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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**DES PLAINES RIVER WATERSHED
ALLIANCE, LIVABLE COMMUNITIES
ALLIANCE, PRAIRIE RIVERS
NETWORK, and SIERRA CLUB
Petitioners**

v.

**ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and VILLAGE OF NEW LENOX**

Respondents

STATE OF ILLINOIS
Pollution Control Board

04-88
PCB
(APPEAL FROM IEPA
DECISION GRANTING
NPDES PERMIT)

**PETITION FOR REVIEW OF A DECISION BY THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY**

Pursuant to 415 ILCS 5/40(e)(1) and 35 Ill. Adm. Code Section 105, the Des Plaines River Watershed Alliance, the Livable Communities Alliance, Prairie Rivers Network, and the Sierra Club (collectively, "Petitioners") hereby petition for review of the October 31, 2003 decision of the Illinois Environmental Protection Agency ("IEPA") to grant a National Pollutant Discharge Elimination System ("NPDES") permit (Permit No. IL0020559) to the Village of New Lenox to increase its discharge of pollutants into Hickory Creek from its sewerage treatment plant.

In support of their petition, Petitioners state:

Petitioners

1. Des Plaines River Watershed Alliance is a not-for-profit organization that is a coalition of organizations and individuals whose mission is to advocate for the Des Plaines River and watershed. Members of the Des Plaines River Watershed Alliance live in the Des Plaines

River watershed, including areas near Hickory Creek, and are concerned with pollution that would affect their ability to enjoy recreation activities dependent on the ecological health of Hickory Creek and the Des Plaines River including fishing, boating, canoeing, nature study and hiking. Members of the Des Plaines River Watershed Alliance are adversely affected by offensive conditions that occur as the result of nutrients, pathogens and biological oxygen demanding pollution discharged into Hickory Creek. Members of the Des Plaines River Watershed Alliance are concerned about ongoing degradation of Hickory Creek and potential for further degradation. (See Memo from Jim Bland. Ex. A, Transcript of Proceedings, April 24, 2002, Ex. B, Tr. 62-76)

2. Livable Communities Alliance is a non-profit organization dedicated to educating and empowering citizens with the knowledge necessary for the development and creation of livable communities throughout Southern Cook and Will Counties. Members of the Livable Communities Alliance live in New Lenox and other areas that will be directly affected by the proposed discharge. (See Ex. B Tr. 58-62, 86-90 and the Statement of the Center for Neighborhood Technology by William M. Eyring, P.E. April 24, 2003, Ex. C)

3. Prairie Rivers Network is an Illinois not-for-profit corporation concerned with river conservation and water quality issues in Illinois. It works with concerned citizens throughout the state to address those issues that impact Illinois streams. Prairie Rivers Network members live in the Hickory Creek and Des Plaines River watersheds and are concerned with pollution that would affect their ability to enjoy recreation activities dependent on the ecological health of Hickory Creek, the Des Plaines River and the Illinois River including fishing, boating, canoeing, nature study and hiking. (See Ex. B, Tr. 19-28 and Post- Hearing Comments of Prairie Rivers Network, May 23, 2002, Ex. D)

4. The Sierra Club is a California not-for-profit corporation, which has among its purposes to protect and restore the quality of the natural and human environment. The Sierra Club has over 20,000 members residing in the State of Illinois and has members who are adversely affected by offensive conditions in Hickory Creek, the Des Plaines River and the Illinois River and by any degradation of Hickory Creek, the Des Plaines River and the Illinois River that could affect the uses of those waters. Sierra Club members live in the Hickory Creek and Des Plaines River watersheds and many Sierra Club members are concerned with pollution that would affect their ability to enjoy recreation activities dependent on the ecological health of Hickory Creek and the Des Plaines River including fishing, boating, canoeing, nature study and hiking. Sierra Club members are adversely affected by offensive conditions that occur as the result of nutrients and biological oxygen demanding pollution discharged into Hickory Creek, the Des Plaines and other downstream waters. (See Ex. B Tr. 29-36; the May 23, 2002 letter of Cynthia Skrukrud, Ex. E and the Statement of Cynthia Skrukrud, Ex. F)

5. Members of the Petitioners, including Beth Wentzel, Kimberly Kowalski, Gaylyn Grimm, William Eyring, James Bland, Jeff Swano, Joyce Korista, Albert Ettinger, and Cynthia Skrukrud, appeared at the hearing held in this proceeding and submitted comments in opposition to the permit. They and other members of Petitioners are so situated as to be affected by the permit and by offensive conditions or other violations of water quality standards in Hickory Creek, the Des Plaines River and the Illinois River. (Exhibits A - F).

