

ILLINOIS POLLUTION CONTROL BOARD  
October 7, 2004

VILLAGE OF LAKE BARRINGTON, )  
CUBA TOWNSHIP, PRAIRIE RIVERS )  
NETWORK, SIERRA CLUB, BETH )  
WENTZEL and CYNTHIA SKRUKRUD, )

Petitioners, )

v. )

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

Respondents. )

PCB 05-55  
(Third-Party NPDES Permit Appeal –  
Water)

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SLOCUM DRAINAGE DISTRICT OF )  
LAKE COUNTY, ILLINOIS )

Petitioner, )

v. )

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

Respondents. )

PCB 05-58  
(Third-Party NPDES Permit Appeal –  
Water)

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AL PHILLIPS, VERN MEYER, GAYLE	)	
DEMARCO, GABRIELLE MEYER, LISA	)	
O'DELL, JOAN LESLIE, MICHAEL	)	
DAVEY, NANCY DOBNER, MIKE	)	
POLITIO, WILLIAMS PARK	)	
IMPROVEMENT ASSOCIATION, MAT	)	
SCHLUETER, MYLITH PARK LOT	)	
OWNERS ASSOCIATION, DONALD	)	
KREBS, DON BERKSHIRE, JUDY	)	
BRUMME, TWIN POND FARMS	)	
HOMEOWNERS ASSOCIATION, JULIA	)	
TUDOR, and CHRISTINE DEVINEY,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 05-59
	)	(Third-Party NPDES Permit Appeal –
ILLINOIS ENVIRONMENTAL	)	Water)
PROTECTION AGENCY and VILLAGE	)	
OF WAUCONDA,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by G.T. Girard):

On September 17, 2004, Village Of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukud (Village petitioners ) filed a petition asking the Board to review an August 23, 2004 determination by the Illinois Environmental Protection Agency (Agency). On September 27, 2004, Slocum Lake Drainage District of Lake County, Illinois filed a petition for review of the Agency's decision (Drainage District petitioners). Also on September 27, 2004, Al Phillips, Vern Meyer, Gayle Demarco, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Politio, Williams Park Improvement Association, Mat Schlueter, Mylith Park Lot Owners Association, Donald Krebs, Don Berkshire, Judy Brumme, Twin Pond Farms Homeowners Association, Julia Tudor, and Christine Deviney filed a petition for review of the Agency's decision (Association petitioners). (collectively, petitioners).

Petitioners appeal the Agency's determination to grant a National Pollutant Discharge Elimination System (NPDES) permit to Village of Wauconda (Wauconda). The permit was issued to allow an increase in discharges for Wauconda's wastewater treatment plant into Fiddle Creek, a tributary of Fox River. The wastewater treatment plant is located in Wauconda, Lake County.

Village petitioners appeal on several grounds, including that no limits were imposed for total nitrogen discharges, no limitations were imposed to address dissolved oxygen issues, no

pretreatment was required, and a proper antidegradation assessment was not performed. Drainage District petitioners and Association petitioners appeal on several grounds, including that the Agency did not follow proper permit procedures, the antidegradation assessment was inadequate and no pretreatment program was implemented. For the reasons set forth below, the Board accepts the petitions for hearing.

### THIRD-PARTY APPEAL

Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (2002)) allows certain third parties to appeal Agency determinations to grant NPDES permits. The third party's petition to the Board must contain:

a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on 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) (2002); *see also* 35 Ill. Adm. Code 105.210(d).

The petition also must, among other things, specify the grounds for appeal and include a copy of the issued permit. 35 Ill. Adm. Code 105.210(a), (c). The third party must file the petition within 35 days after the "date of issuance of the Agency's decision." 415 ILCS 5/40(e)(1) (2002); *see also* 35 Ill. Adm. Code 105.206(b). If the Board determines that the third party's petition for review is not "duplicitous or frivolous," the Board will hear the petition. 415 ILCS 5/40(e)(3) (2002); *see also* 35 Ill. Adm. Code 105.214(d).

The petitions state that, during the Agency's public notice period and at the public hearing on Wauconda's NPDES permit application, petitioners raised the issues on which they now appeal. The petitions also state that petitioners are so situated as to be affected by the permitted facility and include a copy of the issued permit. The petitions meet the content requirements of 35 Ill. Adm. Code 105.210. Petitioners also filed their petitions within 35 days after the Agency issued its determination.

An action before the Board is duplicitous if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board indicates that these actions are duplicative or frivolous. The Board accepts the petitions for hearing. The Board also consolidates these proceedings for hearing.

### HEARING AND DECISION DEADLINE

Petitioners have the burden of proof. 415 ILCS 5/40(e)(3) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a); *see also* 415 ILCS

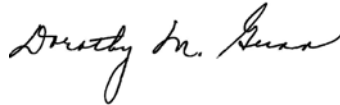
5/40(e)(3) (2002). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(3) (2002)), which only Wauconda may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Wauconda “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2002)].” 415 ILCS 5/40(a)(3) (2002). Currently, the decision deadline is January 15, 2005 (the 120th day after September 17, 2003, the date that Village petitioners filed their petition). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for January 6, 2005.

### **AGENCY RECORD**

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination within 30 days after petitioners filed the petitions. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 7, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board