

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 07 2005

STATE OF ILLINOIS
Pollution Control Board

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
(3rd Party NPDES Permit
Appeal)

SLOCUM LAKE DRAINAGE DISTRICT OF LAKE)
COUNTY, ILLINOIS,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-58
(3rd Party NPDES Permit
Appeal)

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 and CHRISTINE DEVINEY,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-59
(3rd Party NPDES Permit
Appeal)
(Consolidated)

NOTICE OF FILING

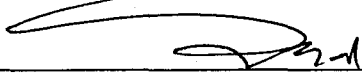
Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

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

SEE ATTACHED SERVICE LIST

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 **RESPONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION AND LITIGATION RECORD** 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: January 6, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

RECEIVED
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JAN 07 2005

STATE OF ILLINOIS
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TOWNSHIP, PRAIRIE RIVERS NETWORK,)
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**RESPONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION
 AND LITIGATION RECORD**

NOW COMES, Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Sanjay K. Sofat, Assistant Counsel and Special Assistant Attorney General, and pursuant to 35 Ill. Adm. Code 101.500, 101.502, 101.504, 101.614, 101.616, and 101.618, 101.800, 101.802, the Illinois Code of Civil Procedures, the Illinois Supreme Court Rules, and the Hearing Officer's Order dated December 15, 2004, and hereby submits its Response to the Slocum Lake Drainage District of Lake County and the Resident Group's Motion to Compel the Illinois Environmental Protection Agency to Produce the Violation and Litigation Record. In support of its Response, the Illinois EPA states as follows:

1. On September 17, 2004, Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel, and Cynthia Skrukud 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).

2. On September 27, 2004, Slocum Lake Drainage District ("Slocum District") of Lake County, Illinois filed a Section 40(e) petition with the Board. 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 Chlueter, Mylith Park Lot Owners Association, Julia Tudor, and Christine Deviney ("Resident Group") filed a Section 40(e) petition with the Board.
3. The Slocum District and the Resident Group appeal the Agency's decision to grant the Village of Wauconda's request to modify its National Pollutant Discharge Elimination System ("NPDES") permit, IL 0020109.
4. 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 2262 pages.
5. On December 13, 2004, the Illinois EPA filed a motion for leave to amend its Record to include the transcript of the NPDES permit information hearing as part of the Agency Record.
6. On December 15, 2004, the Hearing Officer granted the Agency's motion to amend its record.
7. On December 22, 2004, the Board received the Slocum District and the Resident Group's combine motion to compel the Illinois Environmental Protection Agency to produce the violation and litigation record for the Village of Wauconda's wastewater treatment plant from 1980 to the present.

8. The Agency's permitting decision in this case only pertains to the Village of Wauconda's request to expand its treatment plant design average flow discharge from 1.4 million gallons per day ("MGD") to 1.9 MGD during Phase I and to 2.4 MGD in Phase II.
9. This modified permit issued on August 23, 2004, will expire on November 30, 2005.
10. The Agency made its decision to issue the modified permit pursuant to Section 39 of the Act.
11. Regarding the prior noncompliance with the Act by the applicant, Section 39(a) of the Act provides that, "[i]n making its determinations on permit applications under this 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." 415 ILCS 5/39(a) (*emphasis added*).
12. As is clear from the language, Section 39(a) only imposes a discretionary obligation on the Agency to consider the applicant's prior adjudications of noncompliance.
13. After initial investigation, the undersigned attorney found that one prior adjudication of noncompliance in the form of a consent decree was considered during the permitting decision process. No other documents related to noncompliance with the Act by the applicant were considered by the Agency in this case.
14. Today, the undersigned attorney request the Hearing Officer and the Board to allow the Agency to include this consent decree, 99 CH 720, entered by the Nineteenth Circuit Court on December 13, 2000, as par of the previously filed Agency Record.
15. The Slocum District and the Resident Group, however, demand production of all violations and litigation records for the Village of Wauconda from 1980 to present.

