

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

Al Phillips, Vern Meyer, Gayle DeMarco,)
Gabrielle Meyer, Lisa O'Dell, Joan Leslie,)
Michael Davey, Nancy Dobner, Mike Polito,)
Williams Park Improvement Association,)
Mat Schlueter, Mylith Park Lot Owners)
Association, Donald Krebs, Don Berkshire,)
Judy Brumme Twin Pond Farms Homeowners)
Association, Julia Tudor, Christine Deviney,)

Petitioners,)

Vs.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY AND)
VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-59
(Third Party)
(APPEAL FROM AGENCY
DECISION GRANTING
NPDES PERMIT)
Permit No. IL0020109

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

Pursuant to 415 ILCS 5/40(e)(1) and 35 Ill. Admin. Code Section 105, Al Phillips, Jay J. Glenn, Vern Meyer, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Polito, Williams Park Improvement Association, Mike Polito, Mylith Park Lot Owners Association, Donald Krebs, Don Berkshire, Judy Brumme, Twin Pond Farms Homeowners Association, Judy Jackson (collectively referred to as the ("**Resident Group**") hereby petitions this Honorable Illinois Pollution Control Board for review of the August 23, 2004 decision of the Illinois Environmental Protection Agency ("**Agency**") to issue a modified National Pollutant Discharge

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Elimination System (“**NPDES**”) Permit Number IL0020109 (“**Permit**”) to the Village of Wauconda and its Wauconda Wastewater Treatment Plant (“**WSTP**”) to increase its current discharge of pollutants into Fiddle Creek, Fiddle Lake, Fiddle Marsh and the ditches of the Slocum Lake Drainage District (“**SLDD**”). For the purpose of this Petition, collectively referred to as the “**SLOCUM WETLANDS**”, which is a sub-watershed of the Fox River.

A copy of the Permit is attached as **Exhibit A**. The Agency also published its RESPONSE TO COMMENTS, QUESTION AND CONCERNS (“**Responsiveness Summary**¹”) Tr. 8-9² a copy of which is attached as **Exhibit B**. In support of its Petition the Resident Group states as follows:

A.
JURISDICTION

RESIDENT GROUP STANDING

**PETITIONERS RAISED ISSUES DURING
PUBLIC NOTICE, THE COMMENT PERIOD OR DURING THE PUBLIC HEARING**

1. Pursuant to 415 ILCS 5/40(e)(2)(A), the Resident Group is required to demonstrate that the Resident Group raised the issues contained in this petition during the public hearing or prior to the close of the public record.

2. On Tuesday September 9, 2003 at approximately 6:30 p.m. the AGENCY convened an “informational hearing” (“**hearing**”) under the provisions of 35 Illinois Administrative Code 166, Procedures for Permit and Closure Plan Hearings to hear oral and written comments on a draft modified National Pollutant Discharge Elimination System pursuant to the Application of Wauconda Waste Water Treatment

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¹ References to RS ____, are to Responsiveness Summary dated August 23, 2004

² References to Tr. ____, are to public hearing transcript of September 9-10, 2003

Plant at the Wauconda Township Community Hall Center, 505 West Bonner Road, Wauconda, Illinois. Over 200 Residents, government officials and group leaders were in attendance, the meeting room was full with standing room only, and the Wauconda Fire Department advised the Hearing Officer that the meeting must be moved for safety reasons. The Hearing Officer advised the assembled that the meeting would be re-located to the Wauconda High School located at 555 North Main Street, Wauconda, Illinois. The hearing began on Tuesday, September 9, 2003 at 6:30 p.m. and ended on Wednesday, September 10, 2003 at approximately at 1:04 a.m., over 6 hours and 45 minutes of continuous testimony spanning two days.

3. The Hearing Officer set specific rules which every participant was expected to follow ("**Hearing Rules**"), in relevant part as follows:

- (a) The hearing stated that "A public hearing means that this is strictly an information hearing." Tr-5
- (b) The hearing was "not a contested hearing."Tr-5
- (c) All speakers had the option of directing question to the Agency or make general comments or both. Tr 6-7
- (d) Village of Wauconda is free to answer questions if they are willing to do so, and the Hearing Officer advised that the Village of Wauconda as willing to answer questions. Tr-7
- (e) Hearing Officer prohibited speakers from arguing, cross-examining, or engaging in a prolonged dialogue with the panel. Tr 7
- (f) Hearing Officer required groups, organization, and associations, elect a spokesperson to make comments or ask questions on behalf of the entire group Tr -7.

