

ILLINOIS POLLUTION CONTROL BOARD  
April 24, 1986

IN THE MATTER OF: )  
 )  
APPLICATION FOR LAKE MICHIGAN ) PCB 86-60  
PERMIT NO. 187 LM FOR )  
THE CITY OF LAKE FOREST )

ORDER OF THE BOARD (by J. Anderson):

On April 22, 1986, the Illinois Department of Transportation (IDOT) submitted to the Board for its concurrence Lake Michigan Permit NO. 187 LM to be issued to the City of Lake Forest. This concurrence is required by "An Act in relation to the regulation of the rivers, lakes, and streams of the State of Illinois" (Waterway Regulation Act), Ill. Rev. Stat. 1985 ch. 19 pars. 52-79. On the same day, counsel for certain riparian property owners located downdrift of the proposed project filed an objection to Board approval of the permit "based on the current state of the administrative record" and requested that the Board hold a hearing prior to action on this permit. The City filed responses in opposition to the objection on April 23 and 24, also requesting expedited consideration. The owners also filed an additional objection on April 24.

The Board notes that this permit application was filed with IDOT on February 12, that the IDOT proposed permit was presented to the Board April 22 for placement on the Board's April 24 agenda, that the City has scheduled for May 5 the sale and bid opening for the \$8.5 million in bonds necessary to finance the project, delay of which could cause the City to lose between \$500,000 and \$750,000 (see attachments to objection) and that the next regularly scheduled meeting of the Board is on May 9. For the reasons articulated below, the Board believes that the existing administrative record is sufficient to allow the Board to presently make the limited determination concerning this permit based on pollution considerations only, as provided for and required by statute. The Board is therefore giving this matter the expedited consideration requested by IDOT and the City, but must remark that it prefers to be given a more reasonable time period for deliberation.\*

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\* The Board additionally notes that the City's last filing was received during the noon recess of the Board's April 24 meeting and was considered prior to a vote being taken. After the vote, the riparian owners made an additional filing, having been apparently unaware of the City's noon filing until the meeting reconvened. The Board, on its own motion by a 5-1 vote, reopened the case to consider the owners' latest filing. The Board readopted its Order, all Members voting as they did initially.

In summary, the request for hearing is denied, and Board concurrence with the permit is granted. This is not to be construed as involving any Board determination regarding IDOT permitting procedures, as neither the Waterway Regulation Act nor the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 pars. 1001-1052, confer jurisdiction on the Board to engage in any such review.

The Permit Requested and Objections Thereto

The permit at issue here would authorize construction of a major shoreline protection and recreational project at the City's Forest Park. The project would include placement of approximately 80,000 tons of armor stone and 10,000 tons of rock to construct revetments and breakwaters, placement of 150,000 cubic yards of sand and 50,000 cubic yards of earth fill for beach nourishment and other facilities and the dredging of 1500 yards of material to allow for installation of boat launching ramps. IDOT would condition issuance of the permit on 1) the City's initiation and continuation of a Shoreline Monitoring Program as proposed by the City, and the City's subsequent mitigation of any erosion or shoreline damages which the monitoring might show was attributable to the project, and 2) the City's passage of a resolution essentially agreeing to be bound by the first condition.

The information on which IDOT based its decision includes the application accompanied by an environmental assessment by the City that the project would not affect downstream property owners; riparian owners' objections, and City responses thereto; and an April 22 preliminary assessment made by experts for the riparian owners countering that assessment. Also included was correspondence relative to another permit required by the City, a federal permit to be issued by the Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act (cite). By letter of April 4, 1986, the Illinois Environmental Protection Agency (Agency) provided the Army Corps with a certification required by Section 401 of that Act that

"it is [the Agency's] engineering judgment that the proposed project may be completed without causing water pollution as defined in the Illinois Environmental Protection Act [and Board regulations] provided that the project is carefully planned and supervised."

The letter went on to state that the certification was contingent on the Corp's inclusion in its permit of various conditions designed to prevent violation of water quality standards. This was one of the subjects of discussion between the City, IDOT, and the Army Corps at an April 9 meeting at which the objectors were present. The Army Corps' permit was issued on April 23, subject to conditions including those suggested by the Agency.

