ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

CITY OF SPRINGFIELD,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 93-135
	)	(Variance)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board upon filing by the City of Springfield ("Springfield" or "the City") of a Petition for Variance[1] ("Pet.") on July 22, 1993. Springfield requests variance for five years from 35 Ill. Adm. Code 302.206 as that section relates to dissolved oxygen ("DO") in the Sangamon River. Section 302.206 requires that DO shall not be less than 6.0 mg/l during at least 16 hours of any 24-hour period, nor less than 5.0 mg/l at any time. Also on July 22, 1993, Springfield requested leave to incorporate materials from a previous Board docket, PCB 88-113. On August 5, 1993, the Board granted leave to incorporate the materials, but emphasized that the Board had not determined the materials were relevant.

Springfield wishes to build temporary dams on the Sangamon River during extreme drought conditions. In order to get Army Corps of Engineer approval for the dams, the Agency must certify that no water quality standards will be violated. Thus, Springfield believes a variance from the DO standards is necessary to secure Agency certification and ultimately Army Corps approval for construction of temporary dams in the Sangamon River.

On September 16, 1993 the Illinois Environmental Protection Agency ("Agency") filed its recommendation ("Rec.") that the requested relief be granted subject to conditions. Springfield responded with an objection to the Agency condition requiring Springfield to use clarified ash pond water to lessen the necessity of the dams.

Hearing in this matter was waived by City of Springfield and no hearing was held.

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[1] Springfield alternatively characterizes the petition as a "Petition for Variance" (Pet. at 1) or as an "Extension of Variance" (Pet. at 8, 9). The Board will construe this petition as a petition for extension of variance.

BACKGROUND

Springfield owns and operates water and electric utilities which provides service to the City of Springfield and adjacent communities and areas. Water utilities are routinely provided to the City of Springfield, the Villages of Chatham, Grandview, Jerome, Leland Grove, Rochester and Southern View, Sugar Creek, and Sherman-Williamsville Public Water Districts, and to certain unincorporated areas adjacent to Springfield. (Pet. at 1). Springfield anticipates that the Village of Loami will become a wholesale water customer by late 1993 or early 1994. The service area encompasses approximately seventy square miles and includes a population of about 142,000. (Rec. at 1). The long-term average potable water pumpage is approximately 21 million gallons per day. (Rec. at 1).

Pursuant to the variance granted by the Board in PCB 88-113, Springfield was required to submit to the Agency a firm schedule detailing the planning and implementation time frame for obtaining a long-term water supply within one year after receiving the variance. Springfield states that this condition has been satisfied by the submittal of a joint application to the United States Army Corps of Engineers, the Agency, and the Illinois Department of Transportation, dated July 27, 1989, for a permit under Section 404 of the Clean Water Act for placement of a dam in Horse Creek, Sangamon County, Illinois, and creation of a lake known as Hunter Lake. (Pet. at 2).

PRELIMINARY MATTERS

In PCB 88-113, the variance approved by the Board laid the groundwork for Springfield to gain Army Corps approval for the construction of temporary dams as an emergency measure during "extreme drought conditions." During the pendency of the variance, circumstances never reached the level of "extreme drought condition" and as a result, the dams were never constructed. Likewise, Springfield is not presently experiencing drought conditions and has no immediate need for the dams. Although Springfield does not articulate a justification for the instant petition, the Board concludes that Springfield makes this request in order to act quickly to gain Army Corps approval in a future drought emergency.

It is well settled that the Board will not grant unnecessary variances. (SCA Services v. IEPA 71 Ill. App.3d 715, 389 N.E. 2d 953; North Aurora v. IEPA PCB 89-66; Geneva v. IEPA PCB 89-107). However, the Board will proceed with a consideration of this matter on its merits despite the absence of a showing of immediacy, but only with recognition of the fully developed record and our opinion and order in PCB 88-113. The Board takes this course of action in light of the extraordinary hardship demonstrated by Springfield in a previous, fully considered

proceeding before the Board.

REGULATORY FRAMEWORK

Section 36(b) of the Act allows the Board to grant an extension of variance where satisfactory progress has been demonstrated. Section 36(b) states:

Section 36 Variances

> b. Except as provided by Section 38 of this Act, any variance granted pursuant to the provisions of this Section shall be granted for such period of time, not exceeding five years, as shall be specified by the Board at the time of the grant of such variance, and upon the condition that the person who receives such variance shall make such periodic progress reports as the Board shall specify. Such variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown.

