ILLINOIS POLLUTION CONTROL BOARD
March 2, 1972

NORTH SHORE SANITARY DISTRICT	)	
	)	
	)	#PCB71-343
v.	)	
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

MR. MURRAY R. CONZELMAN and MR. JOHN R. SLOAN appeared for the NORTH SHORE SANITARY DISTRICT

MR. RICHARD COSBY and MR. THOMAS W. SCHUENEMAN appeared for the ENVIRONMENTAL PROTECTION AGENCY

MR. RICHARD M. KATES appeared for the LEAGUE OF WOMEN VOTERS

MR. THOMAS H. COMPERE and MR. BERLE L. SCHWARTZ appeared for the CITY OF HIGHLAND PARK

OPINION OF THE BOARD (BY MR. KISSEL):

On January 31, 1972, the Board entered its order in this case after consideration of all of the evidence and arguments by the parties: The North Shore Sanitary District ("District"), the Agency and the League of Women Voters ("League"). Although the order must, of course, speak for itself, generally it granted the District a variance to permit the connection of 1,000 living units (4,000 Population Equivalents) on certain conditions. On February 10, 1972, the District filed a "Petition for Reconsideration and Rehearing" with the Board in which it objected to the following paragraphs of the January 31, 1972 order, and here seeks to have those orders modified.

> 2. "The District shall be permitted to add a total of 1000 living units or 4000 P.E. to the sewers tributary to the Clavey and Waukegan plants."
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> 14. "The District shall install disinfection facilities at the Water Street and Gillette Avenue Sewers. Within 45 days of the entry of the order, the District shall present a timetable for the installation of such facilities to the Agency and the Board. The Agency shall formulate a written response to the Board within 15 days of receipt of the District timetable. The Board shall then issue an implementation schedule."

Its objections to the quoted paragraphs were numerous:

1. The District would not realize sufficient revenues from the 1000 living units to finance the various interim improvements required by the Board in previous orders, including the January 31, 1972 order and particularly the requirement for interim chlorination at the Water Street and Gillette Avenue Bypasses;

2. The issuance of only 1000 permits precludes developers, contractors and others engaged in the Lake County housing industry from proceeding with concrete commitments for construction in the upcoming years; and

3. The chlorination facilities required by the Board would not insure the use of the beaches in 1972 and 1973.

The League filed a brief with the Board suggesting that the Board grant the variance for 5000 units on condition that the District expedite the construction of the Waukegan retention basin, and complete it by June 1973. The League's position was that if the retention basin would be completed by that date, or soon thereafter, there would be no need to require the disinfection facilities at the Water Street and Gillette Avenue overflows. The Agency recommended that the Board not grant the additional variance requested by the District. As a result of the District's motion, a public hearing was held before the entire Board on February 22, 1972 at the Board's office in Chicago, Illinois. At that hearing, the City of Highland Park sought leave to intervene in this case; the City's motion was objected to by each of the parties on the ground of lack of proper notice. Opposing counsel were given five days to respond to the City's motion. The City remained at the hearing and was afforded an opportunity to present its position for the record. After receipt of the arguments of opposing counsel, the Board agrees that the City of Highland Park should be added as a party to the case.

The Board has considered motions made by other parties in other cases for reconsideration of the Board's order against them. We have consistently taken the position that we will not reconsider our initial decision unless there is a significant change in the circumstances, or there is new evidence available after the hearing which was not available at the time of the hearing. We think that both of those circumstances exist in this case.

The order of January 31, 1972 was predicated on the Board's conclusion that granting of the variance under the conditions detailed in this order would actually improve the quality of the water of Lake Michigan, and that had the variance not have been granted, (and therefore the conditions are met) the Lake would have continued to show signs of bacterial contamination near the beaches located within the District's bounds. One of the most important conditions of the variance was, therefore, "paragraph 14" which required disinfecting of Water Street and Gillette Avenue bypasses by September of 1972. If met, this would have meant that for part of the 1972 and all of the 1973 bathing season, the bacterial contamination from the overflows would have been substantially reduced and the beaches within the District most likely would have been useable during those periods. In its motion

for reconsideration, the District objected to "paragraph 14" on a number of grounds. One of the alternatives considered by the Board before adoption of the January 31 order, and now favored by the District, was to not require chlorination of the Water Street and Gillette Avenue bypasses, but to wait until the retention basin at Waukegan plant was built and operable so that it could handle the overflows, and treat them, as it was designed to do. But based upon the evidence in the original hearing, the latter was not a feasible alternative at that time because of the District's history of delay in completing not only all of its projects, but this project in particular.[1] If the "retention basin" alternative had been the one selected by the Board in its January 31 order, disinfection of the overflows would not have been provided until at least September, 1973 and perhaps later, knowing that the District had a penchant for delay in completing its projects. However, in the hearing on the Motion for Reconsideration, the District's commitment to completion of the "retention basin" project was strongly manifested.

