

ILLINOIS POLLUTION CONTROL BOARD
January 18, 1991

GALLATIN NATIONAL COMPANY,)
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 Petitioner,)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
)
 Respondent.)

PCB 90-183
(Variance)

THOMAS R. MULROY, JR. AND REBECCA RAFTERY, JENNER & BLOCK, ON
BEHALF OF PETITIONER.

MARK V. GURNICK, WILLIAM D. INGERSOLL AND SUSAN SCHROEDER, ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY, ON BEHALF OF RESPONDENT.

MICHAEL F. KUKLA ON BEHALF OF INTERVENORS FAIRVIEW AREA CITIZENS
AREA TASK FORCE.

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

This matter comes before the Board on a petition for variance
filed October 9, 1990 by Gallatin National Company (Gallatin).
Gallatin requests a variance from "the regulations contained in 35
Ill. Adm. Code Section (sic) 812 until October, 1991." On November
15, 1990, the Illinois Environmental Protection Agency (Agency)
filed its recommendation stating that the request for variance
should be denied. On November 26, 1990, Fairview Area Citizens
task Force (FACT) filed a petition for intervention.¹ On November
29, 1990, a hearing was held in Fairview, Illinois at which 150-
200 members of the public attended, a number of whom testified
either in favor of or against the grant of variance.

BACKGROUND

In January, 1989, the Village of Fairview granted Gallatin
site location approval for Gallatin's proposed 80-acre balefill to
be located in Fairview, Illinois. This approval was upheld by both
the Board and the appellate court. (Fairview Area Citizens Task
Force v. Village of Fairview, PCB 89-33 (November 26, 1989);
Fairview Area Citizens Task Force v. PCB, 555 N.E.2d 1178 (4th

¹ Tr. ___ indicates citation to the transcripts of the
November 29, 1990 hearing. R. ___ indicates citation to
the record. The record indicates that no one objected
to FACT's petition for intervention. (Tr. at 8.) The
hearing officer granted FACT's petition. (Tr. at 9.)

Dist. 1990).) The Supreme Court of Illinois denied FACT's petition for leave to appeal. (Fairview Area Citizen's Area Task Force v. PCB, No. 70478 (October 3, 1990).) On September 11, 1989, Gallatin submitted its initial application to the Agency for a development permit. (Pet. Ex. B.) On March 9, 1990, the Agency issued its denial letter setting forth nine reasons for denying the application. (Pet. Ex. A.) On April 23, 1990, Gallatin filed its second development permit application addressing the nine denial reasons given by the Agency. Gallatin waived the Agency's decision deadline to December 19, 1990 and, in an October 25, 1990 order, the Board tolled that decision during the pendency of this variance proceeding. This second permit application is still pending before the Agency.

During the pendency of this second permit application, the Board was proceeding with its R88-7 rulemaking concerning new non-hazardous waste landfill regulations (hereinafter referred to as the "R88-7 regulations" or "new regulations"). (R88-7 Second First Notice adopted March 1, 1990; R88-7 Second Notice adopted June 7, 1990; R88-7 Final Opinion and Order adopted August 17, 1990.) On August 1, 1990, at an informational hearing in Fairview, the Agency suggested that it might apply the R88-7 landfill regulations to Gallatin's pending permit application. (Pet. Ex. D; Tr. at 87.) On September 18, 1990, the R88-7 regulations became effective. On September 20, 1990, the Agency met with Gallatin and stated its intent to apply the new regulations to Gallatin and asked that Gallatin review the R88-7 regulations and ascertain whether its application was in compliance with these newly enacted regulations. (Pet. Ex. A at 17; Tr. at 108.) On September 27, 1990, Gallatin submitted a memorandum to the Agency reviewing each provision of the R88-7 regulations and providing information as to how the pending application satisfied these new requirements. (Pet. Ex. A at 17; Tr. 108-09.)