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- (g) The Hearing Officer advised that if any prior testimony covered the topics of a prospective witness, the duplicate written oral comments should be skipped Tr. 7-8
- (h) The hearing officer then limited individuals to five minutes and representatives of groups to ten minutes. Tr-8
- (i) The Agency provided registration cards which could be filled out if the Resident would like to comment. Tr-8
- (j) The Hearing Officer then represented that the Agency will issue a Responsiveness Summary which would attempt to answer all the relevant and significant questions raised in this hearing or submitted prior to the close of the comment period. Tr-9

4. The Resident Group filed additional post-hearing comments prior to the close of the record. The extensive participation by members of the Resident Group in the hearing and post-hearing filings, fully satisfies the requirement that the Resident Group raised the issues in this petition during the hearing and prior to close of the record.

5. Prior to the hearing, the Resident Group mailed individual notices and comments to hundreds of our neighbors in the Saddlewood Subdivision, Aspen Grove Subdivision and Oak Grove Subdivision. Those post cards were given to Agency officials and should be a part of this record and those views are incorporated in this Petition.

RESIDENT GROUP

6. Al Phillips is the co-founder of the PLUG THE PIPE group and is the founder of the Save Fiddle Creek Group. Al Phillips is a resident of Lakeland Estates, in the Village of Lake Barrington, Township of Wauconda, County of Lake, State of Illinois. Al Phillips was the organizer and webmaster for the

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www.savefiddlecreek.com web site which advised the Residents of developments. Al

Phillips participated in the hearing. Tr-180.

7. Vern Meyer is owner of The Herbal Garden, a regional supplier of wholesale herbs, Vern Meyer grows herbs on his farm in un-incorporated Wauconda Township. Vern Meyer is a property owner in the Slocum Wetlands. Vern Meyer was present at the hearing and he is a member of the PLUG THE PIPE GROUP and Vern Meyer resides within the Slocum Lake Drainage District. Vern Meyer owns property in the Slocum Wetlands.

8. Gale DeMarco is a resident of Lakeland Estates in the Village of Lake Barrington, Township of Wauconda, County of Lake, State of Illinois. Gale DeMarco owns property in the Slocum Wetlands.

9. Gabrielle Meyer is a Resident of un-incorporated Township of Wauconda, County of Lake, State of Illinois. Gabrielle Meyer is the wife of Vern Meyer, she resides within the Slocum Lake Drainage District. Gabrielle Meyer owns property in the Slocum Wetlands.

10. Lisa O'Dell is a resident of Lakeland Estates in the Village of Lake Barrington, Township of Wauconda, County of Lake, State of Illinois. Lisa O'Dell is a member of the PLUG THE PIPE GROUP. Lisa O'Dell resides within the Slocum Lake Drainage District and Lisa O'Dell owns property in the Slocum Wetlands.

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11. Joan Leslie is a resident of Lakeland Estates in the Village of Lake Barrington, Township of Wauconda, County of Lake, State of Illinois. Joan Leslie is a member of the PLUG THE PIPE GROUP. Joan Leslie resides within the Slocum Lake Drainage District.

12. Mike Polito is a resident of un-incorporated Wauconda Township, County of Lake, State of Illinois. Mike Polito is the President of the Williams Park Improvement Association. The Board of Directors of the Williams Park Improvement Association has directed Mike Polito to join this Petition and object to the permit. The Williams Park Improvement Association has forwarded a Roster of the approximately 140 property owners which is attached as **Exhibit C**.

13. Mat Schlueter is a resident of un-incorporated Wauconda Township, County of Lake, State of Illinois. Mat Schlueter is the President of the Mylith Park Lot Owners Association. The Board of Directors of the Mylith Park Lot Owners Association has directed Mat Schlueter to join this Petition and object to the permit. The Mylith Park Lot Owners Association have forwarded a Roster approximately 85 property owners of the Mylith Park Lot Owners which is attached as **Exhibit D**.

14. Donald Krebs is a resident of Twin Pond Farms, Village of Lake Barrington, Township of Cuba, State of Illinois. Don Krebs is an officer of the Twin Pond Homeowners Association and he testified in the hearing Tr. 102-107. .

15. Don Berkshire is a resident of Twin Pond Farms, Village of Lake Barrington, Township of Cuba, State of Illinois. He is a member of the Twin Pond Homeowners Association and he was present at the hearing.

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16. Judy Brumme is a resident of Twin Pond Farms, Village of Lake Barrington, Township of Cuba, State of Illinois. Judy Brumme is an officer of the Twin Pond Homeowners Association. Judy Brumme has directed that the Twin Pond Homeowners Association object to the permit. Judy Brumme has forwarded a Roster of approximately 53 property owners of Twin Pond Homeowners Association which is attached as **Exhibit E** .

17. Nancy Dobner is a Resident of un-incorporated Township of Wauconda, County of Lake, State of Illinois and she is a member of the PLUG THE PIPE Group. Tr-48.