(emphasis added)

A petition for an extension of a variance is made pursuant to 35 Ill. Adm. Code 104.123. 35 Ill. Adm. Code 104.123 states:

Section 104.123 Extension of Prior Variance

> a) A petition to extend a prior variance granted by the Board shall be commenced by filing a petition for variance with the Agency and the Board in accordance with the requirements of Sections 104.120 and 104.121. To the extent that the information required by Sections 104.120 (Petition for Variance) and 104.121 (Contents of Variance Petition) has been included in the prior petition for variance for which extension is sought, a resubmission of that information shall not be required provided that the petition shall request the incorporation of the record, opinion and order in the prior proceeding into the new petition.
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> b) A petition to extend a prior variance shall be subject to all of the requirement of this Part except as provided in subsection (a).

Thus under Section 104.123, a petitioner seeking an extension of variance does not have to resubmit the information required by Sections 104.120 and 104.121 to the extent that that information was included in a prior proceeding and Board has allowed the incorporation of the record from the prior proceeding. The incorporation of a record from a prior proceeding does not free a petitioner from the pleading

requirements found in Sections 104.120 and 104.121.

Springfield seeks a variance from 35 Ill. Adm. Code 302.206, which states:

Section 302.206 Dissolved Oxygen

> Dissolved oxygen (STORET number 00300) shall not be less than 6.0 mg/l during at least 16 hours of any 24 hour period, nor less than 5.0 mg/l at any time.

In determining whether any variance is to be granted, the Act requires the Board to determine 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) (1992)). Furthermore, the burden is upon the 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 (1977), 135 Ill.App.3d 343, 481 N.E.2d 1032). Only with such showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations (Monsanto Co. v. IPCB (1977), 67 Ill.2d 276, 367 N.E.2d 684), and compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter (Id.). Accordingly, except in certain special circumstances, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

The Board may grant an extension of variance where satisfactory progress has been demonstrated. (Ekco Glaco v. IPCB (1989), 186 Ill.App.3d 141, 542 N.E.2d 147.) In addition, it has been past Board practice to grant an extension an expired variance where satisfactory progress has been demonstrated. (See, Scott Air Force Base v. IEPA (May 10, 1990) PCB 88-69, 111 PCB 09 (extension granted after expiration of original variance upon the showing of satisfactory progress and where the duration of the extension was unusually short); Rowe Foundry v. IEPA (February 23, 1989) PCB 88-21, 96 PCB 147 (extension granted after expiration of original variance upon showing of satisfactory progress); City of Farmington v. IEPA (February 20, 1985) PCB 84-166, 61 PCB 70 (extension of expired variance granted where lack of compliance was beyond the control of petitioner and where there were no reasonable alternatives); Midwest Solvents v. IEPA (April 5, 1984) PCB 84-5, 59 PCB 251 (extension of expired provisional variance granted where diligent

progress was demonstrated and adverse weather conditions interfered with completion of work project).)

HARDSHIP

As stated earlier, neither party detailed the hardships that Springfield would incur if the variance is denied. The Agency summarized information from PCB 88-113 and added:

> Petitioner does not elaborate on any additional hardships that may be imposed as a result of the continued compliance with the standard. To the extent that Lake Springfield's water supply has been replenished in recent years as a result of adequate rainfall events, petitioner should provide any additional information on hardship to the Board for the record.

(Rec. at 2.)

Springfield responded that the hardship remains the same and that it was merely coincidence that the original request came at a time when the City was experiencing drought conditions. (Response to Rec. at 3.) Because both parties rely on the record from PCB 88-113, the Board will quote that order at length below:

