

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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

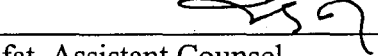
Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

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 THE SLOCUM DISTRICT AND THE RESIDENT GROUP'S REQUEST TO ADMIT** 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

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**ILLINOIS EPA'S RESPONSE TO THE SLOCUM DISTRICT AND THE RESIDENT
GROUP'S REQUEST TO ADMIT**

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 Parts 101 and 105 of the Illinois Pollution Control Board ("Board") regulations, 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 ("Petitioners") Request to Admit.

GENERAL OBJECTIONS

The Illinois EPA objects to each of the Petitioners' request to admit to the extent that, individually or cumulatively, they purport to impose upon the Illinois EPA duties or obligations,

which exceed or are different from those imposed upon the Illinois EPA by the Illinois Administrative Code and the Illinois Code of Civil Procedure.

THE AGENCY'S RESPONSE TO THE SLOCUM DISTRICT AND THE RESIDENT GROUP'S REQUEST TO ADMIT ARE IN BOLD LETTERS:

The name of the Illinois EPA employee responding to the question is provided at the end of the response. A Verification from each of the respondent is enclosed. The objections to the request to admit are made by the Agency attorney, Sanjay K. Sofat.

1. That on March 23, 2003, the Illinois Environmental Protection Agency (hereinafter referred to as "IEPA") received a letter of transmittal from the engineering and architectural firm of Bonestroo Devery & Associates.

Admit. Don Netemeyer.

2. That the letter of transmittal was signed by Robert J. Devery, P.E., and William G. Dinchak, P.E., DEE.

Admit. Don Netemeyer..

3. The transmittal letter evidenced delivery of the final NPDES permit application from the Village of Wauconda.

Deny in part. Don Netemeyer.

Objection: The request seeks a conclusion by stating that the letter evidenced delivery of the final NPDES permit application. The transmittal letter indicates submission of an NPDES permit application, not a final NPDES permit application as suggested by the Petitioners. At the time of this submission, the applicant was awaiting sample results and was planning to submit section B.6 of the application upon receiving these sample results.

4. That on April 3, 2003, the IEPA received the Final letter of transmittal from the Village Engineers containing Section B.6 on page 8 of 21 of the NPDES Permit Application.

Deny in part. Don Netemeyer.

Objection: The request seeks a conclusion by stating that the letter received by the IEPA was the Final letter of transmittal from the Village Engineer.

5. That on April 7, 2003, the Illinois Environmental Protection Agency (hereinafter referred to as the "IEPA") received the completed Table in Section B.6 from the Village of Wauconda relating to its NPDES Permit Application.

Deny in part. Don Netemeyer.

Objection: The request seeks a conclusion by stating that the IEPA received the completed Table in Section B.6 for the effluent testing data from the Village of Wauconda. The last column (titled "ML/MDL") concerning minimum detection limits was not completed.

6. That on April 14, 2003, the IEPA completed its anti-degradation Assessment.

Deny in part. Bob Mosher.

Objection: The request seeks a conclusion by stating that on April 14, 2003, the IEPA completed its anti-degradation Assessment. April 14, 2003, is the date of the antidegradation assessment memorandum. Further commentary on the Agency's antidegradation review was provided in the NPDES information hearing Responsiveness Summary document.

7. That the IEPA has actual knowledge that the Fiddle Creek Wetlands include Fiddle Lake.

Deny. Bob Mosher.

Objection: The request seeks a conclusion by stating that the IEPA has actual knowledge that the Fiddle Creek Wetlands include Fiddle Lake. The Agency is aware of a Fiddle Lake appearing on early plat maps, but modern topographic maps do not show a Fiddle Lake. The Agency believes the lake has filled and is now a part of the Fiddle Creek Wetlands.

8. That the IEPA anti-degradation assessment was based on a facility related stream survey for Wauconda Creek in 1993.

Deny. Bob Mosher.

Objection: The request seeks a conclusion by stating that the IEPA anti-degradation assessment was based on a facility related stream survey for Wauconda Creek in 1993. The 1993 facility related stream survey was noted in the antidegradation assessment memorandum dated April 13, 2004, however, conclusions in the memorandum concerning the antidegradation standard were not based on the past conditions of the Creek. But rather the future conditions of the stream should the sewage treatment

expansion project be allowed. Past and present characteristics of the receiving stream are part of the antidegradation assessment, however, they are not the basis of the assessment.

9. That on May 18, 2003, the IEPA forwarded to the Village of Wauconda its draft permit.

Admit. Don Netemeyer.

10. That the IEPA issued a Draft Modified NPDES Permit Knowing that the Permit Application was incorrect or false.

Deny. Don Netemeyer.

Objection: The request seeks a conclusion by stating that the IEPA issued a Draft NPDES permit knowing the permit application was incorrect or false. At the time of issuing the draft NPDES permit, the Agency did not have any knowledge that the permit application was incorrect or false.