18. Julia Tudor is a Resident of the Village of Wauconda, Township of Wauconda, County of Lake, State of Illinois and she attended the hearing.

19. Christine Deviney is a Resident of the Village of Lake Barrington, Township of Wauconda, County of Lake, State of Illinois. Christine Deviney owns property in the Slocum Wetlands and she resides in the Slocum Lake Drainage District.

20. The Resident Group has been approached by many more supporters of the PLUG THE PIPE group and neighbors in the Village of Port Barrington, Village of Island Lake and un-incorporated Nunda Township in County of McHenry. The Resident Group consists of individuals and three homeowner associations: Twin Pond Farms Homeowner Association, Williams Park Improvement Association and Mylith Park Lot Owners Association, and a number of Residents in the Lakeland Estates Subdivision. The Resident Group lists approximately 285 homeowners representing in excess of 500 adult downstream Residents.

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B.
RESIDENT GROUP STANDING
RESIDENT GROUP IMPACTED BY PERMITTED FACILITY

21. Every member of the Resident Group is so situated to be affected by the permit and the continuing and planned future violations of the Environmental Protection Act in the Slocum Watershed including offensive conditions and violation of water quality standards

22. The expanded waste stream authorized by this Permit flows through the Slocum Wetlands into the Fox River and other downstream waters.

23. The Lake County Forest Preserve owns 2,600 lineal feet of Fiddle Creek downstream of the current outfall of WSTP and Fiddle Creek constitutes the northern boundary of the 517-acre Fox River preserve. Tr-76

24. All members of the Resident Group are Residents of Lake County and every Resident supports the Lake County Forest Preserve through Real Estate Taxes.

25. All members of the Resident Group expect the Lake County Forest Preserve to preserve and protect all Lake County Forest Preserve Assets.

26. All members of the Resident Group have access to the Fox River Marina and Preserve for recreation and boating.

27. Many members of the Resident Group have primary contact with one or more of the following: Fiddle Creek, Slocum Lake Drainage District Channels and Fox River Marina and Preserve.

28. Members of the Resident Group include all three homeowner associations and Residents in the subdivision of Lakeland Estates and many areas of un-incorporated Wauconda Township, Cuba Township and Nunda Township own private wells for

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personal water supply, and this modified NPDES permit has a direct impact on the future usefulness of their current water supply and the health and safety of their families.

Slocum Wetlands

29. The Fiddle Creek, Fiddle Lake, Fiddle Marsh and Slocum Lake Drainage District channels affects many hundreds of Residents in McHenry County and Lake County. The Slocum Wetlands extends approximately 2.4 miles from Anderson Road to the Fox River.

30. These Slocum Wetlands have two features which the Agency has disregarded in both its permit and Responsiveness Summary. The Agency has failed to recognize Fiddle Lake, and has even gone so far as to have it removed from the maps which it has published on its web site. Fiddle Lake was documented in the hearing with an 1861 map Tr-193 and a current tract map from the Wauconda Assessor's maps.

31. The Agency has failed to mention the second superfund site which was also discussed in the hearing. This 2nd Superfund [Charkowski] ("**Superfund 2**") is adjacent to the Slocum Lake Drainage District Channels and about one-half mile from the WSTP outfall, directly on the waste stream. The Agency, by their attorney advised the Residents that this 2nd Superfund site was a "local problem" Tr-197. The Resident Group has submitted post-hearing documentation on both Fiddle Lake and Superfund 2. The Resident Group displayed aerial photographs of Superfund 2 and submitted them to the Agency in its post-hearing submission. The Resident Group post-hearing submission is made part of this Petition.

C.
PROCEDURAL DUE PROCESS
Klaren II

32. In the exercise of an abundance of caution, the Resident Group notes that, one of the many issues raised at the hearing which is not included in the Agency Responsiveness Summary [Exhibit B] is a jurisdictional objection. This deliberate omission by the Agency indicates that the Agency either consider the objection either relevant or significant. The Resident Group believes the issue of procedural due process is a threshold issue.

33. The Resident Group advised the Hearing Officer of Supreme Court decision in THE PEOPLE ex rel. Robert J. Klaren II et al., v. Village of Lisle et al. 202 Ill. 2nd 164, 781 N.E.2nd 223; 2002 ILL. Lexis 941, 269 Ill. Dec. 426, Tr-180 a copy of which is attached as **Exhibit F.**

34. The Resident Group believes **Klaren II** mandated that the Agency establish such reasonable rules for hearings under 35 Illinois Administrative Code 166 which guarantee procedural due process.

