



**WILLIAM J. SCOTT**  
**ATTORNEY GENERAL**  
**STATE OF ILLINOIS**  
**SPRINGFIELD**

February 5, 1971

File No. S-263

**WATER POLLUTION:**  
**Permits**

Honorable William F. Cellini  
Director  
Department of Public Works and Buildings  
2300 South 31st  
Springfield, Illinois

Dear Sir:

I have your letter of December 31, 1970, in which  
you state as follows:

"The Waukegan Port District filed an applica-  
tion with the Division of Waterways of the  
Department of Public Works and Buildings  
requesting permission to construct a rubble  
mound breakwater in Lake Michigan south of  
Government Pier at Waukegan in the SW1/4 of  
Section 22-45-12, Lake County, Illinois.

The Department of Public Works and Buildings,  
pursuant to Par. 65, Chap. 19, Illinois  
Revised Statutes 1969, is authorized with  
the concurrence of the Sanitary Water Board,  
to issue permits for any fill or deposit of  
rock, earth, sand or other materials, or any

refuse of matter of any kind or description in Lake Michigan.

Public Act 76-2428 (House Bill No. 3788), the Environmental Protection Act, approved June 29, 1970, repealed the Sanitary Water Board Act of July 12, 1951 and the functions and duties heretofore performed by the Sanitary Water Board are incorporated to a large degree in the new Environmental Protection Act with authority in the Environmental Protection Agency.

It is anticipated that legislation will be introduced during the forthcoming session of the General Assembly to amend said Par. 65, Chap. 19, to make such legislation compatible (sic) with the Environmental Protection Act. In the interim, however, the Department has some doubt as to a proper course relative to issuance of permits since the concurrence of the Sanitary Water Board required by said Par. 65, Chap. 19 is presently unattainable as a result of the repeal provision contained in said Public Act 76-2428, approved June 29, 1970.

As an emergency measure the Department issued Permit No. 17LM, dated October 26, 1970, to the Waukegan Port District for the above mentioned work in Lake Michigan with the concurrence of the Environmental Protection Agency. It is this action which makes us uncertain as to a proper course to follow in this regard and earnestly solicit your opinion thereon. Briefly, is the Department of Public Works and Buildings obligated to or in the alternative may such Department substitute the Environmental Protection Agency for the Sanitary Water Board in the matter of concurrence required under said Par. 65, Chap. 19, Illinois Revised Statutes 1969, pending clarification of such legislation by amendment or otherwise on this point."

You have correctly observed that the Environmental Protection Act repealed the Sanitary Water Board Act. It is then essential to consider the Environmental Protection Act as a whole for the appropriate answer to your inquiry.

The duties of the Environmental Protection Agency are defined in Section 4 of the Environmental Protection Act (Ch. 111 1/2, Pars. 1001-1051, Ill. Rev. Stat. 1969, Supp.).

Section 4(g) provides that:

"The Agency shall have the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder."

Turning next to Title X of the Act, we find that Section 39 of the Act (Ch. 111 1/2, Par. 1039, Ill. Rev. Stat. 1969, Supp.) provides that:

"When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. \* \* \*"

A requirement for Agency permit is found in Section 12(b) of the Act (Ch. 111 1/2, Par. 1012, Ill. Rev. Stat. 1969, Supp.), which provides that:

"No person shall:

\* \* \*

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit."

I believe that the legislative intent in this instance is quite clear. Within the Act which repealed the Sanitary Water Board Act and established the Environmental Protection Agency, the General Assembly clearly intended to substitute the Environmental Protection Agency for the former Sanitary Water Board in regard to matters involving permits. I might add that a brief review of statutory amendments in 1970 will illustrate the attempt by the General Assembly to make all associated statutes consistent with the Environmental Protection Act. The legislative oversight in this instance could be corrected in the manner which you anticipate.

In conclusion, I would like to make what might perhaps be the most practical and valid point in support of my conclusion; in creating and defining the duties of the Environmental Protection Agency to include the issuance

of permits, the General Assembly could not have intended to do other than substitute the Environmental Protection Agency for the Sanitary Water Board in this regard. It would have been highly inconsistent to repeal the Sanitary Water Board Act and impose this duty upon a new agency within the same Act, while conversely not intending to substitute the agency for the abolished board in matters pertaining to Chapter 19, Illinois Revised Statutes 1965. It therefore follows that statutory duties and authority of the Environmental Protection Agency are such that you must substitute it for the Board and accordingly seek Agency concurrence.

Very truly yours,

A T T O R N E Y G E N E R A L