

ILLINOIS POLLUTION CONTROL BOARD  
September 25, 1986

IN THE MATTER OF: )  
)  
JOINT PETITION OF THE ) PCB 85-202  
METROPOLITAN SANITARY DISTRICT )  
OF GREATER CHICAGO AND THE )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY FOR EXCEPTION )  
TO THE COMBINED SEWER )  
OVERFLOW REGULATIONS )

INTERIM ORDER OF THE BOARD (by J. D. Dumelle):

Upon review of the materials filed in this proceeding and the June 25, 1986 hearing transcript, the Board wishes additional information on the following matters.

The following threshold questions reflect the Board's uncertainty as to the nature of, and the need for, the relief being sought by the Petitioner:

1. In the joint petition, relief was requested from the Section 306.306 Compliance Dates pursuant to the Subpart D Exception Procedure. No exception was requested from Section 306.305, the Board's treatment standards. However, in its concluding comments, the petitioners appear to be requesting relief specifically from 306.306(b), the compliance deadline for MSD of December 31, 1977 (assuming that the reference to 306.305(b) was inadvertent). Why is MSD requesting such relief for itself, since that protection has already been provided in Section 306.306(d) (1), (2) and (3), i.e. the MSD is in the construction grants program?

Are the Agency, and MSD as a regional lead government, actually seeking relief only for the 29 municipalities, i.e., for an exception from 306.306(c), which requires all CSO's (except MSD) to have complied by December 31, 1975 unless they are in the grant program or, alternatively, a holding that the municipalities are, and have been since 1977, in the grant program?

If so, what distinguishes the possible exposure of these municipalities from the other municipalities who, until "their" portions of TARP were completed, appear possibly to have been similarly exposed?

2. On the one hand, the Petitioners have invoked the intergovernmental cooperation provisions of Article VII,

Section 10 of the Illinois Constitution to support their assertion that all the municipalities, as well as "the USEPA, the IEPA, the Army Corps of Engineers, the Illinois General Assembly and the Congress of the United States" have recognized the MSD as the lead agency. They further assert that the IEPA's position is that "these municipalities are protected by the District's [grant] application."

On the other hand the Petitioners assert that the MSD and IEPA are not representing the municipalities "in the sense that the municipalities could be bound by our actions." (Pet. Concluding Comments, p. 3, 4, 5).

Would the Petitioners please clarify their role and that of the municipalities in this proceeding?

3. One other reason stated by the Petitioners for seeking extended compliance relief is to protect MSD and the municipalities from federal enforcement, referring to the USEPA's January 2, 1984, National Municipal Policy statement. That statement allows the "permitting authority" to extend the CWA compliance deadline beyond the July 1, 1988 compliance date if, as in this case, extraordinary circumstances make it impossible to meet the above deadline. (Pet. Concluding Comments, p. 5, 6, Attach.).

In reference to the "National Municipal Policy," the petitioners are requested to discuss whether the Act or Board regulations require Board action (by way of the exception procedure or otherwise) to empower the Agency to set the extended fixed compliance schedule.

The Board also requests responses to the following questions:

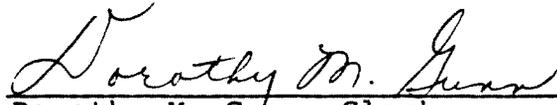
4. If the entire cost of the TARP completion is borne by the MSDGC property-taxpayers what would be the effect upon the total Chicago tax bill? What rate and percentage increase would result?
5. Does the MSDGC have the legal power to issue bonds without referendum for the full amount of the cost of completion of TARP?
6. Assuming that the Board orders the completion of TARP by January 1, 1996 what are feasible construction milestones to set (i.e. 25% completion after three years, 50% completion after six years, 75% completion after eight years, etc.)?

7. Are the tax rates given in the MSDGC's July 25, 1986 submission total tax rates for all MSDGC operations or incremental tax rates for the TARP project alone? How were they computed?

Any responses to this Order should be filed on or before November 10, 1986.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25<sup>th</sup> day of September, 1986 by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board