16. Their demand is irrelevant to this permit appeal and goes well beyond the requirements of Sections 39 and 40(e)(3) of the Act.
17. The Slocum District and the Resident Group's demand is irrelevant to the permit appeal because neither the Agency is required by the Act to consider all violations and litigation records from 1980 to present nor did it.
18. Further, as the Act specifically requires the Board to hear the petition "exclusively on the basis of the record before the Agency", demanding the introduction of documents that were not considered by the Agency during the permitting decision process would not only be inconsistent with the requirements of the Act but also be a waste of the Board's valuable time.
19. The Agency urges the Hearing Officer and the Board to DENY the Slocum District and the Resident Group's Motion to Compel. The Agency further urges the Hearing Officer and the Board to bar the Slocum District and the Resident Group from seeking information that is clearly outside the scope of the subject matter presented in this permit appeal.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Hearing Officer and the Board to TAKE NOTICE of the consent order and DENY the Slocum District and the Resident Group's Motion to Compel the Illinois EPA to Produce the Violation and Litigation Record.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____



Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

DATED: January 6, 2005

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

THIS FILING PRINTED ON RECYCLED PAPER

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STATE OF ILLINOIS)
)
) SS
COUNTY OF SANGAMON)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **RESONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION AND LITIGATION RECORD** 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

(OVERNIGHT MAIL)

Percy L. Angelo
Russell R. Eggert
Kevin G. Desharnais
Mayer, Brown, Rowe & Maw, LLP
190 S. LaSalle St.
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Jay J. Glenn
Attorney at Law
2275 Half Day Road
Suite 350
Bannockburn, IL 60015

(OVERNIGHT MAIL)

and mailing it from Springfield, Illinois on January 6, 2005, with sufficient postage affixed as indicated above.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME

this 6th day of January, 2005.



Brenda Boehner

Notary Public

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summary

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL
LAKE COUNTY, ILLINOIS
CHANCERY DIVISION

RECEIVED
CLERK'S OFFICE

JAN 10 2005

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. JAMES E. RYAN,)
State of Illinois,)
)
Plaintiff,)
)
vs.)
)
VILLAGE OF WAUCONDA, an)
Illinois municipal corporation,)
)
Defendant.)

STATE OF ILLINOIS
Pollution Control Board

99 CH 720

F

DEC 18 2000

~~CIRCUIT CLERK~~

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") and Defendant, VILLAGE OF WAUCONDA, ("Wauconda") an Illinois municipal corporation, have agreed to the making of this Consent Order. These stipulated facts shall be the findings of fact by this Court and the conclusions herein shall be the conclusions of law by this Court.

I.

STIPULATION OF USE AND AUTHORITY

The representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind the party they represent to this Consent Order. This Consent Order may be used in any future enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Section 42(h) of the Act, 415 ILCS 5/42(h) (2000).

II.

STATEMENT OF FACTS

A. PARTIES

1. The Attorney General of the State of Illinois brings this action on his own motion and at the request of the Illinois Environmental Protection Agency pursuant to the statutory authority vested in him under Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2000).

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged under Section 4 of the Act with the duty to administer and abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. Section 1342(b)(7).

3. Defendant, the Village of Wauconda ("Wauconda") is an Illinois municipal corporation located in Lake County, Illinois.

B. FACILITY DESCRIPTION

At all times relevant to this Consent Order, Wauconda owns and operates the Wauconda Wastewater Treatment Plant ("WWTP") located at 302 Slocum Lake Road, Wauconda, Lake County, Illinois. The legal description of the WWTP is the Southeast Quarter of Section 26 Township 44N, Range 09E, Lake County, Illinois.

The WWTP provides preliminary, primary, secondary and tertiary treatment of wastewater, and consists of a raw sewage pumping station, aerated grit tank, comminutor, primary clarifiers, primary effluent

pumping stations, bio-packed towers, solids contact tank, secondary clarifiers, sand filters, chlorine contact tank, aerobic digesters and sludge pumps.

The WWTP discharges to a tributary of the Fox River, a water of the State of Illinois, as that term is defined in Section 3.56 of the Act, 415 ILCS 5/3.56(2000).