On October 4, 1990, the Agency notified Gallatin that it would apply the R88-7 regulations in its review of Gallatin's pending application. (Pet. Ex. A at 18.) This letter stated "[b]ecause the application under review does not meet all of the requirements of the new rules and adequate time does not exist for you to compile all of the necessary information, you may wish to withdraw the application or waive the Agency's mandatory decision deadline. ... If no waiver is received or the application is not withdrawn, then our decision will be based on the regulations in effect and the information before us at the time of our decision." (Pet. Ex. A at 18.) Attached to this letter is a list of thirty requirements which the Agency's preliminary review revealed were not met by the application. (Pet. Ex. A at 18.) The letter also stated that more problems might be discovered during further review of the application and recognized that the Agency had not yet reviewed Gallatin's memorandum of September 27, 1990. (Pet. Ex. A at 18.) One of the items listed by the Agency is that the "[a]pplication did not include a description of the groundwater quality standards

applicable at the facility including a specific numerical value for each constituent and including an evaluation of the background concentrations of each constituent based on a quarterly sampling of wells for one year pursuant to [35] Ill. Adm. Code 811.320 and 812.317(1)." (Pet. Ex. A at 18.)

Further meetings were held between the Agency and Gallatin. On October 9, 1990, Gallatin filed its variance petition. The filing of the variance petition operated to automatically stay application of part 812 to Gallatin. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1038(b).) By order entered October 25, 1990, the Board tolled the agency's decision deadline imposed by Section 39(a) of the Act during the pendency of the stay. The above background information is intended to illustrate the interrelationship of the instant variance proceeding to the pending permit application, in light of the enactment of R88-7 regulations during the Agency's review of that application. By filing its variance petition, Gallatin is seeking relief from compliance with certain provisions of the new regulations governing information to be included with a permit application. Moreover, if such a variance were granted, the Agency could not deny Gallatin's permit application on the basis of the regulation which is the subject of this variance. On November 9, 1990, the Agency sent Gallatin a letter stating that it would treat Gallatin's September 27, 1990 memorandum as a modification to the permit application and that Gallatin should not presume that any issues had been resolved until the Agency issued its final permit decision. (Res. Ex. A.)

PRELIMINARY ISSUES

Several motions are pending in this matter that must be addressed by the Board. On November 26, 1990, Gallatin filed a motion to strike the Agency's recommendation. The Agency responded on December 4, 1990. Gallatin seeks to strike the recommendation on the basis that it does not comply with 35 Ill. Adm. Code 104.180(a) governing the contents of the recommendation. The Board finds that the unusual posturing of this matter, which prevents this case from falling neatly into a traditional variance proceeding, also prevents the Agency's recommendation from falling neatly within the requirements of Section 104.180(a). Therefore, Gallatin's motion to strike is denied. On December 27, 1990, FACT filed a motion to strike portions of Gallatin's brief. Paragraph 1 of FACT's motion is denied for reasons explained below on page 7. Paragraphs 2-4 of FACT's motion to strike are hereby granted because Gallatin did not introduce certain information into the record at hearing. On December 31, 1990, the Agency filed a motion to file its attached brief instant. The motion is granted.

DISCUSSION

Initially, the Board must address the modification of

Gallatin's request for relief as set forth in its petition for variance and the relief requested as evinced by the record and as argued in Gallatin's post-hearing brief. In its variance petition, Gallatin states that it seeks a variance from "the regulations contained in 35 Ill. Adm. Code Section (sic) 812 until October, 1991." (Pet. for Variance at 1.) These regulations are part of the Board's new landfill regulations which became effective September 18, 1990. By its variance petition, Gallatin seeks to avoid application of Part 812 of the R88-7 regulations governing "Information To Be Submitted In A Permit Application", to its pending permit application. Gallatin's application has been pending before the Agency since April 23, 1990, approximately five months prior to the effective date of the new regulations. Gallatin alleges in its petition that "retroactive" application of the new regulations to its pending permit application would impose an arbitrary and unreasonable hardship upon Gallatin and that no adverse environmental impact would result if the variance were granted. Gallatin lists four regulations as "examples" of how application of the new regulations would impose an arbitrary and unreasonable hardship on Gallatin. (Pet. for Variance at 11-16.) Gallatin also alleges that it is "in compliance with the great majority of the new rules." (Pet. for Variance at 2.) However, Gallatin reiterates in its request for relief that it is seeking a variance from Part 812.

