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Landfills Threaten Irondequoit Bay*

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LANDFILLS THREATEN IRONDEQUOIT BAY

Summary Landfills may be regarded as a kind of pollution of water, since part of the environment is destroyed, and the regulatory capacity of a wider area may be threatened. Landfills in New York also have the effect of transferring authority ownership and from public to private hands. In the course of many years a considerable area of Irondequoit Bay has been filled, and the area south of Empire Boulevard clearly faces complete destruction within the next generation. Present landfills are being made both with and without application to the State Water Resources Commission, which is the permit granting agency.

Background

The State regulation of landfills took effect on Jan. 1, 1966. Before that time virtually the only restraint might have been found in the State Sanitary Code (Ch. 9 Reg. 5) in which the Commissioner may direct local boards of health to take steps for the public good. In effect, no restraint was applied. In the Rochester area both Finger Lakes and Lake Ontario have been subjected to filling for almost a century. A major peninsula and at least one complete home site were constructed in Conesus Lake, and the area of Irondequoit Bay which has been filled is several acres in extent. The Irondequoit encroachments were diagrammed in a study by John Bennett, the results of which were published in the Rochester Times-Union in June 1965 in two articles by-lined by John Street. No documentary evidence has been assembled on the fills at Sodus Bay, but filling is still going on rapidly.

During 1967-8 there was for the first time State action against landfills. Applications must be made to a regional permit agent; for Region I the agent is Mr. Robert F. Perry, State Conservation Department, Scottsville, N.Y. At least one application for a small landfill was refused and not appealed. If the applicant appeals to the central permit agent, Mr. T. P. Curran, Conservation Department, Albany, then a public hearing may be held. In one case, the application of Parkvil for filling at the northern end of Conesus Lake, a hearing was held after the application was approved because of demands by objectors. At this hearing the State's counsel in fact defended the approval, that is, took the side of the applicant. The decision resulting from the hearing favored the applicant for the landfill, and it was contested in court (Albany, July 12, 1968) with the assistant solicitor of New York defending the State's decision. In all other cases which have

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come to a hearing in Region I, the decision has been against the applicant. Actual removal of fill which had been placed was enforced in both Canandaigua and Conesus Lakes. A fine of \$500.00 plus \$100.00 a day until the fill was removed was levied in the Ames case, involving fill at the southern end of Lake Conesus.

A preliminary survey of action on landfills in other parts of the State (outside Region I) indicates that applications are granted freely, and no restraint has been generally applied in cases of presumed illegal fills. Apparently Region I has done more to protect the public of New York than has been done by the State Conservation Department elsewhere.

Irondequoit Bay as a Natural History Landmark

As a pre-glacial, mouth of the Genesee River, the Bay is the only feature of its type in the Great Lakes. Less unique features have had the fortune of becoming State and National Parks. Its shores are varied, mostly wooded and luxuriant. Sheltered by high ground on either side, it is beautifully situated for fishing and small boating. In the shallow water areas the production of aquatic vegetation has been productive, interesting, and scenic. Botanical collectors found it a source of valuable specimens which have been preserved in the herbaria of the Rochester Academy of Science, Cornell University, and the New York State Museum. Wild rice (Zizania) and numerous other plants provide food for wild fowl (and information on environmental dynamics for scientists).

Pollution

Increased urbanization of the area around Irondequoit Bay, and particularly of the watershed of Irondequoit Creek received little official attention until recently. Biological changes were obvious by 1939, when R. C. Clausen (State Biological Survey: The Lake Ontario Watershed) noted that several species of plants had disappeared. Clausen was a full generation ahead of official state action in deploring the pollution of the bay. Indeed, his documentary photograph of garbage in the bay might well have been taken in 1968.

During the spring and summer of 1967 eight different bulletins of the Rochester Committee for Scientific Information reported on the condition of Irondequoit Bay and its watershed. Conditions of pollution which were reported included coliform counts indicative of serious fecal pollution, petroleum product waste (poisonous to many kinds of aquatic organisms), and high phosphate content (condition for growth of nuisance algae). During the past year some new treatment facilities have begun to operate in the watershed, and plans have been announced for the removal of all waste water from the area. Improvement, however, is yet to come.

Legal Confusion

"Water level" is no hard and fast line, and the particular interpretation given to the term may make the difference between regulation of landfills and impotence of authorities. From the viewpoint of biologists and concerned conservationists it has been most unfortunate that no members of the State Law Department have had an education in ecology or limnology. High administrative posts in the Water Resources Commission are filled by men with training in engineering, rather than in ecology or other branches of biology.