Hickory Creek

6. Hickory Creek flows through Will County and discharges into the Des Plaines River near Joliet, Illinois. The stream has attracted attention because of its exceptional ecology, history and geology. According to a 1971 publication by the Illinois Natural History Survey,

Hickory Creek was at that time the outstanding stream in the Des Plaines River system. (Letter of Jim Bland, January 19, 2003, Ex G) Hickory Creek has a low 7Q10 flow of 3.5 cubic feet per second upstream of the New Lenox discharge and 5.3 cubic feet per second about 5 miles downstream of the discharge.

7. More recently, Hickory Creek was been identified as an impaired water by IEPA in its August 2003 list of impaired waters. Potential causes of impairment listed by IEPA are phosphorus, nitrogen, total dissolved solids, flow alterations, and suspended solids. The potential sources of impairment listed by IEPA are: municipal point sources, combined sewer overflows, construction, land development, urban runoff/storm sewers, hydrologic modification, habitat modification, and flow modification. Large offensive algal blooms have been reported in the creek. (Ex. B Tr. 22-6, 58, 62-3, 77, 85)

Statement of Issues Raised

8. On January 5, 2003, IEPA gave notice that it had made a tentative decision to renew a NPDES permit to New Lenox to discharge into Hickory Creek. The renewed permit will allow the New Lenox plant to increase its design average flow from 1.54 million gallons per day to 2.516 million gallons per day. After reviewing a copy of the draft permit, Petitioners commented through testimony given at a public hearing held on the draft permit on April 24, 2003 in the New Lenox Council Chambers. (See Ex. B). Petitioners further commented on the permit with written comments (See Exhibits A, C, D, E, G).

9. In those comments and that testimony, Petitioners raised legal and scientific issues regarding flaws in the draft permit and in IEPA's consideration of the draft permit including that:

- a. The draft permit allowed discharges of phosphorus and nitrogen that

cause, have a reasonable potential to cause or contribute to violations of the water quality standards regarding offensive condition, 35 Ill. Adm. Code 302.203, in violation of 40 CFR 122.44(d) and 35 Ill. Adm Code 309.141. Nutrients are the likely cause of algal blooms and other unnatural plant growth that have been reported in the creek. Further, Petitioners showed that Hickory Creek now violates state water quality standards regarding offensive conditions because of algal blooms. In addition, Petitioners asked that phosphorus discharges be monitored.

b. The draft permit allows discharges that may cause, have a reasonable potential to cause or contribute to violations of state water quality standards regarding dissolved oxygen, 35 Ill. Adm 302.206, and copper, 35 Ill. Adm. Code 302.208(e) in violation of 40 CFR 122.44(d) and 35 Ill. Adm. Code 309.141.

c. The draft permit and the studies and lack of studies that led to the creation of the draft permit did not comply with Illinois' antidegradation rules protecting the existing uses of the receiving waters. 35 Ill. Adm Code 302.105(a). Studies were not properly conducted to determine the potential effect of the draft permit on existing uses of the stream. Further, IEPA took no steps to determine if existing recreational uses of the stream might be impacted by the lack of disinfection of wastewater from the plant in months outside of May through October.

d. Further, Petitioners urged that the IEPA take the steps necessary to comply with 35 Ill. Adm. Code 302.105(c). The alternatives to allowing the increase in pollution were not reasonably weighed prior to the issuance of the draft permit. Many of the costs of proceeding under the draft permit were ignored. In particular, the high cost of retrofitting the plant to remove phosphorus after numeric standards are established, the

social and economic costs of expanding the plant in the center of the Village, and the environmental effects of the kinds of development that would be facilitated by the plant expansion were not considered. Conversely, the estimated costs of alternatives (e.g. land treatment and land application of treated wastewater) to allowing the increased discharge were unreasonably inflated and the costs of minimizing nutrient discharges were not considered. Petitioners requested a life cycle analysis be performed on all considered alternatives as an appropriate economic assessment of the costs to provide a better cost-benefit analysis and to provide the public with a costs-per-treated-volume figure.

