

ILLINOIS POLLUTION CONTROL BOARD  
December 18, 2003

DES PLAINES RIVER WATERSHED	)	
ALLIANCE, LIVABLE COMMUNITIES	)	
ALLIANCE, PRAIRIE RIVERS NETWORK,	)	
and SIERRA CLUB,	)	
	)	
Petitioners,	)	PCB 04-88
	)	(Third Party NPDES Permit Appeal)
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY and VILLAGE OF	)	
NEW LENOX,	)	
Respondents.	)	

ORDER OF THE BOARD (by J.P. Novak):

On December 2, 2003, Des Plaines River Watershed Alliance, Livable Communities Alliance, Prairie Rivers Network, and Sierra Club (petitioners) timely filed a petition asking the Board to review the issuance of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 40(e) of the Illinois Environmental Protection Act (Act). *See* 415 ILCS 5/40(e) (2002); 35 Ill. Adm. Code 105.206(a). The permit was issued by the Illinois Environmental Protection Agency (Agency) on October 31, 2003, to the Village of New Lenox for its wastewater treatment plant facility in New Lenox, Will County, Illinois. The petitioners appeal on the grounds that the discharges will impair the stream water quality of the receiving stream. The petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

A third-party appeal of an NPDES permit is authorized by Section 40(e) of the Act. 415 ILCS 5/40(e) (1998). The Board's procedural rules state that "[i]f the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the decision of the Agency (415 ILCS 5/40(e)(1))." 35 Ill. Adm. Code 105.204(b).

Section 40(e)(2) requires that the petition contains "a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing of the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility." 415 ILCS 5/40(e)(2). Further, Section 40(e)(3) provides that if the Board determines that the petition is not duplicitous or frivolous and contains a satisfactory demonstration under Section 40(e)(2), the Board shall "hear the petition." 415 ILCS 5/40(e)(3). Petitioners appeared at and gave testimony on the permit at a public hearing held on April 24, 2003, at the New Lenox Council Chambers and presented written comments. Petitioners raised legal and scientific issues regarding flaws in the draft permit. The petition also states that petitioners will be affected adversely when pollution

discharged under the permit causes or contributes to diminished stream water quality and the creation of offensive conditions in the Hickory Creek.

The Board finds that the petition is neither duplicitous nor frivolous and that the petition contains a satisfactory demonstration under Section 40(e)(2) of the Act. This matter is accepted for hearing. The hearing in this matter must be scheduled and completed in a timely manner, consistent with Board practices, and the applicable statutory decision deadline (set out in Section 40(a)(3) of the Act), or the decision deadline as extended by a waiver.

As the Board noted in McHenry County Defenders, Inc. v. IEPA (Aug. 6, 1998), PCB 98-173, slip op. at 4-5, the Board has construed the Act and Section 40(e) as giving the person who had requested the permit: (1) the right to a decision within the applicable statutory time frame (now 120 days); and (2) the right to waive (extend) the decision period. The Village of New Lenox, the permit applicant, is the party with the right to a decision within 120 days and is the only party with the right to waive the decision deadline. The result is that failure of this Board to act within the 120 days would allow the permit applicant, the Village of New Lenox, to pursue an appellate court order as detailed in Section 40(a)(3) of the Act.

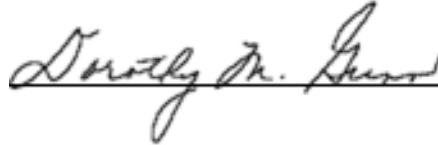
The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer. The assigned hearing officer must inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that a 30-day public notice of hearing may be published. After hearing, the hearing officer must submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing.

Any briefing schedule must provide for final filings as expeditiously as possible. Absent any future waivers of the decision deadline, the statutory decision deadline is now March 31, 2004, (120 days from December 2, 2003). The Board meeting immediately preceding the decision deadline is scheduled for March 18, 2004.

If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible. The Board notes that Board rules (35 Ill. Adm. Code 105.102) require the Agency to file the entire Agency record of the permit application within 14 days of notice of the petition.

**IT IS SO ORDERED.**

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 18, 2003, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board