ILLINOIS POLLUTION CONTROL BOARD
November 19, 1982

DEPARTMENT OF THE ARMY, Petitioner,	)	
v.	)	PCB 82-136
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

CONCURRING OPINION (by I. G. Goodman):

Although I agree with the Board Opinion and Order entered in this matter today that the Board must grant this Provisional Variance pursuant to Title IX of the Illinois Environmental Protection Act, I do not believe that the Board is forced to rubber stamp Agency conditions attached to the grant of the Provisional Variance which it would not allow in a regular variance proceeding.

Specifically, Conditions 5 and 6 do not pertain, by any stretch of the imagination, to this Provisional Variance. Condition 5 demands that the Petitioner submit a log of all dredging on the Illinois River since the year 1927, noting the frequency and method of dredging, the quantity of material dredged and the method of disposal, and any analysis of the material that is available. Condition 6 calls for Petitioner to sample the sediments at sites designated by the Agency pursuant to the results of Condition 5 and, if sediments fail to pass the Agency testing requirements, to begin planning for the location, development and construction of a confined disposal facility. Conditions 7 and 8, although arguably related to the present variance, are likely also immaterial to this proceeding. These conditions, if presented by the Agency in a normal variance proceeding, would undoubtedly be rejected by the Board as immaterial to the variance and outside the admittedly broad powers of the Board with regard to variance conditions.

If the Agency is allowed to continue this practice, the range of conditions imposed on provisional variances could reach absurd proportions. I do not think it was the Legislature's intention to allow this abuse and I do not believe it should be continued.

Irvin G. Goodman, Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 23rd day of November, 1982.

Christan L. Moffett, Clerk
Illinois Pollution Control Board