

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 1972

CHICAGO REGIONAL PORT DISTRICT     )  
  )  
  )             #72-234  
  )  
      v.                                    )  
  )  
ENVIRONMENTAL PROTECTION AGENCY    )

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

Petition was filed by Chicago Regional Port District, seeking a variance from the provisions of the Rules and Regulations Relating to Disposal Sites and Facilities, which Regulations (Section 5.12(c)) prohibit the "deposition of refuse in standing water."

Petitioner, pursuant to its Port District operations, desires to construct certain outer perimeter dikes in Lake Calumet using inorganic heavy fill such as broken concrete, natural stone, brick-bats, cinders, clay, slag and some material dredged from Lake Calumet. Obviously, such construction cannot be effected without the deposit of solid material in standing water. The permit section of the Environmental Protection Agency has denied a permit based on the foregoing regulation. While the regulations were not drafted to cover activities of the character here involved, the proposed construction would constitute a violation of the regulation and our jurisdiction is properly sought in this respect.

Paragraph 11 of the petition states as follows:

"(11) The only manner in which these outer perimeter dikes can be constructed is "in standing water" and the extensive diking already performed in Lake Calumet acts as a further containment. There is no other practical manner in which such areas can be developed and as previously stated, all of Lake Calumet Harbor has been constructed in this manner. Our estimate is that there is approximately 3' of standing water on the west side of Lake Calumet where permission is sought to construct this series of connecting perimeter dikes running from Slips 5, 7 and 9 to the North Turning Basin. All of this area is now "under water". The Port District by first developing the outer perimeter dikes is functioning in accord with the best technical method that can be utilized for such purposes. The Port District seeks to create the foundation for further land usage on the west side of Lake Calumet as it can be appreciated that lacking tax or subsidization support that it must

exercise every energy and business judgment to enhance its revenues in order to defray its revenue bond obligations and other M&O expenses. Denial of such permission would work an incredible hardship on the Port District because it would delay and hamper any land site development in these areas."

All fill will be confined by the construction of cross-dikes in such a manner as to prevent the leakage of materials, particularly dredgings, that might have a polluttional impact on the lake. Petitioner is pursuing its program of harbor construction and no reasonable alternative would appear available to the manner of construction proposed in the petition. Denial of the variance would impose an extreme hardship, not only on petitioner, but on the entire community dependent on the harbor and port facilities being constructed by the District.

Accordingly, the petition for variance is granted, subject to the construction of adequate retention facilities to preclude any polluttional discharge into the lake and the utilization only of non-polluttional fill, excluding garbage. See Merle K. Buerkett v. Environmental Protection Agency, #71-303; Danville Metal Stamping Company v. Environmental Protection Agency, #72-228.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that the Chicago Regional Port District be granted a variance from the Rules and Regulations for Refuse Disposal Sites and Facilities prohibiting the "deposition of refuse in standing water", subject to the following terms and conditions:

1. Petitioner shall take all steps set forth in its petition with reference to construction and containing dikes to prevent polluttional discharge of any character into the waters of Lake Calumet. No garbage or other polluttional fill shall be used in the operation. All dikes and retention equipment and facilities shall be maintained in a water-tight condition.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 6<sup>th</sup> Day of September, A. D. 1972, by a vote of 4 to 0.