The riparian owners' substantive objections, in essence, are that their properties will be adversely affected by two asserted effects of the project: diminution of littoral sediment transport and increase or accelerated erosion due to the alteration of current and wave patterns along the shoreline. No challenge was made to the Agency's water pollution conclusions. The owners have also lodged a procedural objection to IDOT's April 22 action, which is that the action was arbitrarily premature, given IDOT's knowledge that their experts' site inspection (necessary to finalize their report) was scheduled for April 26-27.

#### The Board's Role In The Waterway Regulation Act

In pertinent part, the Waterway Regulation Act invests IDOT with jurisdiction over "every body of the water within the State of Illinois", and requires IDOT generally to gather and maintain information concerning the navigability and shorelines of these water. Ill. Rev. Stat. 1985 ch. 9 par. 52. The statute charges IDOT to "secure every ...lake...in which the State...has any right or interest against encroachment, wrongful seizure, or [unlawful] private use". Ill. Rev. Stat. 1985 ch. 19 par. 54. As to Lake Michigan, the Act specifically provides that "close cooperation" shall exist between IDOT, the Board, the Agency and other state agencies. The duty of the Agency is abate pollution in the Lake, by insuring that discharges meet "criteria of the ...Board". Ill. Rev. Stat. 1985 ch. 19 par. 61(a). Paragraph 65, which is at issue here, requires a permit signed by IDOT and countersigned by the Board, for the "deposit of rock... or other material", or the "building of any...structure", or the commencement of "any work of any kind whatsoever in any...public bodies of water"; the requirement of a permit is specifically repeated for deposit of material into Lake Michigan. Ill. Rev. Stat. 1985 ch. 19 par. 65.

It is the Board's conclusion that the permit system of the Waterway's Regulation Act is designed to utilize the expertise developed by IDOT in assessing the impact a project may have on the configuration of waterways and shorelines, and to utilize the expertise developed by the Board and the Agency in assessing the impact a project may have on the quality of the waters contained within those waterways.

#### The Board's Resolution

As the riparian owners' objections relate not to pollution or water quality, but instead to current and wave actions and sediment transport as they relate to beach and bluff alterations, the Board finds that this is not a case where the information which would be generated at a public hearing would be relevant to the Board's charge and authority. The request for a public hearing is therefore denied.

Concerning the pollution/water quality issue, there is no information here present which would lead the Board to come to a conclusion contrary to that reached by the Agency: the project, if performed in compliance with all permits, may be completed without causing water pollution. The only information which hypothetically could raise concern is the City's intention to use sand fill dredged from Waukegan Harbor (see City's letter of 4-23-85 at p. 5). In light of the commonly known environmental history of Waukegan Harbor, the suitability of the use of this material, if itself polluted, could be questionable. However, the condition of the Agency's 401 certification (to be contained in the Army Corps' permit) that the City shall not cause pollution or violation of water quality standards will require that the City analyze the materials to insure that their use will not cause environmental harm.

Finally, the Board wishes to comment on Condition 2 of the IDOT permit, requiring the City to adopt a resolution after permit issuance. While the Board does not ordinarily make decisions contingent on future actions, the Board notes that the City has already publicly committed itself to the monitoring and mitigation provisions. The Board therefore views the resolution requirement as harmless surplusage.

Accordingly, Lake Michigan Permit No. 187 LM is hereby approved and the Chairman of the Board is authorized and instructed to sign the permit document.

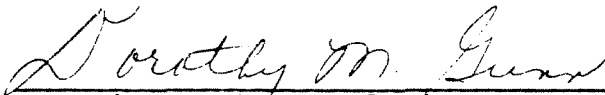
IT IS SO ORDERED.

J. D. Dumelle, R. Flemal and J. T. Meyer concurred.

B. Forcade dissented.

J. Marlin abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 24<sup>th</sup> day of April, 1986, by a vote of 5-1.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board