> Springfield's instant request is prompted most recently by the severe drought conditions of 1987 and 1988, and projected continued low water levels in Lake Springfield for 1989. The long-term average annual range of the level of the Lake is about 1.7 feet, between approximately 557.9 and 559.6 feet MSL; highest levels typically occur in June and the lowest in November. Although lake levels were normal as recently as April 1988, by the end of September 1988 they were about 2.75 feet below the normal September datum of 558.3 feet. If this deficit is not made up by natural winter and spring runoff into the Lake, Springfield fears that it will be entering the critical summer season of 1989 with an unrecoverable deficit. Springfield estimates based on the present rate of decline and the long-term trend of seasonal variations, that the Lake level will be at an elevation of about 552 feet by February 1, 1989, or approximately 6 feet below the February norm. Moreover, any repeat of a drought in the summer of 1989 will further exacerbate the situation. Operating problems for the water supply and electrical utilities (as opposed to recreation) are predicted to occur at elevations of about 550 feet and to become critical operational constraints at about 546 feet, including inability to pump water from the Lake to supply water use needs, restrictions in the ability to generate electrical power, and possible loss of the ability to adequately treat waste waters. It is also noted that the Lake 1 level actually fell to a low of 547.4 feet during the

> drought of 1953-1955, at a time when water demands were significantly less than at present.
>
> In the summer of 1988 Springfield begin instituting both voluntary and mandatory water conservation measures. The initial trigger to this activity was deteriorating water system pressures during peak hourly demands. Springfield notes that on some occasions system pressure was reduced to approximately half of the normal 50 psi, which endangered firefighting ability among other matters. As conditions worsened, the Springfield City Council ordered mandatory water conservation via ordinance. Springfield estimates that the conservation programs realized about a 16% decrease in water consumption.
>
> Besides the hardship that mandatory water conservation itself imposes, Springfield points to other hardships that could result if the water conservation programs are insufficient to curtail water demands beyond available supply. These include discontinuance of electric generation, rationing of water, decrease in fire-fighting capability, inability to serve critical public health facilities (hospitals constitute some the largest individual consumers of Springfield's water supply), and economic loss to businesses and their employees.

PCB 88-113; at 93 PCB 663-4; citations omitted throughout.

ENVIRONMENTAL IMPACT

Springfield did not provide the Board with any data concerning environmental impact. The Agency also did not address the environmental impact of the requested variance. Instead, the Agency states:

> Environmental quality concerns arising from the construction of temporary dams were previously addressed in the original grant of variance. Because the present petition is merely an extension, rather than modified or changed project, the Agency believes a grant of variance containing the same terms and conditions relating to environmental quality should address this criterion.

(Rec. at 1.)

Because both parties rely on the record from PCB 88-113, the Board will quote that order at length below.

Presence of the dams during the cold weather months[2] should have relatively little likelihood of inducing DO problems either upstream or downstream from the dams. Oxygen solubility is inversely proportional to water temperature, which allows the DO of cold water, unless the water is severally disturbed by pollution, to be well above standard.

A different DO circumstance prevails during the warm weather months. Then the typically elevated water temperatures can limit DO solubility to near that of the DO standard. Moreover, algal populations tend to be higher in warm waters, and algal respiration alone can produce sufficient oxygen demand to cause DO concentrations to fall near or below the standard. A further strain can be placed on the DO if the stream discharges are also low due to the lower rates of reaeration which are associated with sluggish stream flow.[3] Thus, most of the DO concern regarding Springfield's proposal is centered on the possible negative impact at times of warm weather low-flow.

Data collected by both Springfield and the Agency do show that the DO standard in the Sangamon River is not now consistently met at warm weather low-flow. The detailed cause of this circumstance is not resolvable from the instant record. However, there is substantial reason to believe that the cause is related to natural conditions of temperature, biotic activity, and low flow, rather than to the impact of pollution. Lowest observed DO concentrations in fact occur when the waters are warmest, the algal net consumption of oxygen is at its maximum, and flows are low.

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[2] It is to be noted in this context that a large portion of the historical diversion of the South Fork into Lake Springfield has occurred during November through March. The record does not indicate whether this pattern would persist if the Sangamon River project were undertaken.

[3] A modeling study conducted by the Illinois Natural History Survey, at the request of Springfield, indicates that at water temperatures typical of warm weather months Sangamon River discharges would have to be on the order of 237 cfs to allow continuous maintenance of even 5.0 mg/l DO. Although Springfield contends that the modeling results are at odds with empirical data (R. at 76, 261-265; Exh. 21), it notes that the 237 cfs is approximately 6 times greater than the measured flow in the Sangamon under the drought conditions experienced in summer 1988 (R. at 75). On this basis Springfield concludes that natural low-flow conditions are themselves sufficient to allow violations of the DO standard (Petition, p. 14).