35. The Resident Group believes that the September 9th & 10th AGENCY hearing was controlled by **Klaren II** and the Resident Group was denied it's full panoply of procedural due process rights, as follows:

- a. Notice
 - 1. The Agency only mailed notice to local legislators, county and municipal officials and published to all others in the Wauconda Leader;

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2. No downstream owner of the impacted wetlands, other than the Lake County Forest Preserve was mailed notice;
3. The Resident Group believes all downstream owners of impacted and potentially impacted wetlands in the Slocum Wetlands, should have received, individual formal notice of these proceedings.

- b. Testimony under oath;
- c. Require both the Agency and the Village of Wauconda to fully support and document their draft modified permit in an open public meeting;
- d. Permit full document review prior to the hearing;
- e. Permit reasonable cross-examination of all witnesses;
- f. Unconscionable to allow any public hearing which seeks public comment to continue past 9:00 p.m.

36. The Resident Group believes the Agency should have a second public hearing and require both the Agency and the Village of Wauconda to explain and defend their final modified permit, the basis of Agency decision, permits full discussion of real alternatives, full discussion of the projected environmental impact and current threats to the health and safety of the Residents and allow full, responsible cross-examination.

37. The September 9th and 10th informational hearing, was a condition precedent for any possible Review, as follows:

- a. Any Petitioner wishing to raise issues on appeal, must raise those issues during the public notice period, public comment period or during the public informational hearing;
- b. Any Petitioner wishing to appeal, must also show they will be impacted by the permitted facility.

38. The Resident Group will, by appropriate Motion, ask this Honorable Board: (a) rule that **Klaren II** applies to all hearings conducted by the Illinois

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Environmental Protection Agency; (b) rule that the hearing relating to this permit did not meet the minimum standards set forth in Klaren II; (c) That all further consideration of this permit be stayed until the Agency provides personal notice to every downstream owner and Resident and conducts a full contested hearing which requires both the Agency and Village of Wauconda to testify, under oath and submit to cross-examination.

Statement of Issues Raised

FALSE APPLICATION – POSSIBLE CRIMINAL VIOLATION and HISTORY OF VIOLATIONS

39. 415 ILCS 5/44 is attached hereto as Exhibit G and states:

Criminal acts; penalties (a) Except as otherwise provided in this Section, it shall be a Class A misdemeanor to violate this Act or regulations thereunder, or any omit or term or condition thereof, or knowingly to submit any false information under this Act or regulations adopted thereunder, or under any permit or term or conditions thereof. A court may, in addition to any other penalty herein imposed, order a person convicted of any violation of this Act to perform community service for not less than 100 hours and not more than 300 hours if community service is available in the jurisdiction. It shall be the duty of all State and local law-enforcement officers to enforce such Act and regulations, and all such officers shall have authority to issue citations for such violations.

40. 415 ILCS 5/44(h)(1) Violations; False Statements, states:

Any person who knowingly makes a false material statement in an application for a permit or license required by this Act to treat, transport, store, or dispose of hazardous waste commits the offense of perjury and shall be subject to the penalties set forth in Section 32-2 of the Criminal Code of 1961 (720 ILCS 5/32-2)

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41. In its Application for this Modified NPDES Permit:

Special Condition 11 of the NPDES application requests information on the industrial survey. Question F-12 Remediation Waste. "Does the treatment works currently or has it been notified that it will receive waste from a remedial activities?"

42. In response to Question F-12 WSTP answered N/A.

43. In its Application for this Modified NPDES Permit:

On page 10 of the NPDES application, vinyl chloride is listed with an asterisk. The asterisk indicates "not believed to be present."

44. This is contrary to Conestoga-Rovers report on the Wauconda Sand & Gravel Superfund Site, one of two Superfund sites which either impact or will be impacted by the implementation of this Modified NPDES Permit.

45. The Resident Group is prejudiced because it was never advised of and has never reviewed the 53 exhibits which the Agency says it recorded, and is unaware of any recent representations which may have been made by WSTP.

46. 415 ILCS 5/39 sets forth the requirements for issuance of permits, a copy of which is attached hereto as **Exhibit H**.

47. 415 ILCS 5/39(a) states, as follows:

"(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, and the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In making its determinations on permit applications under this

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Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance. The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. ..."

48. At the September 9th -10th informational hearing, Ms. Moreno, the attorney for the Agency stated as follows: Tr -18

"... Now, yes, it is true that through the '90's it [WSTP] had a lot of problems. No question about that. But it [WSTP] doesn't have those same problems anymore. What happened basically is that in 2000, 1999 and 200, we had the Attorney General's office file suit against the Village to force them to take care of some of these problems. And there was a consent decree entered into here in Lake County in Chancery Court. And for those of you who might be interested, it's No. 99 CH 720. It was entered on December 13, 2000...."

