

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 13 2004

STATE OF ILLINOIS  
Pollution Control Board

DES PLAINES RIVER WATERSHED ALLIANCE,  
LIVABLE COMMUNITIES ALLIANCE,  
PRAIRIE RIVERS NETWORK, and SIEERA CLUB,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY and VILLAGE OF NEW LENOX,

Respondents.

PCB 04-88  
(NPDES Permit Appeal)

NOTICE OF FILING

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, IL 60601


Albert F. Ettinger  
Senior Staff Attorney  
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Roy M. Harsch  
Sheila H. Deely  
Gardner Carton & Douglas LLP  
191 N. Wacker Drive- Suite 3700  
Chicago, Illinois 60606-1698

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and four (4) copies the **MOTION FOR LEAVE TO AMEND RECORD INSTANTER** and **AMENDED RECORD 2** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:   
Sanjay K. Sofat  
Assistant Counsel  
Division of Legal Counsel

Dated: February 10, 2004  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Pollution Control Board

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AGENCY and VILLAGE OF NEW LENOX, )

Respondents. )

PCB 04-88  
(NPDES Permit Appeal)

**MOTION FOR LEAVE TO AMEND RECORD INSTANTER**

NOW COMES, Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Sanjay K. Sofat, and pursuant to 35 Ill. Adm. Code 105.212 and 105.116, and hereby requests that the Illinois Pollution Control Board ("Board") grant the motion to amend its Record instanter. In support of this motion, the Illinois EPA states as follows:

1. On December 2, 2003, Petitioners, Des Plaines River Watershed Alliance, Livable Communities Alliance, Prairie Rivers Network, and Sierra Club, filed a third party permit appeal with the Board pursuant to 415 ILCS 5/40(e)(1) and 35 Ill. Adm. Code 105.204(b). Petitioners appeal the issuance of an National Pollutant Discharge Elimination System ("NPDES") permit to the Village of New Lenox on October 31, 2003, for its STP #1 in New Lenox, Illinois.
2. Pursuant to 35 Ill. Adm. Code 105.116, the Agency Record is to be filed with the Board within thirty (30) days after receipt of the petition. The Agency Record was timely filed with the Board and consists of approximately 659 pages.
3. On January 21, 2004, the Illinois EPA filed an amended Record replacing about twenty pages of the originally filed Record that were illegibly photocopied.

4. After the filing of the amended Record, the Agency noticed that some of the electronic communications ("e-mails") among certain Agency employees were not made part of the originally filed Record. This inadvertent error occurred because the e-mails in question were neither part of the permit file nor the Bureau file, the files that the Agency used to prepare the originally filed Record. It is only during the in-house discussions with the Agency employees it came to the under-signed attorney's attention that some of the e-mails have been inadvertently left out from the originally filed Record.

5. No prejudice will attach to Petitioners if the Agency is granted permission to amend its Record, as the subject matter discussed in these e-mails is already part of the originally filed Record.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board accept the filing of this amended record instantan.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

Sanjay K. Sofat  
Assistant Counsel  
Division of Legal Counsel

DATED: February 10, 2004  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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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

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

**AMENDED RECORD 2**

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), in accordance with the procedural rules of the Illinois Pollution Control Board as set forth in 35 Ill. Adm. Code 105.212 and 105.116, files the following additional documents to amend its Record submitted in the above case:

66. E-mail dated July 11, 2002, from Scott Twait to Wally Poleski, Water Pollution Control/Des Plaines Regional Office, requesting results of metals sample. (p. 660)
67. E-mail dated September 9, 2002, from Bob Mosher to Gregg Good, concerning proposed expansion. (p. 660.5)
68. E-mails dated September 10, 11, and 12, 2002, among Gregg Good, Bob Mosher, and Roy Smogor, concerning macroinvertebrate study in Hickory Creek. (pp. 661-662)
69. E-mail dated September 13, 2002, from Roy Smogor to Howard Essig, concerning macroinvertebrate study in Hickory Creek. (p. 663)

70. E-mail dated September 18, 2002, between Bob Mosher and Gregg Good, concerning deadline for action on study. (p. 664)
71. E-mails dated September 24, 2002, among Roy Smogor, Howard Essig, and Bob Mosher, commenting on study. (pp. 665-670)
72. E-mails dated September 26 and 27, 2002, among Roy Smogor and Howard Essig, commenting on study. (pp. 671-672)
73. E-mails dated September 27 and 30, 2002, among Roy Smogor, Howard Essig, Gregg Good, Mike Henebry, Water Pollution Control/Planning, and Bob Mosher, commenting on study. (pp. 673-675)
74. E-mails dated September 27 and 30, 2002, among Roy Smogor, Howard, and Mike Henebry, commenting on study. (pp. 676-681)
75. E-mails dated September 27, September 30, and October 1, 2002, between Bob Mosher and Howard Essig, commenting on study. (pp. 682-684)
76. E-mails dated October 1 and 2, 2002, between Mark Joseph and Roy Smogor, concerning comments on study. (p. 685)
77. E-mails dated October 1, 2 and 7, 2002, among Mark Joseph, Howard Essig and Roy Smogor, commenting on study. (pp. 686-687)
78. E-mail dated October 1, 2, 7 and 8, 2002, between Roy Smogor to Howard Essig, commenting on study. (pp. 688-693)
79. E-mails dated October 1, 2, 7, 8 and 9, 2002, among Roy Smogor, Howard Essig and Mark Joseph, concerning comments on study. (pp. 694-695)
80. E-mails dated October 1, 2, 7, 8 and 9, 2002, among Howard Essig, Mark Joseph and Roy Smogor, concerning comments on study. (pp. 696-697)

81. E-mail dated October 9, 2002, from Roy Smogor to Bob Mosher, concerning comments on study. (p. 698)
82. Consultation termination signed on October 22, 2002 by Michael Branch, Illinois Department of Natural Resources. (p. 699)
83. E-mails dated November 21 and 25, 2002, between Howard Essig and Bob Mosher. (p. 700)

Respectfully submitted,

Illinois Environmental Protection Agency

By: 

Sanjay K. Sofat  
Assistant Counsel  
Division of Legal Counsel

DATED: February 10, 2004

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

STATE OF ILLINOIS

COUNTY OF SANGAMON

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)  
) SS  
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)

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached **MOTION FOR LEAVE TO AMEND RECORD INSTANT** and **AMENDED RECORD 2** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk  
Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

(FIRST CLASS MAIL)

Albert F. Ettinger  
Senior Staff Attorney  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1300  
Chicago, IL 60601

(FIRST CLASS MAIL)

Bradley P. Halloran  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

(FIRST CLASS MAIL)

Roy M. Harsch  
Sheila Deely  
Gardner Carton & Douglas LLP  
191 N. Wacker Drive, Suite 3700  
Chicago, Illinois 60606-1698

(FIRST CLASS MAIL)

and mailing it from Springfield, Illinois on February 10, 2004, with sufficient postage affixed as indicated above.

*Nancy J. D. Lampert*

**SUBSCRIBED AND SWORN TO BEFORE ME**

this day of February 10, 2004.

*Brenda Boehner*

Notary Public



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