The District has actually awarded the contracts for the retention basin and for the attendant pumping facilities since the original hearing on the District's variance petition. The contract provides for a completion date for all such facilities of September 1, 1973, which the District testified it would require be met. Further, it may also be possible to advance that completion date by declaring the retention basin project at Waukegan an "emergency project", as it has done in other other cases. Since the installation of the retention basin and the pumping facilities basically determines whether or not Lake Michigan bathing can occur in 1973, we believe that cause exists for the use of the District's "emergency" declaration power. One way of completing the project earlier would be for the District to employ overtime whenever that will speed up work. Another way of speeding up would be the leasing of the necessary pumps and using them before the installation of the permanent pumps. We will require, therefore, that the District complete the retention basin no later than Sept. 1, 1973[2] and investigate all means available to speed up this project, including the availability of leased pumps, and the use of overtime work, and report to the Board and the other parties the results of its investigation, the manner in which it intends to proceed, and the reasons therefor.

Even given the availability of the retention basin and the attendant facilities by the end of the summer, 1973, the Board believes that disinfection of the Water Street and Gillette Avenue bypasses would have been the most appropriate measure to be taken. Unfortunately, the evidence presented at the recent hearing indicated that disinfection facilities could not be installed by September, 1972 as originally forecast. Prospects are also dim for installation by summer, 1973, the next bathing season. In order to install the disinfection facilities at the Water Street bypass, the District would have to acquire rights from E.J.&E. Railroad. Under the Eminent Domain Act, this could not be done without prior approval from the Illinois Commerce Commission;

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[1]The original contemplated completion date was March, 1973, and the contemplated date now is September 1, 1973.

[2]The League has asked us to require a completion date of June 1973, but based upon the present record we do not know if this can be done, we agree with the League that all means at the District's disposal should be used to speed up the Project and if after investigation the June date can be met, we will require it.

cwo proceedings, one before the Commerce Commission and then a condemnation suit, would most likely have to occur then before the District could obtain the necessary right-of-way. A seven-month construction period would then be pyramided on top of those hearing processes. The Water Street project therefore appears to be effectively stymied. If that is the case, then to chlorinate at Gillette Avenue will make little sense since with Water Street still untreated, a large amount of untreated sewage will still be cascading into Lake Michigan when overflow conditions occur. Therefore, Paragraph 14 of the Board order of January 31, 1972 will be rescinded; instead, the District will be ordered to take the steps outlined above to advance the availability date for the Waukegan retention basin, the pumping station, and the interceptor and relief sewer. While Lake Michigan will suffer for a few more months under this new Order, the people of the county will not be required to waste their money on a useless, and maybe, never available project.

At the recent hearing, the District also objected to the Board's limitation of 1000 hookups (4000 P. E.) to the Clavey Road and Waukegan Sewage Treatment plants. In support of this contention, the District indicated that it would not receive sufficient revenues from the 1000 permits granted to finance the improvements which the Board had ordered because the grant of only 1000 permits would preclude developers, contractors and others in the housing and building industry from proceeding with concrete commitments for construction in 1973 and 1974. Though the District's first argument has been somewhat obviated by the Board's rescission of its order directing that disinfection take place at the bypasses(because the disinfection facilities involved a large part of the cost), the second contention still remains a matter for concern. At the recent hearing, the District introduced new evidence regarding the need for 5000 permits. Allan Pickus, a Waukegan architect and contractor, indicated that scheduling and financing of projects requires that preparations be made several years in advance. Thus, for the lifting of this sewer ban to have any beneficial economic effect, the District would require that a sufficiently large number of permits be granted so that construction can proceed at an appropriate pace. This is necessary because builders need to obtain financing for the total construction project, be it an apartment house, or private homes, so that the costs common to the entire project, i. e., roads, sewers, etc. can be done at once and amortized over the entire project. Without the firm commitment to connect the entire construction project, builders could not risk the funds for the common costs. Pickus' testimony was corroborated by that of Thomas A. Rostron, President of the First Federal Savings and Loan Association of Waukegan, who stressed that developers must be assured that sewers will be available at the conclusion of a project before they can commit capital to a building program. He indicated that no lending institution would make a mortgage commitment unless there were written approval from the Board as to the availability of sewer hookups. Based on this new evidence, the District shall have the power to issue 5000 living unit (20,000 P.E.) permits for the Waukegan and Clavey Road plants. Just because the Board authorizes the issuance of 5000 permits does not mean that such connections will occur within the next year; as Pickus indicated, actual connections to the plants will most likely total between 700 and 1000 the first