10. Petitioners asked that all technically and economically reasonable measures to avoid or minimize the extent of the proposed increase in pollutant loadings be incorporated into the permit and that the permit be improved in a number of respects including that;

- a) It provide for economically feasible controls on the discharge of nutrients including phosphorus and nitrogen;

- b) The limits in the permit be improved to prevent discharges that could cause or contribute to violations of water quality standards regarding offensive conditions and dissolved oxygen;

- c) That proper biological studies be conducted to assure that the discharge would not adversely affect existing uses of the stream;

- d) That IEPA seriously consider whether the increased discharge was actually necessary in light of potential alternatives; and

- e) That IEPA seriously consider alternatives to allowing the levels of pollutants in the streams that would be allowed by the draft permit.

11. On October 31, 2003, Illinois EPA issued the permit that is subject to the current

appeal. (Ex. H) The final permit, while containing some changes from the draft permit that addressed a portion of the dissolved oxygen problem and the existing violations of the total dissolved solid standards, did not remedy the flaws discussed above that were raised by Petitioners in oral comments at the hearing and written comments made after the hearing. To the extent the permit allows a mixing zone, such zone has not properly been designed under 35 Ill. Adm. Code 302.102. The permit does not comply with 35 Ill. Adm. Code 302.105 or 35 Ill. Adm. Code 309.141. In violation of 35 Ill. Adm. Code 309.142, IEPA has not properly verified that the discharges allowed by the permit will not cause or contribute to violations of the offensive conditions, dissolved oxygen or copper standards.

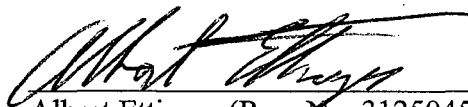
12. Nutrients, particularly phosphorus, are a problem in many Illinois waters. IEPA did not put phosphorus limits in the permit. Illinois EPA has the authority and the obligation to regulate all pollutants as necessary to prevent violation of Illinois water quality standards regarding dissolved oxygen (35 Ill. Adm. Code 302.206) and offensive conditions (35 Ill. Adm. Code 302.203). Applicable federal regulations explicitly require that NPDES permits include restrictions “necessary to achieve water quality standards ... including State narrative criteria.” 40 CFR 122.44(d)(1). These federal regulations are applicable under Illinois law. 35 Ill. Adm. Code 309.141.

13. IEPA resource and policy protocols (with respect to in-stream biology) have been deficient in identifying and protecting the biological and cultural value of Hickory Creek; historically the most important stream in the Chicago Area and a resource of national significance. IEPA Facilities Planning procedures have not been sufficient to protect Illinois streams. Secondary growth impacts of sewage treatment plant location, design and expansion are routinely ignored despite regional and national evidence which shows significant degradation

associated with impervious cover of land and expanding urban land use (i.e. 10% impervious cover = impacted; > 10% = degraded; > 20% impaired).

14. Members of Petitioners will be affected adversely when pollution discharged under the permit causes or contributes to the creation of low oxygen and offensive conditions in Hickory Creek, the Des Plaines River and the Illinois River and otherwise injures the ecology of Hickory Creek and downstream waters as a result of IEPA's failure to require protective effluent limits, monitoring, and a proper antidegradation analysis.

WHEREFORE, the Des Plaines River Watershed Alliance, Livable Communities Alliance, Sierra Club, and Prairie Rivers Network ask that the Pollution Control Board set aside the NPDES permit (No IL0020559) issued to the Village of New Lenox on October 31, 2003 as not sufficiently protective of the environment and not in accord with law, and direct that the Agency reconsider the permit in order to establish conditions and limits necessary to protect Illinois waters, assure protection of Illinois water quality standards, and comply with the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., and Illinois law.



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