Springfield contends that emplacement of the two dams would not cause a significant negative impact on the existing DO situation. As evidence for this conclusion Springfield notes that sampling in the pools upstream from two existing channel dams on the Sangamon River in the vicinity of Springfield during low river stages has not revealed any endemic DO problems. Similarly, analysis (sic) of DO in the pool formed by the existing South Fork dam have not revealed any violations of the DO standard. Springfield further suggests that the deeper water maintained in the proposed pools would provide for a dampening of the large diel DO swings witnessed in the shallow free-flowing reaches, and thus inhibit rather than promote violations of the DO standard in the new pools.

Springfield further contends that DO would not be adversely affected below the proposed Sangamon River dam. Analyses using a Streater-Phelps model indicate virtually no difference in DO patterns at low flow with or without the proposed dam. The exception exists for the river segment immediately below the proposed Sangamon River dam, where DO concentrations are projected to be higher under the with-dam scenario due to reaeration at the dam. Springfield reaches a similar conclusion based on diel field sampling.

Not withstanding (sic) its belief that the dams will not adversely impact the DO of the Sangamon River, Springfield does agree, as condition to grant of the variance, to mitigate any fish kills associated with placement of the dams. Additionally, Springfield agrees to conduct monitoring of DO in the Sangamon River both upstream and downstream of the proposed Sangamon River dam, and upstream of the proposed South Folk dam while the dams are in place[4].

A second environmental issue, not related to DO, concerns whether a proposed 41 cfs minimum release rate would provide for sufficient aquatic habitat downstream from the proposed Sangamon River dam. The Illinois Department of Conservation, Division of Water Resources, conducted an instream flow analysis study which concludes that the release rate would be sufficient to maintain aquatic habitat, and would actually, for some species, increase the amount of usable habitat. Springfield also contends that the pools upstream from the dams would tend to provide needed deep water refuge during times of drought.

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[4] Springfield has also analyzed various methods of instream aeration of the Sangamon pool (R. at 220-226; Exh. 26), but has rejected these as impractical (Petition, p. 9). The Agency concurs (Pet. Exh. 7).

> Concern has also been expressed by communities located downstream from Springfield that the modifications proposed by Springfield for the Sangamon River would adversely affect their water supply wells. Springfield counters that it perceives no immediate impact on these water wells, and notes that the program for continuous release of water from the proposed dam should not decrease Sangamon River flows below the existing 7-day, 10-year low-flow discharges.

PCB 88-113, 93 PCB 664-6 footnotes from original; citations omitted throughout.

COMPLIANCE PLAN

The Board's order in PCB 88-113 conditioned the granting of the variance upon Springfield undertaking a schedule for an alternative plan to eliminate the needed for the variance. Springfield reports several measures taken in order to comply with the Board's order. Springfield has remodelled its water demand forecast to gain a better picture of its water usage and customers. During 1988, Springfield instituted a program to provide free water saver kits to retail water customers. This completely voluntary program has been issued to 7.5% of the system's total water customers. (Pet. at 3.)

The City has also adopted an ordinance authorizing the construction of Lake Springfield II (Hunter lake). On July 26, 1989, Springfield applied for the necessary permits pursuant to Section 404 of the Clean Water Act. In August of 1989, Springfield issued $17,985,000 in water revenue bonds to fund completion of the land acquisition for the Hunter Lake project. Springfield has acquired 5,587 acres for the project prior to 1978. The original project area was 7,701 acres. Subsequent to the issue of the water bonds, Springfield initiated acquisition of the rest of the land needed for the project. Since 1978, Springfield has acquired another 1,203 acres in 56 transactions. Springfield has either reached tentative agreements for purchase or has initiated eminent domain proceedings for the remaining property. (Pet. at 5, 6.)