Although Gallatin's petition for variance requests relief from the "retroactive" application of all of Part 812, testimony and evidence adduced at hearing and in its post-hearing brief establish that Gallatin's asserted concern is with 35 Ill. Adm. Code 812.317(1). Gallatin repeatedly stated in its petition, at hearing and in its brief that it believes it is in compliance with all other aspects of the R88-7 regulations, with the exception of Section 812.317(1), which requires that the permit application include four quarterly groundwater data to establish background concentrations for certain constituents. (Pet. for Variance at 2; Tr. at 37-8, 54, 150, 192 and 232; Brief at 3, 4, 8-9, 10, 14, 16-17, 24, 28, and 30.) Gallatin asserted that its pending application was prepared with reference to the R88-7 regulations. (Tr. at 143.) Gallatin offered no evidence at hearing on how compliance with any other section of the new regulations would result in the imposition of a hardship, much less an arbitrary or unreasonable hardship. Therefore, the Board will not rule upon Gallatin's compliance with the provisions of Part 812 other than 812.317(1); such a determination lies with the Agency in its permit review process, subject to Board review in a permit appeal. (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1039 and 1040.) However, Gallatin's assertions of compliance are important because they establish that Gallatin has narrowed its variance request to Section 812.317(1). Since Gallatin offered no evidence at hearing regarding relief from any regulation other than Section 812.317(1), the Board must find that, to the extent any other relief is sought, Gallatin has failed to carry its burden and such relief is denied.

Before addressing the merits of Gallatin's petition, discussion of some transition provisions provided in the R88-7 is needed. The regulations define what is a new facility, or new unit at a facility, in 35 Ill. Adm. Code 810.103. 35 Ill. Adm. Code Part 814 addresses generally the requirements for both new and existing disposal units within existing landfill facilities with ongoing operations, and how long they can continue to operate depends on the level of compliance which they have achieved or can achieve with the new regulations. For example, a landfill, already permitted and operating, that wishes to keep an operating unit open for more than seven years must have design and operating capability at the highest possible level consistent with the technical regulations applying to new units; they are given relief only from such things as location standards or retrofitting their existing leachate collection system. (35 Ill. Adm. Code 814.301 and 814.302.) Only existing facilities initiating closure within two years can utilize the provisions of old Part 807 permits; all others must go through the transition requirements of the new regulations by way of permit modification to their existing permits.

Gallatin, however, is not at the stage where it has an existing permit to modify, much less an ongoing operation. Hence, Gallatin does not qualify for the transition relief provided for in the new regulations. We disagree with Gallatin's assertion that Section 812.317(1) should not be applied to its pending permit application. Gallatin is clearly a new landfill pursuant to the following definition of "new facility" set forth in Part 810 of the R88-7 regulations:

"New facility" or "New unit" means a solid waste landfill facility or a unit at a facility, if one or more of the following conditions apply:

.....

It is a landfill or unit not exempt from permit requirements pursuant to Section 21(d) of the Act that has no development or operating permit issued by the Agency pursuant to 35 Ill. Adm. Code 807 as of the effective date of this Part; or" (35 Ill. Adm. Code 810.103.)

Therefore, absent a grant of variance, an adjusted standard or a site-specific regulation by the Board, Gallatin is subject to all the regulations applicable to new landfills, including the provisions of Part 812 regarding the contents of the permit application as well as the technical provisions as set forth in Part 811.

Thus Gallatin's alleged hardship is associated with the application of the new rules during the pendency of its permit application, but prior to Agency decision, and the potential loss of a construction season that could result from having to start over with a new application. Specifically, the remaining question is whether Gallatin should receive a variance from Section 812.317(1) of the new regulations.

HARDSHIP AND ENVIRONMENTAL IMPACT

A petitioner seeking a variance must prove that immediate compliance with the regulation would impose an arbitrary or unreasonable hardship and that hardship resulting from denial would outweigh any injury to the environment. (Ill. Rev. Stat. 1989, ch. 111 1/2, par.1035; Unity Ventures v. PCB, 476 N.E.2d 1368 (2d Dist. 1985).) Section 812.317(1) of the new regulations provides that "[t]he permit application shall contain a groundwater monitoring plan which demonstrates compliance with 35 Ill. Adm. Code 811.318 and 811.319 and which includes ... a description of the groundwater quality standards applicable at the facility pursuant to 35 Ill. Adm. Code 811.320" 35 Ill. Adm. Code 811.320 requires that background concentrations "shall be established based on four quarterly sampling of wells for one year" The Board agrees with the Agency's interpretation that the these regulations require that the four quarterly sample results be submitted with the permit application.