year, with approximately 2000 occurring in each subsequent year. Of prime consideration in limiting the original grant to 1000 units was the Board's desire to maintain a continuing supervision over the District's expansion program. Placing the limitation at 1000 would force the District to return to the Board at the end of that first year in order to renew the variance; at such a time, the District would have to show substantial compliance with the deadlines under their construction program. Raising the level to 5000 does not preclude the maintenance of such supervision, since in order that advance planning can take place for construction year 1975, the District will most likely have to return to the Board in about a year for a renewal of its variance. If the District is not complying with our Order, or proves that it has not exercised all good faith in trying to comply, new variances should not be granted in the future beyond those granted today. In addition, through the District's monthly progress reports, the Board and the Agency will continue to be apprised of the District's activities.

It is important to note that the granting of a variance for 5000 living units is essentially the same grant as previously made by the Board on January 31. In the January 31 order, the Board granted a variance for 1000 units for the next year, recognizing that if the District met its schedule, it would receive permission to connect additional living units in the next year, probably 2000 such units, and so on. With the present grant of 5000 units, the testimony is that not more than 1000 units will be connected in the first year anyway. What the Board is really doing is to give the builders the wherewithal to build the 1000 units this year. Under the January 31 order, the manner of apportioning the 1000 unit allotment was left to the discretion of the District. Since 5000 units will ultimately be connected to the District system under this variance, however, we must now take into account the relative capacities of the Clavey and Waukegan plants. Accordingly, the District shall apportion the loadings under this variance in the approximate one-third to Clavey, two-thirds to Waukegan ratio proposed by the District in its original variance request in this case.

One other point must be mentioned --- the District's financial problems. Testimony at the hearing established that the value of the appraised real estate in the District had increased by 150 million dollars since the voters in the District had passed the original 36 million dollar bond issue in 1968. This increase in assessed valuation makes 7.5 million dollars available to the District for its programs. Such funds are available within the five percent bonding limitation imposed on the District under Sec. 285, Ch. 42, Ill. Rev. Stat. (1971). At present, the District is committed to a large-scale construction and expansion program. Those facilities are being constructed in order to abate pollution. (See Opinion, PCB70-7, 12, 13 and 14, March 31, 1971). The facilities ordered in this variance case are also directed to abating pollution (See opinion PCB71-343, January 31, 1972). To comply with such an order, the District is authorized by Section 46 of the Environ-

mental Protection Act to issue general obligation or revenue bonds, if necessary, without referendum. No specific order to issue bonds is necessary; we leave the question of how to raise money to the District, but the money must be raised. See Ruth v. Aurora Sanitary District, 17 Ill. 2d 11, 158 N.E. 2d 601 (1959).

The parties entered into a stipulation regarding certain matters and the League has asked that the Board make the stipulation part of the Board's order. The stipulation, inter alia, would provide for operation of interim chlorination facilities at the North Chicago plant during the 1972 swimming season, for ample notice in the District and to contractors regarding the district's bidding processes, and for the adoption of a fine schedule by the District. Such steps, we believe will assure better operation and a higher quality effluent, as well as possibly advancing the completion date for the District's expansion program. The stipulation shall be incorporated into the Board Order.

-ORDER-

Upon examination of the record, the Order of the Board of January 31, 1972 in the above-entitled case, PCB 71-343, granting the North Shore Sanitary District a variance from Paragraph 7 of the Order of the Board in the case of the League of Women Voters, et al v. North Shore Sanitary District, PCB 70-7, 12, 13 and 14 is hereby modified as follows:

1. Paragraph 2 of the Board Order of January 31, 1972 is hereby repealed in full and replaced as follows:

   2. The District shall be permitted to add a total of 5000 living units or 20,000 P.E. to the sewers tributary to the Clavey and Waukegan plants.