The United States Army Corp of Engineers determined the Hunter Lake project "will have significant impact (both positive and negative) in the project area and warrants preparation of an Environmental Impact Statement to meet National Environmental Policy requirements during the process of the permit application." In order to develop the EIS, Springfield has completed certain engineering projects. In addition, Springfield must demonstrate that the Hunter Lake project complies with the National Historic Preservation Act. Springfield has completed phase I of this three-phase process. In March of 1990, Springfield entered into a contract with the Illinois Natural History Survey to conduct research and develop conclusions

regarding the ecological components of the EIS review. By March of 1993, the Natural History Survey had completed all aspects of its work with the exception of the delineation of wetlands. Springfield has also contracted with Sangamon Sate University, the Springfield-Sangamon County Regional Planning Commission, the Illinois Water Survey and Planning and Management Consultants, Ltd. of Carbondale, Illinois, for other matters related to Hunter Lake. (Pet. at 6.)

In addition, if the Corps of Engineers grants the permit for Hunter Lake, Springfield will proceed with the detailed engineering of the project, specifications of construction projects, bid contracts and issue bonds to finance to work. Springfield admits that the construction of Hunter lake will not be complete by the expiration of the variance requested in this proceeding. Thus it appears Springfield is actively working towards the development of an alternative water source.

Springfield provided the Board with data concerning water pumped from the South Fork Station from 1976 and from the clarification pond since 1979. During the period 1976 - 1992, 28,087 millions of gallons were pumped from the South Fork. Of this total, 13,981 million gallons were pumped during the drought event of 1987-89 (49.8%). Similarly, during the same drought event, 737 million gallons were recirculated from the clarification pond. (Pet. at 2.)

In 1991, Springfield filed an application for renewal of the NPDES permit for its generating stations and water treatment facility. The clarification pond has two outfalls which are subject to the permit, one to Sugar Creek and the return discharge to Lake springfield. When the final NPDES permit was issued it included a new special condition for these outfalls regarding the boron concentration for the discharges; this condition will become effective December 14, 1994. Springfield intends to come into compliance with this condition on the discharge to Sugar Creek by seeking an adjusted for the boron standard before the Board. Springfield does not presently plan to take similar action concerning the discharge back to Lake Springfield because Springfield does not have any data on the boron concentration of that discharge. Thus, Springfield believes that subsequent to December 14, 1994, augmentation of Lake Springfield from the clarification pond would not be permitted because of the likely levels of boron in the discharge. (Pet. at 2.)

The Agency believes that one condition of the Board's grant of variance should require that the City continue to supplement Lake Springfield with the recirculated pond water. The Agency acknowledges the probable level of boron in the pond water exceeds regulatory standards. However, the Agency believes that there is likely a lesser environmental impact of allowing the

City to temporarily return this clarification pond water to Lake Springfield during extreme drought events than in damming the Sangamon River. Requiring the petitioner to return this pond water into the Lake may therefore lessen the number of times and/or duration that the City needs to dam the Sangamon River. (Rec. at 3, 4.)

Springfield responds that it believes that a variance condition requiring the City to continue to supplement Lake Springfield with clarification pond water is outside of the scope of this proceeding because it involves Springfield's NPDES permit conditions and that permit is not before the Board. Springfield is amenable to including the discharge to the Lake in its contemplated future adjusted standard for boron from the clarification pond outfalls, or alternatively by seeking an emergency variance for the outfall to the Lake in drought conditions. (Response to Rec. at 2.)

The Board does not agree with Springfield's contention that this condition is not properly before the Board. The Board has frequently addressed NPDES conditions and the underlaying standards in variance proceedings and may do so here. (cite) However, in this matter, the Board is reluctant to impose the condition suggested by the Agency based the record before us. First, the Board notes that there is uncertainty as to the boron level in question. (Pet. at 3; Rec. at 3.) Indeed, we have virtually no information concerning the level of boron, or of any other regulated constituent, in the clarification pond water. Although the parties indicate that the clarification pond water has been used in the past, it appears that this use will be discontinued after December 1994, presumably due to levels of boron present in the pond water. Thus, it appears the imposition of a condition requiring use of the clarification pond water would in fact amount to a requirement that petitioner use non-complying water. Although the Agency has concluded that there is a lesser environmental impact from the clarification water than from temporarily damming of the Sangamon River, the Agency does not provide comparative data or state any basis for this conclusion.

Moreover, the condition as suggested by the Agency is quite vague. The Agency suggests the "petitioner shall be required to supplement Lake Springfield's water supply by returning recirculated clarification pond water to the lake during extreme drought events." The Board notes that there are no specifications in terms of amounts of water, testing or monitoring, or the definition of "extreme drought events" included in this condition.