The regulation from which Gallatin seeks a variance requires that an applicant provide certain information, accumulated over a period of one year, with its permit application. (35 Ill. Adm. Code 812.317(1).) Viewed in the context of the instant matter, there are two components to this regulation: (1) the "time deadline" requiring that the information be submitted with the application; and (2) the substantive data accumulated pursuant to the regulation. Gallatin claims hardship only with the delay associated with compliance with the "time deadline" aspect of Section 812.317(1); denying Gallatin's variance request and requiring compliance with Section 812.317(1) would mean that Gallatin would have to begin the permit application process anew, from the beginning.

Gallatin's vice-president, Douglas Keats, testified that such a delay could result in the loss of at least one "construction season" and could increase construction costs approximately \$2.5 million. (Tr. at 46-51.) Keats also testified that the delay would cause Gallatin to lose refuse contracts. (Tr. at 51.) Keats opined that the denial of the variance would cost Gallatin between \$3-4 million. (Tr. at 53.) Keats stated that no contracts to accept refuse had been signed, but that, in any event, no such contracts could be signed until Gallatin obtained its permit. (Tr. at 59.) Keats also testified, by way of an offer of proof, that the Village of Fairview (Fairview) would

suffer a financial loss if the project is delayed. (Tr. at 48-50.) In support of this allegation of hardship, Gallatin introduced its annexation agreement with Fairview which provides for a "tippage fee" sufficient to reimburse Fairview for its direct costs associated with the annexation and maintenance of the balefill and provides that residents of Fairview will be given preference in employment. (Pet. Ex. F at 8 and 12; Tr. at 268.) Numerous members of the public testified in support of Gallatin, stating that the community was in dire financial straits and that the facility would improve this situation.² (Tr. 167-237.)

The Board finds that Gallatin has established that both it and the Village of Fairview would incur financial hardship as a result of the delay associated with denial of the variance. The Board rejects the Agency's and FACT's contention that, in the instant proceeding, evidence of hardship to Fairview is irrelevant and that such evidence is restricted to hardship incurred by the petitioner. The Board has not refused to consider evidence of the effect of hardship on those other than the petitioner where such evidence is sufficient and relevant. (See e.g., Citizens Utilities Co. v. IEPA, PCB 88-151 (March 8, 1990); City of Geneva v. IEPA, PCB 86-225 (July 16, 1987); Stephen Drake et al. v. IEPA and City of Pontiac, PCB 81-54 (December 17, 1981); Clem Juris v. IEPA, PCB 80-68 (September 4, 1980).) In any event, Gallatin has submitted sufficient evidence of its hardship, standing alone, to qualify for a variance. The hardship in this case is incurred as a result of the unusual circumstances presented here where an applicant qualifies as a new facility and, hence, must comply with the new regulations, but its permit application was filed prior to the effective date of the new rules. A grant of variance in this instance would only excuse Gallatin from that part of Section 812.317(1) requiring that the information be submitted with the permit application, allowing Gallatin to submit this information at a later date. Such a variance is consistent with the purpose of the transition provisions of the new regulations. Requiring Gallatin to go back and start the permit application process anew, absent a finding that a grant of variance would result in adverse environmental impact, would constitute an arbitrary or unreasonable hardship.

The Board recognizes that if variances were granted every time financial hardship was incurred as a result of compliance, variances would be granted routinely. This is not the case, however, because relief will be granted only when the hardship is arbitrary or unreasonable when compared to the benefits it produces. (Environmental Protection Agency v. Lindgren Foundry Co., PCB 70-001 at 6 (September 25, 1970).) Hence, the Board must

² The Board also notes that many residents of Fairview and people from the surrounding area testified in opposition to the variance. (Tr. 167-237.)

weigh the hardship imposed on Gallatin against the environmental impact resulting from a grant of variance. Gallatin introduced the testimony of Roberta Jennings, a hydrogeologist, in support of its claim that granting the variance would not result in significant adverse environmental impact. Jennings testified that the purpose of Sections 812.317(1), and Section 811.320 which is incorporated by the former section, is to establish a background concentration which is to be considered the applicable standard at the compliance point. (Tr. at 16-17.) Four quarterly data is required to determine any statistically significant seasonal variation occurring naturally in the groundwater. (Tr. at 17.) Jennings testified that allowing Gallatin to collect the remaining data as requested would not result in any adverse environmental impact "unless you are doing any large scale disturbance rate near the well ... or in some manner significantly altering conditions, the background is still going to be what it is." (Tr. at 20.) Jennings also stated that although the possibility of background change resulting from site disturbance depends on the site, Gallatin's background "does not vary a great deal." (Tr. at 21.)