11. That the IEPAa did not request the Village of Wauconda to correct, amend or re-file its NPDES permit application.

Deny. Don Netemeyer.

Objection: The request is incomplete as to that it fails to state why the IEPA should have asked the Village of Wauconda to amend it's NPDES application, about what information, and at what point of time during the permitting decision process.

12. (Listed as 10). That the IEPA anti-degradation assessment failed to note and/or assess the Tarkowski superfund site (hereinafter referred to as "Superfund 2").

Deny in part. Bob Mosher.

Objection: The request is incorrect as to that it implies that the Tarkowski Site is a superfund site. The Agency anti-degradation assessment did not consider the Tarkowski Site. This site is not a USEPA Superfund Site.

13. (Listed as 11). That the IEPA anti-degradation policy is mandated by 40 CFR 131.12.

Deny in part. Bob Mosher.

Objection: The request is incorrect as to that it implies that the IEPA anti-degradation policy is only what is provided in the federal regulations at 40 CFR 131.12. The Agency anti-degradation policy is simply the Board standard at 35 Ill. Adm. Code 302.105. The federal regulation at 40 CFR 131.12 simply requires that states must adopt an antidegradation standard.

14. (Listed as 12). That the IEPA has actual knowledge that the Fiddle Creek, Fiddle Marsh,

Fiddle Lake and Slocum Drainage District of Lake County channels (hereinafter referred to as the "Fiddle Creek Wetlands") has a number of subdivisions whose properties are directly connected to the Fiddle Creek Wetlands.

Admit. Bob Mosher.

15. (Listed as 13). That the IEPA has actual knowledge that the Fiddle Creek Wetlands has a Lake County Preserve directly connected to the Fiddle Creek Wetlands.

Admit. Bob Mosher.

16. (Listed as 14). That the IEPA has actual knowledge that the Fiddle Creek Wetlands are primary contact waters.

Deny in part. Bob Mosher.

Objection: The request is incorrect as to that it implies that the IEPA always knew that the Fiddle Creek Wetlands are primary contact waters. Since the issuance of NPDES permit for the Village of Wauconda in August 23, 2004, the Fiddle Creek Wetlands are considered protected waters for primary contact pursuant to 35 Ill. Adm. Code 302.209. The reissued permit no longer contains a year-round disinfection exemption.

17. (Listed as 15). That the IEPA has actual knowledge that on November 28, 1975, no sewer outfall from any Sewer Treatment Plant discharged into the Fiddle Creek Wetlands.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as no such information was considered during the permitting issuance process.

18. (Listed as 16). That in the 1980's the IEPA issued its first NPDES permit which allowed the Village of Wauconda to re-locate its Wauconda Wastewater Treatment Plant (hereinafter referred to as "WWTP") Outfall to discharge into the Fiddle Creek Wetlands.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as no such information was considered during the permitting issuance process.

19. (Listed as 17). That the IEPA has actual knowledge that the Fiddle Creek Wetlands have suffered degradation since the IEPA issued the Village of Wauconda an NPDES permit allowing discharges into the Fiddle Creek Wetlands.

Deny. Bob Mosher.

Objection: The request seeks a conclusion by stating that the IEPA has actual knowledge that the Fiddle Creek Wetlands have suffered degradation since the IEPA issued the Village of Wauconda an NPDES permit. Further the request goes to an issue of ultimate fact.

20. (Listed as 18). That on July 31, 2003, the IEPA has actual knowledge that the Wauconda Task Group has failed to comply with NPDES permit number 2001-EP-3444, in that its Boron concentrations always significantly exceeded limits.

Deny. Don Netemeyer.

Objection: The request is incorrect as to that it implies that the permit number 2001-EP-3444 is an NPDES permit. The above-mentioned permit is not an NPDES permit but a State operating permit for pretreatment and discharge to a municipal system. Further, the request is irrelevant to this permit appeal as no such information was considered during the permitting issuance process.

21. (Listed as 19). That on July 31, 2003, the IEPA has actual knowledge that the Village of Wauconda has failed to comply with its current NPDES permit Ill 0020109 in that the Village of Wauconda's WWTP discharges into a zero flow stream and the effluent probably exceeded the 1 mg/l limit.

Deny. Don Netemeyer.

Objection: The request is incomplete as to that it fails to state the name of the constituent in the effluent the could probably exceed the 1 mg/l limit. Therefore, the Agency is unable to respond to the request.

22. (Listed as 20). That on July 8, 2004, the IEPA had actual knowledge that the arsenic concentration was in excess of the effluent limit and may violate acute water quality standards.

Deny. Bob Mosher.

