

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1982

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

DISSENTING OPINION (by J.D. Dumelle):

My reasons for dissenting on this provisional variance are because of the incompleteness of the pleadings on the merits and the nature of the conditions as detailed below.

Variance is being granted for ammonia, unnatural turbidity, and dissolved oxygen. The ammonia levels given (0.07 mg/l) are probably un-ionized ammonia readings but this is not so stated. The Board standard is 0.04 mg/l. What is not clear is whether the act of dredging itself increases the ammonia content of the returned river water. If it does not, then a valid argument can be made that variance is not needed to return river water to the river.

The "unnatural turbidity" Board prohibition has been defined by the Agency in terms of amount of sediment passing a given sieve size. The Board here is thus granting variance really not from the Act or a Board Rule but from an Agency criterion. The Board, has no way, without a rulemaking proceeding or possibly a permit appeal to determine whether or not this criterion is "technically feasible and economically reasonable"; the statutory requirement for Board Rules. I strongly recommend that the Board shortly, on its own motion, begin formal consideration of this Agency turbidity criterion in order that the certainty of its validity is established. Will barge tows that roil the water need turbidity variances? Will pile driving cause a violation?

The third standard for which variance is granted is dissolved oxygen. No information is given as to the cause of depression of dissolved oxygen levels. Is it because of the ammonia levels referred to above? Is it because of the sediments being dislodged and exerting an oxygen demand? And will those lower levels of dissolved oxygen cause fish kills? No information is available to the Board in the pleadings on these important questions.

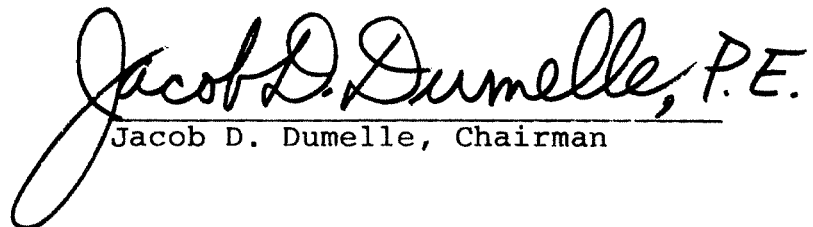
The conditions asked by the Agency and here granted by the Board majority are troublesome. In Condition No. 2 a temperature limit is given above which dredging may not be done. This was done to reduce the toxic effects of the ammonia. But if the dredging does not increase ammonia levels above ambient river water content then the temperature limit becomes useless. The ammonia is as toxic in the river as it ever was and returning river water to the river doesn't change that fact.

Condition No. 5 asks for historical dredging data since 1927. Since these data are to be furnished by February 28, 1983 they obviously are not a portion of the instant 30-day variance. Could the Agency not have requested these data under the Freedom of Information Act instead of in a short term provisional variance?

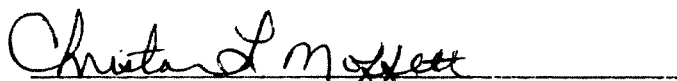
Conditions Nos. 6 and 7 require a confined disposal area for "further dredging". Again, this requirement has no relationship to the instant variance and thus in fact is beyond the Board's legal powers to so require.

Lastly, Condition No. 8 requires that a named dredge under Federal control be kept in the Peoria area through February 1983 "barring emergency considerations". No justification is given for this sweeping order of deployment of a piece of Federal equipment. What relation does this condition have at all to the instant variance? Where is the Board's legal authority to do this?

The Agency has here proposed a convoluted and troublesome provisional variance to the Board. The Board, as a minimum, should have struck down those conditions listed above.


Jacob D. Dumelle, Chairman

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 19th day of November, 1982.


Christan L. Moffett, Clerk
Pollution Control Board