On cross-examination, Jennings was asked to define a "significant disturbance." (Tr. at 24.) Jennings testified "it would have to be upgrading (sic) of a well and fairly close to the well. It would also depend on the nature of the activity. For example, at this particular site, there are no major roadways, no major farm fields, that would cause a great deal of fluctuation of the background constituents." (Tr. at 24.) According to Jennings, minor development activity would not harm the groundwater. (Tr. at 24-25.) Jennings also opined that, depending on the site, no significant activity should occur within 200 - 500 feet of the well. (Tr. at 24-25.) Jennings also testified that completion of the groundwater model is not dependant on the four quarterly groundwater data. (Tr. at 27-32.)

The Agency introduced the testimony of Kevin Rogers, an Environmental Specialist III with the Hydrogeologic Investigation Unit of the Agency. Rogers testified that the Agency interprets Section 812.317(1) as requiring submission of the four quarterly sample results with the permit application. (Tr. at 246.) Rogers opined that it is important that the four quarterly groundwater data be submitted with the permit application to be used as "a new procedure in the form of a location standard." (Tr. at 242.) According to Rogers, this data would be used to calculate a site-specific water quality standard prior to the development of the site in order to determine whether the design of the site would be protective of the groundwater quality. (Tr. at 242-43.) Rogers stated that this was his "personal interpretation" of the new regulations and that he was not aware of the Agency's official position. (Tr. at 247.)

The Board agrees with the Agency that Section 812.317(1)

requires that the data be submitted with the application. However, the Board disagrees with the Agency's recommendation that Gallatin should not receive relief from the "time deadline" aspect of this regulation. As noted above, a grant of variance in this case would not allow Gallatin to postpone compliance with any other provisions of the new regulations other than that portion of Section 812.317(1) requiring that the four quarter groundwater data be submitted with the permit application. Jennings testimony establishes that the environmental concern associated with granting the instant variance is that of construction activities disturbing the background concentration levels. The Board has addressed these concerns in condition no. 1 below which restricts construction-related activities within 500 feet of the wells.

The record establishes that the specific values of background concentration are not necessary for purposes of modeling and design. It is only necessary for Gallatin to show that there will be no increases in the concentrations of constituents above the background at a compliance point (beyond 100 feet) in 100 years, as a result of operations at the facility. However, the specific numerical concentrations that are established as background are needed, and must be included in a permit, because they become the groundwater quality standard applicable to that site to show compliance. Groundwater monitoring continues throughout the design life of the facility. Based upon such monitoring, if there is sufficient reason to believe that the initial established background is in error, an applicant would submit a request to change the established background by way of permit modification. While in most instances the Board would be reluctant to grant a variance from a provision of Part 812 because the provisions of the new regulations are interrelated, the requirements of Section 812.317(1) are separable from other components of the permit information requirements for purposes of the instant permit decision. The Board finds that Gallatin has established that, subject to certain construction conditions, allowing it to submit the groundwater data required by Section 812.317(1) in the manner provided for below will not result in any adverse environmental impact.

COMPLIANCE PLAN

The record establishes that Gallatin has submitted the results of one of the quarterly samples of background groundwater quality, the second quarter groundwater quality data were to be collected on December 7, 1990, the third quarter's data are to be collected on March 2, 1991 and the final quarter's data is to be collected on May 25, 1991 and submitted to the Agency no later than June, 1991. (Pet. Ex. H; Tr. at 19-20.) The Board finds Gallatin's compliance plan is acceptable, subject to the condition imposed below that it submit each remaining quarterly sample result within 7 days of receiving the result.

CONSISTENCY WITH FEDERAL LAW

The Agency states in its recommendation that a grant of variance will not violate any applicable federal law.

