

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1982

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

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

This provisional variance request comes before the Board upon the November 18, 1982 Recommendation of the Illinois Environmental Protection Agency (Agency). The Agency recommends that a 30-day provisional variance be granted to the Department of the Army, Rock Island District, Corps of Engineers (Army Corps) in connection with its proposal for maintenance dredging of the Illinois River between miles 147 and 148, located near the mouth of the Mackinaw River. Approximately 170,000 cubic yards of "highly polluted" dredgings are proposed to be deposited on the banks of the Illinois River. As some of this sediment will be carried back into the river by, for example, storm run-off, the Agency recommends a 30-day provisional variance from the water quality standards of 35 Ill. Adm. Code 302.212 (ammonia nitrogen), 302.203 (unnatural turbidity), and 302.206 (dissolved oxygen).

The Board notes that this Recommendation is replete with Agency "misgivings" concerning the Army Corps' "inadequate" environmental impact assessment, its delay in seeking variance relief (believed by the Agency to have been a foreseeable need), and its choice to petition for a provisional variance rather than a Board variance with its provisions for "meaningful analysis, comment and opportunity for hearing". In the latter context, the Agency stated that

"it believes that the Petitioner's (sic) has used the provisional variance in this matter as a way to force the Agency to act quickly and favorably or be accused of shutting down commerce on the Illinois River."

The Board concurs that while this use of the provisional variance mechanism falls within the letter of the law as outlined in Sections 35(a), 36(c), and 37(b) of the Act it

does considerable violence to its spirit: while the variance authorizes an act of less than 45 days in duration, it may result in problems of much greater duration. However, given a) the Agency's finding that denial of variance would impose an arbitrary or unreasonable hardship, and b) the extremely limited nature of the Board's Section 35(a) authority to review provisional variance requests, the Board reluctantly accepts the Agency's Recommendation. Variance is granted, subject to the conditions outlined in the attached Order.

ORDER

Petitioner, the Department of the Army, Rock Island District, Corps of Engineers, is hereby granted a provisional variance from 35 Ill. Adm. Code 302.212 (ammonia nitrogen), 302.203 (natural turbidity) and 302.206 (dissolved oxygen) for a period of 30 days, subject to the following conditions:

1. Petitioner shall dredge no more than 170,000 cubic yards on the Illinois River between miles 147 and 148.
2. Petitioner shall not commence dredging until the ambient water temperature in the Illinois River between miles 147 and 148 reaches a temperature of less than 8 degrees Celsius. The 30 day period of the variance shall commence at such time.
3. Petitioner shall notify Tom McSwiggin, Manager, Permit Section, Division of Water Pollution Control (217/782-0610), the day that dredging begins.
4. Petitioner shall monitor and report the water quality impacts of the dredging as follows:
 - a. Petitioner shall sample the following parameters at all sampling points listed under Condition 4(d): total suspended solids; volatile suspended solids; total ammonia nitrogen as N; pH; temperature; lead (total and dissolved); zinc (total and dissolved); dissolved oxygen.
 - b. Sampling at the sampling points listed in Condition 4(d) shall be at surface and mid-depth elevations between mid-channel and the bank on which disposal occurs.
 - c. Sampling at the sampling points listed in Condition 4(d) shall be done daily during the period of the dredging. Petitioner shall identify the river velocity for each day of the dredging.
 - d. Sampling shall be done at the following points:

1. If the discharge plume is visually identifiable, at a point upstream of the influence of the dredging operation and at 10 points spaced equidistantly within the discharge plume. Petitioner shall identify the location of each sampling point (by river mile and location within the channel) and shall provide a sketch of the plume; or
 2. If the discharge plume is not visually identifiable, at a point upstream of the influence of the dredging operation, at a point approximately 1,000 feet downstream of the point of discharge, and at each river mile beginning with mile 147 and ending with mile 138. Petitioner shall identify the location of each sampling point (by river mile and location within the channel).
- e. Samples shall be analyzed in accordance with Standard Methods. The results of this analysis shall be submitted to the Agency by January 15, 1983.
5. Petitioner shall compile and analyze all historical data of dredging on the Illinois River between River Miles 80.2 and 230.2 since 1927. By February 28, 1983, Petitioner shall submit a report to the Agency and the Illinois Department of Transportation identifying each site dredged, the frequency that each site was dredged, the method of dredging used in each instance, the quantity of material dredged each time, the method of disposal for each dredging, and any and all analyses of the material dredged for each site and each dredging.
 6. Using the information developed under Condition 5, Petitioner shall identify the sites along the Illinois River which have been most frequently dredged. Petitioner shall sample the sediments at those sites designated by the Agency to determine whether the sediments meet the material testing requirements set forth in Agency rules. Petitioner shall submit the results of sampling to the Agency by May 1, 1983. If sediments fail to pass the testing requirements, Petitioner shall immediately begin planning for the location, development and construction of a confined disposal facility, and investigate alternatives, innovative or otherwise, for controlling pollutants in a manner which minimizes the need for confined disposal facilities without open water or bank disposal of polluted materials. Petitioner shall fully cooperate with the Department of Transportation in its planning effort.
 7. If any further dredging is to be done between miles 147 and 148, the Petitioner, in conjunction with a local sponsor, shall locate, develop and construct a confined

disposal area. If such a disposal area cannot be provided despite the exercise of all diligent efforts, Petitioner shall seek a variance before the Illinois Pollution Control Board, pursuant to Section 35(a) of the Act. Any such variance request shall be commenced no later than 90 days before any additional dredging is to begin.

- 8. Barring emergency considerations, the dredge Thompson shall remain in the Peoria area of the Illinois River from December 1982 through February 1983.
- 9. Within ten days of the date of this Order, Petitioner shall execute and forward to Delbert Haschemeyer, Deputy Director, Illinois Environmental Protection Agency, Enforcement Programs, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this provisional variance. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 82-136 (provisional variance) dated _____, understand and accept the said Order realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent


Title

Date

IT IS SO ORDERED.

Board members J. Dumelle dissented and I. Goodman concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of November, 1982 by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board