

ILLINOIS POLLUTION CONTROL BOARD
April 1, 1987

DEPARTMENT OF THE ARMY,)
)
 Petitioner,)
)
 v.) PCB 87-38
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On March 23, 1987, the Department of the Army ("Army") filed a petition for extension of prior variance. That petition seeks a five-year extension of a variance granted in PCB 84-86 (October 25, 1984).

The Board has reviewed the variance petition in light of the relief requested and the terms of the prior variance and finds that the petition is deficient in several respects:

1. Paragraph 8 of the petition makes reference to the sampling and analysis data acquired under the terms of the prior variance, but fails to include the data.- The Army must provide all testing and analysis data which was acquired under the prior variance to the Board, as well as any reports evaluating that data;
2. Paragraph 5(c) of the petition makes reference to the planning for confined upland disposal facilities required by paragraph 7 of the prior Order but fails to include that information. The Board will be unable to determine whether confined upland disposal would constitute an arbitrary or unreasonable hardship to the Army unless detailed information on the cost estimates and implementation difficulties is presented to the Board; and

3. Paragraph 3 of the petition requests incorporation by reference of the entire record from the prior proceedings; this is not possible. In the prior proceeding (PCB 84-86), the Army filed an amended petition supplying the Board with a large amount of information. That amended petition requested (3, Amend. Pet., filed August 13, 1984), that the documents be returned to the Army when they had served the Board's purpose. The Board, in its October 25, 1984, Order denied the request to withdraw the documents but invited the Army to borrow the documents and return clear photocopies to the Board. The Board has not been able to determine whether the Army borrowed the documents, but in any event, the documents are not presently in the Board's possession. The Board has the complete set of documents introduced in the 1983 proceeding (PCB 83-25), but the documents from the 1984 proceeding are missing. A list of the missing documents is attached to today's Order. As a consequence, the Board cannot incorporate by reference the record from prior proceedings. The Board will incorporate by reference prior Opinions and Orders. If the Army believes there are documents upon which the Board must rely to make a final determination in this matter, those documents must be physically submitted in this proceeding.

Unless an amended petition is filed within 45 days curing the above-noted defects, this matter will be subject to dismissal.

Additionally, paragraph 7 of the petition seems to request variance to allow dredging in the LaGrange pool area pursuant to 401 Water Quality Certification Log. No. C-157-82 (revised). The Army is free to conduct its maintenance dredging and correlated discharge of dredge material without Board action for those sediments and disposal procedures which pass the Agency 401 Certification procedures (Department of the Army v. IEPA, PCB 83-25, July 26, 1983, p. 4). The Army is requested to elaborate on what relief is being requested as it relates to the LaGrange pool.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1st day of April, 1987, by a vote of 6-0.

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