus, in 1993, when the crack was first officially noted by the Agency, the waste pile had been removed. (Tr. at 54.) Further, Mr Steele, when asked why he did not note the crack in his June 1991 inspection report, stated that "[t]he crack was not particularly noticeable during the visit". (Tr. at 29.)

The record also establishes that PermaTreat on a daily basis treats lumber and places the lumber on the drip pad to drain off excess CCA. The "waste pile" which, at worst, included mud was also placed on the drip pad in 1991 along with lumber to dry. And in fact, the Agency inspector stated that the pile was dry and any free standing liquids at the site could not be attributed to the waste pile. (Tr. at 21 and 27.)

The Board is not persuaded that the crack existed in 1991. Further, the Board is not persuaded that a pile consisting of mud which was dry at the time of inspection could have contributed to contamination. Therefore, after a comprehensive review of the record, the Board finds that condition 6, other than the first paragraph, and condition 7 are not necessary conditions.

Conditions 8 and 9.

Conditions 8 and 9 require PermaTreat to test the soils to the east and south of the drip pad to demonstrate that "no soil [contamination] is present in the area surrounding the former

waste pile". (R. at 420 and 421.) The conditions set forth the specific number of samples, the distance between samples and the depth of the samples. (R. at 420 and 421.)

The petitioner maintains that no record exists to support the Agency's requiring soil samples in the closure plan. The petitioner points out that the drip pad is constructed to slope toward the northwest; therefore, the Agency is requiring testing of soils around the highest elevation of the drip pad. (P. Br. at 12.) Further, the petitioner points out that the Agency testified that the "only reason it included that condition was the some 'ponding of green liquids' was observed east of the drip pad". (P. Br. at 12 citing Tr. at 56.) However, the petitioner maintains that the observation was made some two years after removal of the "waste pile" and the permit reviewer "misremembered what he observed during that inspection, as was revealed in his own testimony". (P.Br. at 12 citing Tr. at 59-70C, 94, 73-75 and 85-88.)

The petitioner also maintains that the information before the Agency established that the placement of the materials on the "waste pile" and the composition of those materials made it impossible for any contaminated material to leave the drip pad. (P. Br. at 12.) The petitioner states that the pile was at least 3 feet away from the southern edge of the drip pad and at least 7 feet away from the eastern edge. (R. at 384; P. Br. at 13.) Further, the petitioner asserts that wind dispersal was not possible since the waste pile area was protected from the wind. (R. at 384 and 385; P. Br. at 13.)

The Agency states that the closure plan refers to an incident where treated but not yet dried lumber fell from the drip pad onto the adjoining soil. (R. at 322.) The soil was removed and testing of the soil was undertaken for arsenic and chromium. (R. at 322.) The Agency points out that there is no indication that the soil was tested for copper concentration. (Ag. Br. at 8.) The Agency argues that the soil removal and testing is insufficient to demonstrate that all "contaminated" soil was removed. (Ag. Br. at 8.)

The Agency also argues that the waste had been piled so high as to "overflow the screen\pallet assembly and had tumbled down to the concrete surface". (Ag. Br. at 8.) Further the edges of the concrete base under the waste pile bore the distinctive green tint of the CCA solution and terminated at the soil surrounding the concrete base. (Ag. Br. at 9.) Mr. Steele and Mr. Sinnott indicated that they had observed ponding in the soil around the "waste pad" with the green tint of CCA. (Ag. Br. at 9.)

In response to the Agency's argument, the petitioner maintains the position that any staining of the drip pad occurs as a part of the daily operations at the facility. (P.Br. at

13.) Further, the soils which may have been contaminated by falling lumber have been removed, according to petitioner. The petitioner argues that the existence of the stained soil and its removal have nothing to do with the waste pile absent a connection between the waste pile and the contaminated soil. (P. Br. at 14.) The petitioner maintains that no connection exists here.

The Board finds that the record before the Agency does not support the imposition of conditions 8 and 9. The photographs included in the record show material which is clearly dry arranged on the drip pad. The drip pad slopes to the northwest as agreed to by the Agency witnesses. (Tr. at 28 and 45.) In addition, the Agency's witness, Mr. Steele, admitted that the material was dry when he inspected the site. (Tr. at 47.) Mr. Steele also admitted that he could not say for sure if the staining seen in the photographs was there prior to the placement of the waste pile and Mr. Steele also indicated that he did not notice the crack in the drip pad when inspecting the waste pile; rather, he reviewed the pictures after an inspection in 1993 and spotted the crack. (Tr. at 29 and 30.). Mr. Steele also testified that he "could not say" the free standing liquid shown in the photographs "came from the waste pile". (Tr. at 21.) Although the photographs may show material which is hazardous, there is no way to connect the liquid to the waste pile. If the liquid is the CCA mixture it could also have come from treated lumber. Although any contamination of soils is a violation of the Board's regulation and the Act, this is not the forum to seek relief. The Board will strike conditions 8 and 9.

Groundwater standards

The petitioner argues that if the Board upholds conditions 8 and 9 the clean-up objectives to apply should be those of Class 2 groundwater standards rather than the Class 1 standards imposed by the Agency. The petitioner maintains that the soils native to the area are strongly acidic and because of subsurface geology water supplies are difficult to obtain. (P. Br. at 15.) The nearest drinking water well is over one mile from the site and the rare private wells in the area are from aquifers 50 to 880 feet deep. (P. Br. at 15.)

The Agency states that at the time of the writing of the closure permit the information available to the Agency came from a report containing well construction reports required by the Illinois Department of Public Health. The information detailed the geological formations the well driller passed through in constructing a well and in some cases the depth and type of formation containing water. (Ag. Br. at 10.) The Agency stated that the only information provided by petitioner was an assertion that the facility was in a location which had been a sewage treatment lagoon. (Ag. Br. at 10.)

A review of the clean-up objectives is not necessary as the Board has stricken conditions 8 and 9.

CONCLUSION

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

ORDER

The first paragraph of conditions 6 of PermaTreat's RCRA Subtitle C closure permit is upheld. The remainder of condition 6, and all of conditions 7, 8 and 9 are hereby stricken from the Agency modified closure permit issued to PermaTreat of Illinois.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurs.

Chairman Claire A. Manning and Board Member Marili McFawn dissent.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But 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 16th day of December, 1993, by a vote of 5-2.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board