SUMMARY

In summary, the Board reiterates that this opinion and order is restricted in its scope to 35 Ill. Adm. Code 812.317(1). The Board finds that Gallatin has established that immediate compliance with that portion of Section 812.317(1) which requires that four quarterly groundwater data be submitted with the permit application would impose an arbitrary and unreasonable hardship upon Gallatin. The Board also finds that, subject to the condition that no significant construction-related activity take place within 500 feet of the wells before completion of the final quarter sampling, the environmental effects of granting Gallatin relief from the "time deadline" portion of Section 812.317(1) are minimal. Therefore, the Board concludes that the Agency shall not deny Gallatin's pending permit application on the basis that the four quarterly groundwater data required by Section 812.317(1) was not submitted with Gallatin's permit application.

The parties have not raised any arguments as to the date of the Agency's decision deadline on the pending permit. We note that the tolling of the Agency's decision deadline, and the automatic stay pursuant to Section 38(b) of the Act, end upon adoption of this opinion and order in accordance with the Board's previous order of October 25, 1990. Without discerning what date the Agency's decision is due, it appears that, at a minimum, two months remained before the Board tolled the decision timetable and that it is possible that Gallatin will have submitted the results of all but the final quarter data. Gallatin has two choices pursuant to the conditions set forth in the accompanying order depending on the date of the Agency's decision deadline. If Gallatin has submitted to the Agency the final data required by Section 812.317(1) three weeks prior to the Agency's decision deadline, the Agency shall consider this information in rendering its permit decision and shall not deny the permit on the basis of Gallatin's failure to submit this information with its initial application. In the event that Gallatin does not accumulate and submit the requisite data at least three weeks prior to the date the Agency's decision on the pending permit is due, Gallatin shall submit this information by way of permit modification to be filed no later than three weeks after it collects the final sample and no later than one week after obtaining the results of that sample.

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

ORDER

Gallatin National Company is hereby granted a variance from (a) that portion of 35 Ill. Adm. Code 812.317(1) which requires that certain data be included with its initial permit application, (b) 35 Ill. Adm. Code 813.103(d) in accordance with Paragraph 3 below and (c) 35 Ill. Adm. Code 813.204 in accordance with Paragraph 4 below for its facility to be located in Fairview, Illinois, subject to the following conditions:

1. No significant construction-related activity shall take place within 500 feet of the groundwater monitoring wells from which the quarterly samples are taken for determining background concentrations before the final quarterly sample is taken.
2. Gallatin shall submit to the Agency the results of the quarterly samples of groundwater used to establish background not heretofore submitted within 7 days of obtaining each quarter's results.
3. If Gallatin submits the data derived from the results of the four quarterly samples to the Agency at least 21 days prior to the Agency's permit decision deadline date, the Agency shall consider such information in rendering its decision on Gallatin's pending permit application. Such a submittal shall not constitute a new application for purposes of calculating the Agency's decision deadline date.
4. If Gallatin fails to submit the data derived from the results of the four quarterly samples on background concentrations pursuant to 35 Ill. Adm. Code 812.317(1) at least 21 days prior to the Agency's decision deadline date, the Agency shall render its decision on the pending permit, but shall not deny the permit on the basis of Gallatin's failure to submit such information with its initial permit application. In the event that Gallatin does not timely file its data derived from the results of the four quarterly samples, Gallatin shall file such data as a permit modification no later than three weeks after it collects the final quarterly sample and no later than one week after obtaining the results of the final sample. The Agency's decision on the permit modification shall issue no later than 21 days after the permit modification is filed.
5. This variance shall terminate on the date the Agency's decision is due on the permit modification pursuant to Paragraph 4 above or upon the date the Agency's decision is due on the pending permit pursuant to Paragraph 3 above, whichever occurs first.
6. Within 45 days after the date of this opinion and Order,

Gallatin shall execute and send to:

Mark V. Gurnik
Illinois Environmental Protection Agency
Division of Legal Counsel
220 Churchill Road
P.O. Box 19276
Springfield, IL. 62794-9276

a certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will be void if Gallatin fails to execute and forward the certificate within the 45-day period. The 45-day period shall be held in abeyance for any period during which the matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Opinion and Order of the Illinois Pollution Control Board in PCB 90-183, dated January 18, 1991, understand and accept said Opinion and Order, realizing such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

B. Forcade concurs. J. D. Dumelle dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 18th day of January, 1991 by a vote of 6-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board