49. This WSTP permit, which has been approved by the Agency the Agency can be characterized as follows:

- a. WSTP has filed a false Answer to this Application for Modified NPDES Permit, in that WSTP knows that WSTP currently receives waste from a remedial activity;
- b. Upon information and belief, Agency has not reported this false statement under 415 ILCS 5/44(h)(1);
- c. WSTP has filed a false Answer to this Application for this Modified NPDES Permit, in that WSTP was asked on page 10 of the NPDES application if vinyl chloride present, WSTP answered with an asterisk indicating "not believed to be present."
- d. Upon information and belief, Agency has not reported this false statement under 415 ILCS 5/44(h)(1);

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- e. That the Agency admits that WSTP “had a lot of problems” and the Agency had to have the Attorney General file suit against WSTP to force them to comply with the law.
- f. The Agency has apparently not required WSTP to file a correct Application.

WAUCONDA WASTE STREAM - INFLOW

50. WSTP has three waste streams making up its inflow. In addition to domestic waste and industrial waste, WSTP accepts third waste stream of leachate from a superfund site leachate collection system. The industrial waste stream services a variety of industries, and includes volatile organic compounds, semi volatiles, base neutral acids (BNAs), metals, phenols, oils, grease, DOB, COD, TSS, boron, radium and radon. Rs-7 & Rs-37

51. Wauconda Sand & Gravel (“**Superfund 1**”) is a NPL Superfund Site located at Bonner Road and Garland in Wauconda Township³. The Village of Wauconda is one of a number of potentially responsible parties.

52. In November, 2003, the Lake County Health Department (“LCHD”) did a random residential well test in a private well near Superfund 1. That test found Vinyl Chloride. Since December, 2003, further testing has shown contamination of groundwater from a leachate plume by a number of contaminants. Groundwater contamination has been identified in almost 100 homes in the Hillcrest Subdivision and recent testing has shown the leachate plume is moving and contaminating adjacent subdivisions. Petitioner will, by appropriate Motion, request the Illinois Pollution Control

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³ Any comment concerning Wauconda Sand & Gravel Superfund Site should note the extraordinary current activity by the USEPA and the widespread contamination of over 100 private wells by a leachate plume which is believed to have traveled from WS&G.

Board to include these developments in their review of this permit. The testimony at the hearing raises legal and scientific issues which point to flaws in analysis used by the Agency in its draft permit.

53. This permit and is the 2nd permit, issued by the Agency, which involves Superfund 1 leachate. The Agency has issued another permit number 2001-EP-3444 which allows the discharge of an average of 4,000 gallons per day of leachate from a Superfund 1 collection system to WSTP. RS-37 Even though the Agency knows that WSTP receives leachate containing 11 metals, volatile organic compounds, pesticides, base/neutrals, cyanide, oils and grease, phenols, oxygen-demand compounds and total suspended solids, it has still not required pretreatment, rather the Agency is only requiring routine monitoring twice during each permit cycle Rs-37

54. The Resident Group does not believe the Agency will protect the Slocum Wetlands and the Resident Group does not believe the WSTP discharge meets any water standards. These doubts extend not only to the Agency assessments, but to Agency testing, specifically the scope of Agency and WSTP testing. On August 20, 2004, a member of the Resident Group funded a grab sample from the WSTP outfall pipe. The results indicate the presence of four volatile compounds above the reporting limit: Bromodichlormethane, Chloroform, Dichlormethane and Methyl-tert butyl (MTBE) ether, a copy of that Analytical Report is attached as **Exhibit I**. The Agency advises, in this permit, that on June 21, 2004 it took tests of effluent which corroborated the Wauconda samples that neither vinyl chloride nor benzene were present. The Resident Group test on August 20, 2004 evidences different facts.

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55. 415 ILCS 122/5, a copy of which is attached as **Exhibit J**, states that the General Assembly finds that methyl tertiary butyl ether (MTBE) presents substantial environmental risks to the water quality in Illinois, as well as to the public health, safety, and welfare of the people of the State of Illinois. The presence of MTBE in the Slocum Wetlands will be addressed by supplemental Motion also. The issues raised by this test go far beyond this permit and the test results have been reported to LCHD.

56. It is absolutely clear that the inflow Wauconda waste stream is a highly dangerous fact and not routine in any way. The Wauconda waste stream requires extensive pretreatment and testing before release into the environment, if in fact it can ever be discharged into the environment. At a minimum every contaminant found in Superfund 1 or in groundwater leachate in the Hillcrest Subdivision should be tested for in this permit.

PRETREATMENT

57. On September 19, 2000, Wauconda adopted an ordinance establishing a Pretreatment Program, It has completed a survey and compiled a list of the non-residential users in the village. However it appears that Wauconda has not implemented and enforced the program. Rs-12 In a letter dated August 3, 2001 the USEPA determined that Pretreatment per 35 Ill. Adm. Code Part 310 was not warranted. The Resident Group has not seen the August 3, 2001 USEPA letter. The Resident Group has constant discussions with the USEPA and will request the reason for this decision. That issue aside, the Agency has given no reason why it hasn't required WSTP to implement a pretreatment program.