Primarily from legal sources, recognition was given to the concept of "moveable freehold", that is the land between high and low water. In essence, the owner of adjoining land could have use of it. In coastal situations, where the tide level fluctuates, more or less regularly, moveable freehold may have some relationship to the realities of water level. However, the concept ignores the knowledge that even the level of tides varies over longer periods of time. Inland waters are not only without tides, but levels have been affected by man's activity: maintained by dams, reduced by withdrawal, increased by diversion, etc.

Thus, the lawyer essentially turned to the Engineer for the meaning of his levels. From records taken at intervals over a span of time, two arbitrary calculations have been selected: low mean water level and high mean water level. Recently, (for example in the Ames case on Lake Conesus, 1967) the State for the first time declared public ownership of land below the mean low water level. The result is that no claim was made for what is usually the whole shallow water margin! It was clear that there has been a defense of the high mean water level in Region I under the regulation known as "section 429".

Earlier this year, I prepared a memorandum for consideration by the Conservation Department in which I showed that neither the "moveable freehold" nor the engineering levels had any meaning in defining a lake, since there is not only artificial regulation but natural regulation which is short and long term, cyclical and non-cyclical. The boundary of the lake is not the water surface, since many plants are emergents, and both organisms and minerals freely pass the surface in both directions. Conservation of the environment is impossible without control of some peripheral area (it may be noted that the State of Wisconsin controls the peripheral area to an elevation of three feet above the surface). I supported the recommendation made for some years by field men of Region I: that the edge of land vegetation is the best way to show where the lake stops, and the only reliable one under natural conditions.

In final analysis the word "waterline" is arbitrary, and the boundary of the lake is where the law-enforcing agency says

it is: in the public interest the State should set and defend waterlines no lower than the edge of land vegetation.

The Defense of Irondequoit Bay

The U. S. Geological Survey Quadrangle Map (7.5 min. ser.) states elevation of Lake Ontario as 249 feet. It should be noted that the International Great Lakes base is 1.22 feet below the USGS base, so that figures in elevation must be correlated with their corresponding base. The 249 foot level extends south of Empire Boulevard up the mouth of Irondequoit Creek.

Using the concept of high mean water level and invoking the marginal protection regulation, the State would defend the area under 246.88 ft. (USGS).

Up to this time there has been no official act on record to halt landfilling operations. Since the enforcement date of the landfill law (Jan. 1, 1966) no permits have been sought or granted until the application submitted on behalf of Meli Bros. Construction Company which is scheduled for hearing on July 30, 1968. There has been filling in the inlet area since Jan. 1, 1966 which undoubtedly violates the defense line. The filling in the area of Frederico Inc., 1225 Empire Blvd. was completed with a margin of rip-rap (rough blocks). Any role which the Conservation Department had in the matter is not on the public record.

The area south of Empire Boulevard has been examined a number of times during the spring and summer of 1968. The last visit was on July 21, 1968. The lake level for the day was 247.13. There are two inlets to the east of Float Bridge. No trespassing signs on both properties are over the name of F. A. Pecora. The western inlet has a building labeled Cameron Construction Co., the eastern area is the site of Meli Construction Co. Both areas contain recent fill of rubble such as comes from excavations and demolitions: mixed dirt, concrete, bricks, and miscellaneous materials. This fill extends into the water to the bottom, that is, well below 246 feet. There has been no establishment of pioneer land plants on the fill nor has there been the establishment of a thick layer of algae or bacteria on the submerged portion, thus the ecological evidence is unequivocal that the fill is recent - certainly less than 2 1/2 years old.

In addition to the rubble, the western inlet contains a large amount of tin cans and junk - bed springs, old refrigerators, etc. The source of this material is the Town of Penfield. Ironically, the material seems to have been gathered in a clean-up campaign according to an unconfirmed, but probably reliable report.

Viewpoint in Conclusion

The fillings of the margins of public waters must be stopped completely, because it cannot be controlled piecemeal. Each fill simply creates more shallow water which invites further filling, and bit-by-bit destruction is a chain reaction

which is directed to the point of asserting that the environment is ruined beyond saving. The wetlands south of Empire Boulevard are still a valuable and beautiful natural resource. The illegal filling which has occurred actually steals wetlands and water resources from the people of the state. Such landfills, when approved by state officials give away public equity to private operators. The law does not require this handout, either by consent or indifference, unless it is grossly misused. Region I, including Irondequoit Bay, should become an example to the state of proper landfill control in the public interest.

Defense of the public interest in Region I is being thwarted by influence on the behalf of private developers both by local elected officials and administrative officials at the state level. Conversations with former employees of the Conservation Department, have well confirmed my own experience on the strength of this silent influence. If the recent history on pollution is any guide, the only antidote is an informed and aroused public opinion.

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