

MAR 11 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,

v.

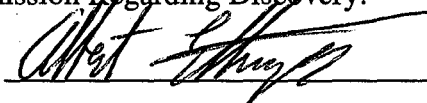
ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and VILLAGE OF NEW LENOX

Respondents.

PCB 04-88
(NPDES Permit Appeal)

NOTICE OF FILING

PLEASE TAKE NOTICE that the Illinois Chapter of the Sierra Club, and Prairie Rivers
Network have filed Petitioners' Submission Regarding Discovery.



Albert F. Ettinger (Reg. No. 3125045)
Counsel for Petitioners

Environmental Law & Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601
312-795-3707

March 11, 2004

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PETITIONERS' SUBMISSION REGARDING DISCOVERY

Petitioners submit that there should be no discovery in this case because discovery cannot yield admissible evidence in this proceeding. If, however, it is decided that there should be discovery, petitioners request any time for discovery be limited to six weeks after the decision permitting discovery.

This case is a third party appeal of decision by IEPA regarding an NPDES permit. The case is governed by 415 ICCS 5/40(e) that states that the Board shall hear the petition "exclusively on the basis of the record before the Agency." 415 ICCS 5/40(e) This language limits the evidence in this appeal to the record that was before IEPA during its permit review process. Prairie Rivers Network v IEPA and Black Beauty Coal Company (PCB 01-112) Opinion and Order of the Board of August 9, 2001 p.10. Apparently, the purpose of the hearing to be held in third party appeals is generally limited to presentation and highlighting of the evidence in the agency record.

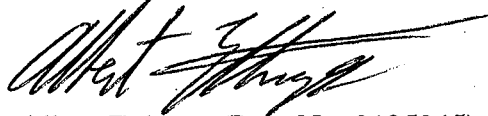
While conceivably there could be discovery in some third party appeal regarding what was in the agency record or alleged tampering with the agency record, petitioners are unaware of

any allegations in this case that make discovery as to the agency record relevant in this case.

Petitioners now have no reason to question the integrity of the record that the Agency has presented to the Board.

Accordingly, petitioners see no purpose to discovery in this case. If, however, it is decided that petitioners are in error on this point, petitioners seek limited discovery designed to respond to discovery sought by respondents. Certainly, six weeks should be adequate for any discovery allowed in this matter.

Respectfully submitted,

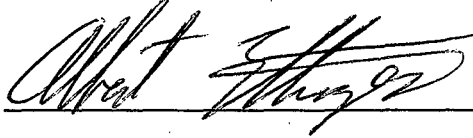
A handwritten signature in black ink, appearing to read 'Albert Ettinger', written in a cursive style.

Albert Ettinger (Reg. No. 3125045)
Counsel for Petitioners

March 11, 2004

CERTIFICATE OF SERVICE

I, Albert F. Ettinger, certify that on March 11, 2004, I filed the attached Petitioners' Submission Regarding Discovery. An original and 4 copies was filed, on recycled paper, with the Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, IL 60601, and copies were served via United States Mail to those individuals on the attached service list.

A handwritten signature in cursive script, appearing to read "Albert Ettinger", is written over a horizontal line.

Albert F. Ettinger (Reg. No. 3125045)
Counsel for Petitioners

Environmental Law & Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601
312-795-3707

March 11, 2004

SERVICE LIST

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

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

Sanjay K. Sofat
Illinois Environmental Protection Agency
1021 N. Grand Avenue East, Mail Code #21
Springfield, IL 62794-9276