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ANTIDegradation

WAUCONDA WASTE STREAM -OUTFLOW

58. This Board has particularized an antidegradation mandate in its General Water Quality Provisions 35 Ill. Adm. Cod 302.105, a copy of which is attached hereto as **Exhibit K**, and this Board states as follows:

“The purpose of this Section is to protect existing uses of all waters of the State of Illinois, maintain the quality of waters with quality that is better than water quality standards, and prevent unnecessary deterioration of waters of the State.”

59. WSTP has directed its outflow to the Village border, choosing to degrade the lakes, streams and wetlands of downstream neighbors and communities Tr 180-196. The Agency is a willing participant in this downstream degradation through its NPDES permit program. The Agency employs a hearing process which protects the Applicant and Agency from public cross-examination of the terms of Draft Permits. In this case the Agency has issued a permit which pays lip service to this Board’s antidegradation mandate, and evades compliance.

60. This Resident Group represents individuals and Homeowner Associations downstream of the two outfalls which WSTP has used over the last 100.. This Resident Group, represents individuals and homeowner associations and speaks for over 280 downstream home owners who know what to expect from WSTP and the Agency. Except for the outfall pipe and a short segment of the Fiddle Creek, the land to be affected by this waste stream is not in the Village of Wauconda and it is not owned by the Village of Wauconda.. The entire stream and channel system is under the jurisdiction of SLDD. The downstream Residents of this Group are not Residents of the Village of

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Wauconda. This permit grants WSTP, with the approval of the Agency, the right to burden and degrade, without compensation, all land, lakes, streams, channels, wetlands and a County Park located in the Slocum Wetlands and bind this unique environment to the Wauconda waste stream for all time. From its construction to 1983, WSTP discharged into Bangs Lake Creek which degraded Slocum Lake. "In 1983 the Board terminated the variance, whereupon the discharge was moved away from Slocum Lake to its present location in Fiddle Creek. (Fiddle Creek has previously been designated in Wauconda's NPDES permit and other Illinois EPA documents as "an unnamed tributary to the Fox River" or Wauconda Creek;" however, the permitted discharge point has been the same since 1983" Rs – 7.

61. 302.105(a) Existing Uses states as follows:

Uses actually attained in the surface water body or water body segment on or after November 28, 1975, whether or not they are included in the water quality standards, must be maintained and protected. Examples of degradation of existing uses of the water of the State include:

- a. an action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity;**
- b. an action that would result in loss of resident or indigenous species whose presence is necessary to sustain commercial or recreational activities; or**
- c. an action that would preclude continued use of the surface water body or water body segment for public water supply or fore recreational or commercial fishing, swimming, paddling or boating.**

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62. Prior to November 28, 1975 the Slocum Wetlands consisted of Fiddle Marsh, Fiddle Lake, Fiddle Creek and the drainage channels of the SLDD. There was no NPDES discharge into the Slocum Wetlands and the boundary of Village of Wauconda may not have extended down Anderson Road.

63. The Agency has implemented policies which are incompatible with the language of both 302.105 and 302.105(a) and which contravenes both the antidegradation mandate and the November 28, 1975 benchmark. A fair reading of the antidegradation provisions requires the Agency to do an assessment of the Slocum Wetlands, as it existed, prior to November 28, 1975. The September 15, 1993 Agency stream survey, is not the statutory benchmark. That survey found "fair environmental conditions and identified elevated levels of conductivity, nitrate plus nitrite, phosphorus, sodium, potassium, boron, strontium, and oil downstream of the WSTP outfall. These conditions are clearly the result of the 1983 relocation of the WSTP outfall. The Agency has refused to evaluate any of the above contaminants and further it has failed to evaluate the impact of increased pollutant loading on either the fish and plant community.

64. 415 ILCS 5/39(a) states that the applicant shall apply to the Agency for such permit and it, shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility...will not cause a violation of this Act or of regulations hereunder.

65. The Agency issued a draft modified permit without any effort to obtain a current antidegradation assessment. The 2003 antidegradation assessment was based on a

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September 15, 1993 stream survey. The 1993 facility stream survey found “fail environmental conditions in Wauconda Creek with minor impact from Wauconda STP discharge.” Elevated levels of conductivity, nitrate plus nitrite, phosphorus, sodium, potassium, boron, strontium, and oil downstream of the Wauconda outfall.” Conditions as of November 28, 1975 is the benchmark for antidegradation assessments. The Agency has failed to protect the existing uses of the receiving waters, as of the benchmark, the potential effect on existing uses including aquatic community, including endangered fish, pollutant sensitive plant species has not been considered.