For the reason stated above, the Board will not at this time impose the condition concerning use of clarification pond water as was suggested by the Agency. The Board notes, however, that

Springfield has indicated it will seek an adjusted standard for boron in the future. The Board suggests that either party may address the issue of the clarification pond water as an emergency water source during that proceeding.

CONSISTENCY WITH FEDERAL REGULATIONS

The Agency states that there are no known federal laws or regulations which would prohibit the granting of this petition for variance. (Rec. at 4).

CONCLUSION

Pursuant to Section 36(b) of the Act, the Board may grant an extension of variance where satisfactory progress has been demonstrated. In addition, the Board may grant an extension of an expired variance upon the demonstration of satisfactory progress. Here, the record indicates that City of Springfield has been diligent in its efforts to comply with the conditions of the initial variance. Springfield has issued $17,985,000 in water revenue bonds to fund completion of the land acquisition for the Hunter Lake project. Springfield has acquired 5,587 acres for the project and has either reached tentative agreements for purchase or has initiated eminent domain proceedings for the remaining property. In addition, Springfield is developing an Environmental Impact Statement concerning Hunter Lake. In order to develop the EIS, Springfield has completed certain engineering projects, entered into a contract with the Illinois Natural History Survey and contracted with Sangamon Sate University, the Springfield-Sangamon County Regional Planning Commission, the Illinois Water Survey and Planning and Management Consultants, Ltd. of Carbondale, Illinois, for other matters related to Hunter Lake. Thus it appears Springfield is actively working towards the development of an alternative water source.

The Board finds that City of Springfield has presented adequate proof of satisfactory progress towards compliance. Accordingly, the Board hereby grants City of Springfield an extension of variance subject to the conditions stated below.

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

ORDER

1. Petitioner, the City of Springfield, is hereby granted variance from 35 Ill. Adm. Code 302.206 as it relates to dissolved oxygen in the Sangamon River, subject to the following conditions:

   A. Within one year after receiving the variance, Petitioner shall submit to the Illinois Environmental

Protection Agency a firm schedule detailing the planning and implementation time frame for obtaining a long-term water supply.

B. Petitioner shall remove the temporary dams (one on the Sangamon River and one on the South Fork River) when the normal levels on Lake Springfield are obtained.

C. Petitioner shall mitigate any loses of fish with the Illinois Department of Conservation if a fish kill would occur as a result of placement of the dams.

D. Petitioner shall initiate mandatory water conservation measures before the dams are constructed. These measures shall be initiated in such a way that water conservation will lessen the need for damming the Sangamon River. Petitioner shall submit to the Illinois Environmental Protection Agency for comment any mandatory water conservation measures which may be approved by the City Council.

E. The mandatory water conservation measures shall remain in effect as long as the dams remain in place. The measures may be withdrawn only when the temporary dams are actually removed from the rivers.

F. Petitioner shall assure a minimum release of 41 cubic feet per second of water from the Sangamon River dam in accordance with the Illinois Department of Transportation Division of Water resources instream flow analysis and August 19, 1987 letter to the U.S. Army Corps of Engineers.

G. Petitioner shall conduct monitoring for dissolved oxygen at stations located both above and below the dam to be installed on the Sangamon River and above the dam to be installed on the South Fork of the Sangamon River. Results of such monitoring shall be submitted to the Illinois Department of Conservation, Illinois Department of Transportation Division of Water Resources, and the Illinois Environmental Protection Agency on an annual basis, or upon reasonable request.

H. This variance shall expire within 5 years or upon Petitioner receiving a second water supply source, whichever occurs first.

2. Within 45 days of the date of this Order, Petitioner shall execute and forward to:

Illinois Environmental Protection Agency
Division of Water Pollution Control

Compliance Assurance Section
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

a Certification of Acceptance and Agreement to all terms and conditions of this variance. The forty-five day period shall be held in abeyance during any period this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and as a shield against enforcement of rules was granted. The form of said Certificate is as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 93-135, December 16, 1993.

_____
Petitioner

_____
Authorized Agent

_____
Title

_____
Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, 415 ILCS 5/41 (1992), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board