2. Paragraph 4 of the Board Order of January 31, 1972 is hereby repealed in full and replaced as follows:

   4. The District shall apportion the allotment under the variance between the subject plants in approximate ratio of one-third of the new connections to Clavey, the remainder to Waukegan. Such apportionment shall also be subject to the conditions in Paragraph 5 below.

3. Paragraph 14 of the Board Order of January 31, 1972 is hereby repealed in full.

4. The following paragraphs are hereby added to the Board Order of January 31, 1972:

   21. The District shall have the retention basin at the Waukegan plant (P3B), the pumping station (P3F), and the interceptor and relief sewers (S6A) (hereinafter called "retention basin") tributary to the basin in operation as soon as possible and no later than Septem-

ber 1, 1973. The District shall employ all means available to advance the date of operation of the retention basin. The District shall investigate all available means to advance the date of operation of the retention basin, including the use of its emergency powers, overtime and leased pumps. Within 60 days of the entry of this Order, the District shall begin reporting in its monthly progress reports to the Board, the Agency and the other parties in this case, the results of its investigations, the steps it has taken to advance the operation date, the manner in which it intends to proceed, and the reasons therefor. Such reporting shall be included within each monthly progress report until the date of completion of the retention basin report.

22. The District shall abate its discharge of untreated or inadequately treated sewage and its violations of the Environmental Protection Act and of regulations thereunder, in accordance with this Order and the Board Orders of January 31, 1972, June 23, 1971 and March 31, 1971.

23. Within 90 days of the entry of this Order, the District shall submit to the Agency and the Board a plan assuring financing of the program herein and heretofore approved, together with a study by bond counsel discussing the various financing alternatives available.

5. The following stipulation is hereby incorporated into the Board Order of January 31, 1972:

24. Within sixty (60) days from the date of this Stipulation, the North Shore Sanitary District will adopt a fine schedule to a certain Ordinance relating to sewers and sewer systems as amended.

25. That the North Shore Sanitary District will take whatever legal steps are necessary in the matter of illegal connections to its systems and facilities.

26. That the North Shore Sanitary District will study the toxicity of polymers it plans to use by making a study of the literature and report its findings to the Illinois Pollution Control Board.

27. That in connection with the interim chlorination facilities at its North Chicago Plant, the North Shore Sanitary District will install and operate such facilities for the swimming season of 1972.

28. That the North Shore Sanitary District states that it advertises for bids on construction contracts in the Waukegan News-Sun and notifies the Dodge Reports. That in addition it furnishes notices to contractors.

29. That a pilot study of ozone may be done at a plant approved by the North Shore Sanitary District if done by the Illinois Institute for Environmental Quality or other governmental agency so long as such study does not interfere with construction.

30. That the North Shore Sanitary District will file its impact study of a sludge disposal site in Newport Township, Lake County, Illinois with the Federal Environmental Protection Agency as soon as a permit is issued by the Illinois Environmental Protection Agency.

6. All other conditions of the variance granted on January 31, 1972 in this cause shall remain in full force and effect.

I, Christan Moffett, Clerk of the Illinois Pollutoin Control Board, certify that the above Opinion & Order was adopted this ___ day of March 1972, by a vote of 4-0 .

Christan Moffett

ILLINOIS POLLUTION CONTROL BOARD
March 2, 1972

NORTH SHORE SANITARY DISTRICT	)	
v.	)	PCB 71-343
ENVIRONMENTAL PROTECTION AGENCY	)	

Concurring Opinion by Jacob D. Dumelle

While I concur in the Board's decision to grant 5,000 connections as it did this date I do not agree with all the language of the March 2, 1972 opinion.

In my dissent filed February 17, 1972 to the original January 31, 1972 Board order granting only 1,000 connections I fully explored my reasons. Those reasons still hold and I shall not repeat them here.

I do not feel that the "new evidence" mentioned in the Board opinion (p.4) was needed or necessary. I think that our extensive sewer ban hearings plus the instant case proceedings fully developed the material for the conclusions reached.

The distribution of the connections between the Waukegan and Clavey plants in the 2:1 ratio is not one I would have made. The Clavey plant's effluent has been of such good quality that I would have reversed the ratio or made an unlimited grant at Clavey subject to the effluent standard for secondary plants not being exceeded.

Jacob D. Dumelle
Board Member

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Concurring Opinion was filed on the 24th day of March, 1972.

Christan L. Moffett, Clerk
Illinois Pollution Control Board