C. ALLEGED VIOLATIONS

On June 28, 1999, the Plaintiff, People of the State of Illinois, filed a six-count Complaint against Wauconda alleging the following violations.

- | | |
|-----------|--|
| COUNT I | WATER POLLUTION: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2000); |
| COUNT II | VIOLATION OF GENERAL EFFLUENT STANDARDS: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), and 35 Ill. Adm. Code 304.120(c); |
| COUNT III | VIOLATION OF NPDES PERMIT EFFLUENT LIMITS: Violation of Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2000) and 35 Ill. Adm. Code 309.102(a), 304.141(a), and 304.120(c); |
| COUNT IV | VIOLATION OF NPDES PERMIT REPORTING REQUIREMENTS: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and 35 Ill. Adm. Code 305.102(a) and (b); |
| COUNT V | VIOLATION OF PERFORMANCE CRITERIA: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and 35 Ill. Adm. Code 306.303, 306.304 and 306.305(b); |
| COUNT VI | VIOLATION OF NPDES PERMIT CONDITIONS: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and 35 Ill. Adm. Code 309.146(a) (1-4). |

D. WAUCONDA'S RESPONSE TO THE ALLEGATIONS

Wauconda neither admits nor denies the material allegations contained in the Complaint. Wauconda is in the process of upgrading its WWTP in accordance with the Compliance Directives contained in Section VII.C. herein.

III.

APPLICABILITY

This Consent Order shall apply to and be binding upon Plaintiff and Defendant and any official, director, agent, employee, department or servant of Defendant, as well as Defendant's successors and assigns. The Defendant shall not raise as a defense to any enforcement action taken pursuant to this Consent Order the failure of its officials, directors, departments, agents, servants or employees to take such action as shall be required to comply with the provisions of this Consent Order.

IV.

COMPLIANCE WITH LAWS AND REGULATIONS

This Consent Order in no way affects the Defendant's responsibility to comply with any federal, state or local statutes or regulations, including, but not limited to, the Act and the Board Regulations, 35 Ill. Adm. Code Subtitles A through H.

V.

SEVERABILITY

It is the intent of the parties hereto that the provisions of this Consent Order shall be severable and should any provisions be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining

clauses shall remain in full force and effect.

VI.

VENUE

The parties agree that the venue of any action commenced in the Circuit Court for the purposes of interpretation, implementation and enforcement of the terms and conditions of this Consent Order shall be in the Circuit Court of Lake County.

VII.

FINAL JUDGMENT ORDER

NOW THEREFORE, in consideration of the foregoing and upon the consent of the parties hereto, the Court having considered the stipulated facts and being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. JURISDICTION

This court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1, et seq. (2000).

B. OBJECTIVE

The objective of this Consent Order is to have an enforceable order which will assure the protection of the public health, welfare and the environment, and compliance with the Act and Board rules and regulations promulgated thereunder.

C. COMPLIANCE DIRECTIVES

1. Wauconda shall undertake and complete certain improvements to its WWTP in accordance with applicable permits and regulations designed to:

- a. Eliminate the hydraulic bottleneck at the headworks of the WWTP caused by the limited capacity of the existing aerated grit tank and screening equipment;
- b. Limit the hydraulic loading to the treatment units downstream of the headworks, with the exception of the Bio Towers;
- c. Conform with the "Basis of Design" report for the WWTP "Wet Weather Flow Improvements" dated May 1, 2000, prepared by Devery Engineering, Inc., and the plans and specifications dated May 10, 2000, identified as Job Number 1690, as amended, approved, and permitted by the Illinois EPA under permit number 2000-AB-1966 dated October 11, 2000.

2. Wauconda shall complete construction of the improvements referenced in paragraph one above and contained in Illinois EPA permit number 2000-AB-1966 by October 14, 2001.