66. In October, 2003 the Village of Lake Barrington retained KOT Environmental Consulting, Inc (“**KOT**”), to perform a Preliminary Evaluation of Fiddle Creek Watershed, a copy of which is attached hereto as **Exhibit L**. The Resident Group obtained a copy of this document under a FOIA request, and we have been advised that it is a part of the Village of Lake Barrington post-hearing submission. This report documents a loss of 180 acres of open water in the Slocum Wetlands since 1993 Exhibit K at 3. At the current wastewater loading conditions (1.4 MGD), the wetland will be reduced to a channel taking wastewater directly to the Fox River. This process can take place in 14 to 15 years. Increasing the wastewater discharge to 2.4 MGD will increase the aging process even more resulting in the elimination of the wetland altogether.

67. The KOT report Ex L coupled with the testimony of Huff & Huff Tr 61-83 evidence a degradation of the Slocum Wetlands from current discharges from WSTP. The Resident Group has found no provision for deferral of decision making. 415 ILCS 5/39(a) actually states it is the duty of the Agency to issue such a permit upon proof by

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the applicant that the facility will not cause a violation of the act or regulations.

68. 302.105(f) Ex requires the antidegradation assessment to consider impacts to biological communities, increased loading, or alternatives or by providing a showing of benefits which fully justify the project.

69. On December 10, 2003 the Agency held a Local Government Meeting, and only approved local government representatives were allowed to participate. The Agency prepared an Action Items/Commitments Memo after the meeting which is attached hereto as **Exhibit M**. It appears that the Agency did not honor its commitment to local government representatives;

70. On December 10, 2003 the Agency stated that "Data has not been gathered on Dissolved Oxygen (D.O.) levels in local upstream/background locations. The Illinois EPA has committed to re-evaluate the D.O. regime in the stream in light of assertions of low D.O. concentrations Ex M -1. On August 23, 2004, the Agency advised the Public, in its Responsiveness Summary, as follows: Rs-7.

"This information is limited; the extent to which it is representative of normal stream conditions and its relationship to the Wauconda discharge is unknown. ... To address the issue the Agency is adding a special condition requiring the facility to collaborate and participate in cooperation with the Agency in a study to characterize the dissolved oxygen profile and study possible nutrients impacts in Fiddle Creek in the vicinity and downstream of Outfall 001 before and after the expansion. The Wauconda permit will contain a re-opener clause to allow additional controls upon the facility operation should there be an ongoing dissolved oxygen problem attributable either partially or wholly to the Wauconda discharge. While it is possible that additional flow from this facility may actually be beneficial to the DO regime of the system, this matter will be evaluate in concert with additional required monitoring.

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On August 23, 2004 the Agency advised the public at Rs-31 as follows:

“The permit as issued includes dissolved oxygen limits and supplemental monitoring requirements to address potential problems within Fiddle Creek and determine any culpability of this discharge should Fiddle creek exhibit DO deficiencies, and require any additional controls that may be warranted.

Not only has the Agency defaulted on its commitment, to local government representatives to re-evaluate the D.O. regime, we assume, prior to issuing the final permit, in the approximately 8 months since the Agency made its commitment to its local government partners, the Agency has made no effort to gather data on the DO regime. Instead it has chosen to ignore the findings of Huff & Huff, who did monitor Fiddle Creek in three locations and their findings indicated four out of five DO violations. These documented water quality violations combined with findings that Nitrates plus nitrites findings were above the use impairment criteria lead to the conclusion that any discharge of effluent alone or in combination with other sources, shall not cause a violation of any applicable water quality standard outline in 35 Ill. Adm. Code 302. This permit allows discharges that may cause or have a reasonable potential to cause, or contribute to violations of the water quality standards regarding offensive conditions, in violations of 35 Ill. Adm. Code 302.206 which violates 40 CFR 122.44(d) and 35 Ill. Adm. Code 309.141.

71. The Resident Group looks to this Board to implement 302.105, protect protect existing uses which includes a County Park and Marina with primary contact with Residents along its entire boundary. The Resident Group looks to the Board to enforce its mandate that the quality of the waters of the Slocum Wetlands will be maintained with

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water quality that is better than water quality standards and prevent unnecessary deterioration. The Resident Group looks to the Board to restoration of the Slocum Watershed to pre November 28, 1975.

