

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1986

IN THE MATTER OF:)
)
JOINT PETITION OF THE AURORA) PCB 85-224
SANITARY DISTRICT, THE CITY OF)
AURORA, ILLINOIS AND THE)
ILLINOIS EPA FOR AN EXCEPTION)
FROM SECTION 306.305(a) AND (b))
TITLE 35: ENVIRONMENTAL PROTECTION;)
SUBTITLE C: WATER POLLUTION;)
CHAPTER I: POLLUTION CONTROL BOARD)

INTERIM OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a Joint Petition of the Aurora Sanitary District ("District"), the City of Aurora, Illinois ("Aurora") and the Illinois Environmental Protection Agency ("Agency") for an exemption to the Board's combined sewer overflow ("CSO") regulations, filed December 31, 1985. Hearing was held on March 6, 1986. The Agency filed supplemental information requested at hearing and a draft order on April 7, 1986, and May 12, 1986, respectively.

At hearing, it was ascertained that of a total of fourteen (14) sewer overflow points, thirteen (13) go to the Fox River and one (1) goes to Indian Creek (R. 74). The combined sewer overflow going to Indian Creek is identified as one of the four major overflow points of the fourteen in the system and would be one of the major discharge points remaining after completion of improvements (Joint Petition, p. 2). No information was contained in the Joint Petition regarding Indian Creek. Petitioners stated that they had no data of any sort, including flow data or water quality data, for Indian Creek nor had the discharge to Indian Creek been modeled or analyzed (R. 76, 79). The Agency testified that no biological analysis had been done regarding Indian Creek nor the impact of the discharge (R. 78).

The Agency hypothesized that there would be some documentable biological degradation as a result of the existing overflow (R. 78-79). The Agency, at the request of the hearing officer, did provide some information on Indian Creek subsequent to hearing. The supplemental information indicates that Indian Creek is a general use waterway approximately seven miles long with a zero 7-day, 10-year Low Flow. Discharge No. 25 outfalls approximately one mile above Indian Creek's confluence with the Fox River (Agency Supplemental Information, April 7, 1986, R. 77). This information would support the Agency's statement at hearing that Indian Creek is probably adversely impacted to some documentable degree.

Petitioners assert that their request for relief from Section 306.305(a) and (b) is justified on the basis of minimal discharge impact. Section 306.361 establishes two levels of justification that joint petitioners must show in order to receive an exception from the general regulations requiring a high level of treatment. Where there is a "minimal discharge impact," Section 306.361(a) establishes a minimum quantum of information that must be provided to the Board:

An exception justification based upon minimal discharge impact shall include, as a minimum, an evaluation of receiving stream ratios, known stream uses, accessibility to stream and side land use activities (residential, commercial, agricultural, industrial, recreational), frequency and extent of overflow events, inspections of unnatural bottom deposits, odors, unnatural floating material or color, stream morphology and results of limited stream chemical analyses.

Section 306.361(b) provides:

Where a minimal impact exception justification cannot be established pursuant to subsection (a), or where an exception will include a modification of otherwise applicable water quality standards, an exception justification shall include, as a minimum, evaluations pursuant to subsection (a) and evaluations of stream sediment analyses, biological surveys (including habitat assessment), and thorough stream chemical analyses that may include but are not limited to analysis of parameters regulated in 35 Ill. Adm. Code 302, analysis of toxics or metals if the collection system tributary to the overflow receives wastes which might contain them, sediment oxygen demand, volatile solids, and diurnal monitoring under both dry and wet weather conditions.

The Petitioners have provided the minimum information required by (a) for the discharges to the Fox River. The evidence presented regarding the Fox River would seem to support the Agency's contention that the impact of the discharges are "localized," rather than minimal, but that it would be difficult to document any significant or identifiable impact in terms of water chemistry of the main flow area (R. 78-80). The evidence presented would seem to support an exemption for discharges to the Fox River under Section 306.361(a), although it is probably a close case. However, there is very little information in the

record on Indian Creek and the impact of discharge point No. 25 at present or after completion of improvements. Clearly the minimum levels of justification envisioned under Section 306.361(a) have not been met. From an initial review of the situation, it would appear that Section 306.361(b) levels of justification would be necessary for the discharge to Indian Creek. The only evidence currently in the record supports the conclusion that Indian Creek is a low flow stream which receives a very large discharge and, consequently, experiences identifiable adverse impact (Joint Petition, p. 2; R. 76-81; Agency Supplemental Information, April, 1986).

Because of the deficiencies in the record regarding Indian Creek, the Board cannot begin to assess the environmental impact or weigh appropriate factors to come to a final decision on this CSO petition. What little information does exist points to potentially significant impact. However, at this stage in the proceeding, it is difficult to assess which level of justification in Section 306.361 needs to be met. It is clear, however, that not even the "minimal impact" level of justification has been provided, even if it were appropriate. Section 306.371(b) provides, in pertinent part, that:

"The Board shall issue and enter such orders concerning a petition for exception as are appropriate for the reasons stated in its written opinion. Such appropriate orders may include but are not limited to orders ... directing that further hearings be held to develop further information or to cure any procedural defects or remanding the petition to the petitioners with suggested revisions. And the hearing shall be held on any revised petition exception."

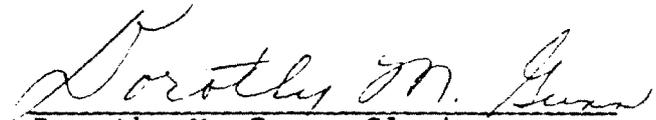
The Board will, for the reasons outlined in this Opinion, remand the petition back to the joint petitioners. Petitioners are directed to develop further information regarding Indian Creek and the impact of the discharge consistent with the levels of justification established in Section 306.361. Upon filing of the amended petition, the Board will schedule a second hearing and consider further action in this proceeding.

ORDER

Pursuant to Section 306.371, this matter is remanded to the Petitioners to develop further information regarding Indian Creek and the impact of the discharge consistent with the levels of justification established in Section 306.361. Hearing will be held upon filing of an amended petition.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Opinion and Order was adopted on the 30th day of June, 1986, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board