3. Wauconda shall verify to the Illinois EPA the dates of the commencement of construction and the completion and placement on-line of the improvements no later than 21 days after commencement and completion of construction. Such written verification shall be sent to:

Charles Gunnarson, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

D. CIVIL PENALTY

1. Wauconda shall pay the sum of Twenty Thousand Dollars (\$20,000.00) by certified check or money order made payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund. Payment shall be made within thirty (30) days from the date of entry of this Consent Order. The certified check or money order shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

The name and number of the case and Defendant's Federal Employer Identification Number ("FEIN") 36-6006136 shall appear on the face of the check or money order. Further, a copy of the check or money order shall be sent by first-class mail to:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

2. For purposes of payment and collection, the Village of Wauconda can be reached at the following address:

Mr. Fred Dierker
Village Administrator
Village of Wauconda
101 North Main Street
Wauconda, Illinois 60084

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2000), interest shall accrue on any penalty amount not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2000).

a. Interest on unpaid payments shall begin to accrue from the date the payment is due and continue to accrue until date payment is received;

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid payments then owing; and

c. All interest on payments owed the Plaintiff shall be paid by certified check or money order made payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Defendant's FEIN, 36-6006136 shall appear on the face of the certified check. A copy of the certified check and the transmittal letter shall be sent to:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601

3. STIPULATED PENALTIES

If Defendant fails to complete the work by October 14, 2001, Defendant shall pay stipulated penalties of Five Hundred Dollars (\$500.00) per day that Defendant fails to complete the work. All stipulated penalties shall be paid in the same manner as described in Section VII.D. above. However, payment of stipulated penalties does not preclude the State from taking other remedies to enforce the terms of this Consent Order.

E. CEASE AND DESIST

Defendant shall cease and desist from future violations of the Act and Board regulations, including but not limited to those Sections of the Act and Board regulations that were the subject matter of the Complaint as outline in Section II.C. of this Consent Order.

F. RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have a right of entry to Wauconda's WWTP at all reasonable times for the purposes of conducting investigations to determine compliance with the Act, Board regulations, and the terms and conditions of this Consent Order. In conducting any inspection of Defendant's WWTP, the Illinois EPA, its employees and representatives and the Illinois Attorney General, his agents and representatives, may take any photographs or samples as they deem necessary in order to conduct their investigation.

G. RETENTION OF JURISDICTION

The Lake County Circuit Court shall retain jurisdiction of this matter for the purpose of amending, interpreting, implementing and enforcing the terms and conditions of the Consent Order.

H. COSTS AND EXPENSES

Each party to this Consent Order shall bear its own costs and expenses, including attorneys' fees.

I. FORCE MAJEURE

1. "Force majeure," for purposes of this Consent Order, is defined as any event arising from causes beyond the control of the Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation

under this Consent Order despite Defendant's best efforts to fulfill the obligation. The requirement that the Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the work described in Section VII.C. above.

2. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Defendant shall notify the Illinois Attorney General's Office within twenty-four hours of when Defendant first knew that the event might cause a delay. Within 20 days thereafter, Defendant shall provide in writing to the Attorney General an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Defendant from asserting any claim

for force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant or Defendant's contractors knew or should have known.

3. If Plaintiff, after a reasonable opportunity for review and comment, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Order that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If Plaintiff, after a reasonable opportunity for review and comment, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, Plaintiff will notify the Defendant in writing of its decision.

4. If the Defendant elects to invoke the Dispute Resolution procedures set forth in Section J, below, it shall do so no later than 15 days after receipt of the Plaintiff's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 1 and 2 above. If Defendant carries this

burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Order identified to Plaintiff and the Court.

J. DISPUTE RESOLUTION

1. Any dispute which arises with respect to the meaning, application, interpretation, amendment or modification of this Consent Order, any report required hereunder, or with respect to any party's compliance herewith, shall in the first instance be the subject of informal negotiations. If the Plaintiff and Defendant cannot resolve the dispute within thirty (30) calendar days, however, it shall be presented to the Court for appropriate resolution upon written notice by any party. The period for negotiations may be extended by mutual agreement among the parties. Unless the Plaintiff is seeking an amendment, modification, clarification, interpretation or enforcement of this Consent Order, Defendant shall file the documents necessary to notify the Court of the dispute, and thereafter the Court shall order the parties to file such pleadings as the Court deems necessary and proper. If amendment, modification, clarification, interpretation or enforcement of this Consent Order is sought by the Plaintiff, the Illinois Attorney General's Office shall have the responsibility for filing the necessary papers.

