

ILLINOIS POLLUTION CONTROL BOARD
March 14, 1986

IN THE MATTER OF:)
)
APPLICATION FOR LAKE MICHIGAN) PCB 85-134
PERMIT NO. 114 LM FOR THE)
DEPARTMENT OF THE ARMY,)
CHICAGO DISTRICT, CORPS OF)
ENGINEERS)

MR. GEORGE N. KARAFOTIAS, DISTRICT COUNCIL, APPEARED FOR THE U.S. ARMY, CORPS OF ENGINEERS;

MR. DANIEL INJERD, APPEARED FOR THE ILLINOIS DEPARTMENT OF TRANSPORTATION; AND

MR. HOWARD CHINN, APPEARED FOR THE ILLINOIS ATTORNEY GENERAL.

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

This matter comes to the Board on a September 3, 1985, request to approve a permit filed by the Illinois Department of Transportation ("IDOT"). On September 20, 1985, the Board Ordered this matter to hearing. On November 6, 1985, the Southeast Sportsman's Club filed a letter inquiring about a hearing. Hearing was held January 7, 1986, in Waukegan, Illinois. Additional information was filed January 16, 1986, by the Department of the Army, Corps of Engineers ("Army Corps"). Additional information was filed by IDOT on January 22, 1986. The Attorney General filed comments January 31, 1986.

This request seeks approval of a permit to dredge 40,000 cubic yards of sand from the mouth of the Waukegan harbor entrance channel. The present request is a modification of a permit previously approved by the Board in PCB 85-110. The previous permit was not implemented because of concern expressed by the Illinois Environmental Protection Agency. At hearing, the Army Corps testified that all work contemplated in the permit application was in fact completed in October, 1985 (R. 19). The participants were requested to advise the Board as to whether the present request was then moot (R. 33), however, none of the subsequent filings addressed this issue.

The relevant statutes make clear that activities of this kind undertaken in this case are not to take place in Lake Michigan until the permit application receives authorization of the Board. The Board's role is to determine whether the information in the record demonstrates that the proposed activity will not cause a violation of the Environmental Protection Act or Board

regulations or adverse environmental impact. The Board has never authorized Permit 114 LM, yet as stated above the work to be done pursuant to that permit was completed months ago. The Board finds that given the circumstances of this case, it cannot lend its approval to the permit application.

The procedures established by the legislature to be applied vis-a-vis permit applications such as 114 LM were designed to ensure that disposition of materials into Lake Michigan occur only after proper authorization for such activity has been given by the Department of Transportation and the Board. Those procedures were clearly not followed in this case insofar as Board approval is concerned. For the Board to approve this permit application after completion of the work would be contrary to the intent of the permit granting process established by the legislature to be followed where these permit applications are involved.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

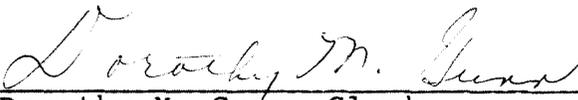
ORDER

The Pollution Control Board does not authorize the Chairman of the Board to sign Permit No. 114 LM. Therefore, the Illinois Department of Transportation application for approval of Lake Michigan Permit No. 114 LM is dismissed.

IT IS SO ORDERED.

Chairman J.D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 14th day of March, 1986, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board