72. 35 Ill. Adm. Code 302.105(c)(2) states as follows:

c) High Quality Waters

2) The Agency must assess any proposed increase in pollutant loading that necessitates a new, renewed or modified NPDES permit or any activity requiring a CWA Section 401 certification to determine compliance with the Section. The assessment to determine compliance with this Section must be made on a case-by-case basis. In making this assessment, the Agency must:

B) Assure the following:

- i) The applicable numeric or narrative water quality standard will not be exceeded as a result of the proposed activity:**
- ii) All existing uses will be fully protected;**
- iii) All technically and economically reasonable measures to avoid or minimize the extent of the proposed increase in pollutant loading have been incorporated into the proposed activity; and**
- iv) The activity that results in an increased pollutant loading will benefit the community at large.**

73. The Agency advises the Public in its Responsiveness Survey that the Agency sent out a letter to the regulated community in July 2002 explaining the requirements of Part 302.105(c)(2)(B). Attachment A to this same letter specifically requires the discharger to address compliance with the Illinois Groundwater Protection Act and a discussion of the impact of the project on the receiving water. RS-7

74. On August 23, 2004, the date of issuance of this permit, the Agency advises that Wauconda has **NOT** met these requirements.

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Private Wells

75. In its Responsiveness Summary Rs – 28 the Agency has advised that for the period of September 9, 2001, through September 9, 2003, the LCHD tested 20 of the wells in the Fiddle Creek Area; none of these wells showed contamination. On September 1, 2004 a member of this Resident Group residing in Lakeland Estates, at her expense, had her well tested. The results of that test are attached hereto as **Exhibit N**.

76. The KOT Report Ex L, a 2003 expert report notes at Ex L p2 “a significant number of residences in the three communities that have wells that are not reported in the database. The community of Lakeland Estates has 12-recorded wells and four of the wells exhibit a high susceptibility to subsurface contamination. The community of Lakeland Estates has 12-recorded wells and four wells exhibit a medium susceptibility to surface contamination. The community of Twin Pond Farms has 11 wells and one of which has a high susceptibility to subsurface contamination. The community of Twin Pond Farms has 11 wells, one of which has a medium susceptibility to surface contamination.

Alternatives

77. 302.105 requires the Agency to provide an overview of alternatives considered by the applicant and identification of any provisions or alternatives imposed to lessen the load increase associated with the proposed activity. The prior history of WSTP and actions of the Agency evidence a bias to protect the surface waters in the Village of Wauconda, specifically Bangs Lake. The hearing had many comments from Residents that the outfall should be into Bangs Lake. At this writing WSTP has already

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degraded two lakes [Slocum Lake and Fiddle Lake], and degraded the waters of the Slocum Wetlands with a net loss of open water in the Slocum Wetlands of 180 acres of open water since 1993. This permit sanctions the continued degradation of the Slocum Wetlands.

78. Two additional alternatives proposed by the Resident Group are:
 - a. Closing the WSTP and put the waste stream underground to the Northern Moraine Water Reclamation District facility about 3 miles away;
 - b. Construct an underground pipe which connects WSTP to the SLDD channels and running a pipe on the bottom of the SLDD channel directly into the Fox River. This, of course would require WSTP to increase its treatment so that the outfall would not degrade the Fox River.

Fox River

79. The permit has failed to address the impact WSTP will have on the Fox River, an impaired waterway. The DT22 segment of the Fox River which is the receiving water body from Fiddle Creek is impaired due to nutrients, siltation, pathogens and suspended solids.

WHEREFORE, NOW COMES Al Phillips, Vern Meyer, Gayle DeMarco, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Polito and the Williams Park Improvement Association, Mat Schlueter and the Mylith Park Lot Owners Association, Donald Krebs, Don Berdshire, Judy Brumme and the Twin Pond Farms Homeowners Association, Julia Tudor and Christine Deviney and the 180 homeowners and over 500 adult downstream Residents pray for the following relief:

- A. That the Illinois Pollution Control Board set aside NPDES permit IL 0020109 issued to the Village of Wauconda on August 23, 2004;

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B. That the Illinois Pollution Control Board rule that the hearing did not meet the procedural due process requirements of Klaeren II and order the Agency to draft new procedures for hearings and re-notice a public hearing to discuss the permit or any modification of the permit reasonable cross-examination of the Applicant and Agency;

C. That the Illinois Pollution Control Board instruct the Agency to begin a new antidegradation assessment of the Slocum Wetlands using November 28, 1975 as the benchmark date;

D. That the Illinois Pollution Control Board instruct the Agency to perform a new water quality assessment in order to establish conditions and limits to protect Illinois waters ;

E. That the Illinois Pollution Control Board instruct the Agency to review the Wauconda Waste Stream and the Superfund 1 leachate;

F That the Illinois Pollution Control Board do detailed testing of the WSTP outfall effluent, including sediment cuts along the waste stream for all contaminants found in Superfund 1 leachate and all pollutants found in Hillcrest wells;

G. That the Illinois Pollution Control Board instruct the Agency to review alternatives including alternative sites;

H. That For such other and further relief as this Honorable Illinois Pollution Control Board deems just.

September 27, 2004

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