2. Defendant shall file any petition with the Court within fifteen (15) calendar days after the informal negotiation period for any extension has expired, and, where the Plaintiff has the responsibility of filing, the Plaintiff shall petition the Court within fifteen (15) calendar days after the expiration of the informal negotiation period (or any extension).

3. In any dispute resolution proceeding, Defendant shall have the burden of showing, by a preponderance of the evidence, that its position will adequately protect the public health, welfare and the environment.

4. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for adjudicated failures or adjudicated noncompliance during the period of dispute resolution; provided, however, that nothing herein shall bar either party from raising any matter in support of its position to the Court that the failure or noncompliance is not a violation pursuant to Section VII.C.

5. Defendant shall have the burden of proving force majeure by a preponderance of the evidence.

K. RELEASE FROM LIABILITY

In consideration of Defendant's payment of Twenty Thousand Dollars (\$20,000.00) civil penalty as described in Section VII.D. herein, Defendant's commitment to complete the work as outlined in Section VII.C.2. herein, Defendant's commitment to refrain from further violations of the Act and Board regulations, and to comply with all applicable provisions of this Consent Order, and upon payment of the penalty required herein, the State releases, waives and discharges the Defendant from any further liability or penalties from violations of the Act which were the subject matter of the Complaint, upon the payment of all monies owed and completion of all activities required by Section VII.C. of this Consent Order. In the event that this Consent Order shall become null and void, there shall be no

release, waiver or discharge from liability or penalties resulting from violations of the Act and the Board Regulations. However, nothing in this Consent Order shall be construed as a waiver by Plaintiff of the right to redress future or heretofore undisclosed violation or obtain penalties with respect thereto.

L. ENFORCEMENT OF CONSENT ORDER

Following the entry of this Consent Order, any party hereto upon motion may move this Court to enforce the terms and conditions of this Consent Order. The Plaintiff, at its discretion, can enforce the terms of this Consent Order against the Defendant. This Consent Order is a binding and enforceable Order of this Court and may be enforced as such through any and all available means.

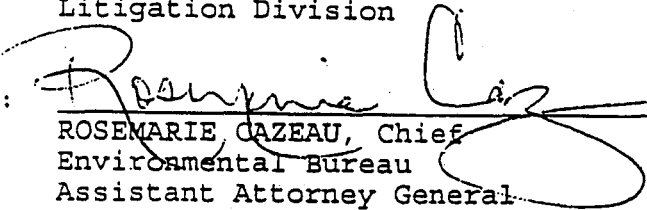
WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to the Court that it may be approved and entered.

PEOPLE OF THE STATE OF ILLINOIS,

ex rel. JAMES E. RYAN,
Attorney General of the
State of Illinois

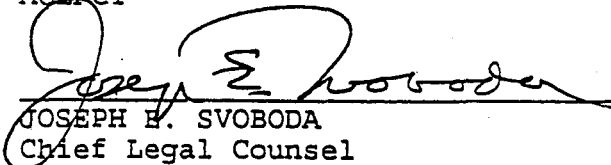
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Date: 12/4/00

BY: 
ROSEMARIE GAZEAU, Chief
Environmental Bureau
Assistant Attorney General

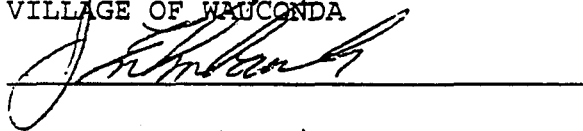
ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Date: 11/29/00


BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

VILLAGE OF WAUCONDA

Date: 12-5-00

BY: 
TITLE: Village President

Date: 12/13/00

ENTER: 
JUDGE

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