Objection: The request seeks a conclusion by stating that on July 8, 2004, the IEPA had actual knowledge that the arsenic concentration was in excess of the effluent limit. The Agency found an arsenic concentration of 0.52 mg/l in a grab sample of effluent collected on February 18, 2004. This concentration did not exceed an NPDES permit effluent limit as no such limit exists in the permit. Further, the sample value did not exceed the effluent limits standard contained in 35 Ill. Adm. Code 304.124, since those numeric values apply as daily average values and individual instantaneous values within a daily average range are expected to fluctuate within a range up to five times that specified average. However, as no sample was collected within the receiving stream, no violation of the water quality standard was actually demonstrated.

23. (Listed as 21). The IEPA has failed to bring enforcement action against the Wauconda Task Group for violations of its NPDES permit.

Deny. Don Netemeyer.

Objection: The request is incorrect as to that it implies that the Wauconda Task Group's permit is an NPDES permit. The above-mentioned permit is not an NPDES permit but a State operating permit for pretreatment and discharge to a municipal system. Also, the request is irrelevant to this permit appeal as it is outside the scope of the permitting decision process to make such decisions. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda, and not to the Wauconda Task Group's State permit.

24. (Listed as 22). The IEPA has failed to bring enforcement action against the Village of Wauconda for violations of its current NPDES permit.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as it is outside the scope of the permitting decision process to make such decisions. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda, and not whether an enforcement action was warranted in this case.

25. (Listed as 23). That the Village of Barrington has submitted an application to have the Fiddle Creek Wetlands as a 303(d) impaired waters.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as it is outside the scope of the permitting decision process to consider such requests. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda, and not regarding the Agency's decision to list or not list the Fiddle Creek Wetlands as impaired waters under Section 303(d) of the Clean Water Act.

26. (Listed as 24). That in June, 2004, the IEPA apparently denied the Fiddle Creek Wetlands application to be listed as a 303(d) impaired waters because of QAPP issues.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as it is outside the scope of the permitting decision process to make such decisions. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda, and not whether the Fiddle Creek Wetlands be listed as impaired waters under Section 303(d) of the Clean Water Act.

27. (Listed as 25). That there was a discussion among the IEPA staff and others that the criteria used to deny the 303(d) impaired waters classification for the Fiddle Creek Wetlands was not in accordance with prior 303(d) evaluations.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as it is outside the scope of the permitting decision process to make such decisions. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda, and not regarding the Agency's decision to list or not list the Fiddle Creek Wetlands as impaired waters under Section 303(d) of the Clean Water Act.

28. (Listed as 26). That the IEPA was advised of the alternative of running a pipe to the Fox River but the IEPA staff was directed not to consider this option.

Deny. Toby Frevert.

Objection: The request is incorrect as to that it implies that the IEPA staff was directed to not consider the option of running pipe to the Fox River. The Agency record contains a discussion on page 25 of the Responsiveness Summary regarding why discharge into the Fox River is not a feasible alternative.

29. (Listed as 27). That from September 9, 2003, until August 23, 2004, the IEPA held numerous secret and closed discussions and meetings with the Village of Wauconda and the Village of Lake Barrington and others.

Deny in part. Toby Frevert.

Objection: The request is incorrect as to that it implies that the IEPA held secret meetings with the Village of Wauconda, the Village of Lake Barrington and others.

30. (Listed as 28). The Resident Group was excluded from all IEPA discussions and meetings.

Deny. Toby Frevert.

Objection: The request is incorrect as to that it implies that the Resident Group was intentionally barred from attending the meetings.

31. (Listed as 29). The Slocum Lake Drainage District attended the December, 2003 closed meeting, but has been excluded from all other IEPA discussions and meetings.

Deny in part. Toby Frevert.

Objection: The request is incorrect as to that it implies that the Slocum District was intentionally barred from attending the meetings.

32. (Listed as 30). The IEPA failed to consider the history of prior violations and Court proceedings involving the Village of Wauconda and its current permit.

Deny.

Objection: The Agency did consider a prior adjudicated noncompliance with the Act during its permitting decision process.

33. (Listed as 31). The IEPA has a policy of making the Village of Wauconda "look good".

Deny. Toby Frevert.

Objection: The request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda.

34. (Listed as 32). The IEPA has actual knowledge that out-of-bank conditions in the Fiddle Creek Wetlands are anticipated.

Deny in part. Bob Mosher.

Objection: The request is improper in part as to that it seems to imply that the IEPA has actual knowledge that out of bank conditions in the Fiddle Creek Wetlands are because of the discharge from the Village of Wauconda's treatment facility. The out-of-bank conditions in the Fiddle Creek Wetlands are anticipated from watershed runoff events and not from the Village of Wauconda's treatment plant's effluent discharge.

35. (Listed as 33). That the IEPA has actual knowledge that there has been no analysis of the influence from the Fox River Backwater and applied a nominal flow at the Slocum Lake Drain confluence based on the data provided in the FIS.

Deny. Bob Mosher.

Objection: The request is incomplete and confusing and therefore, the Agency is unable to answer.

36. (Listed as 34). That the IEPA has actual knowledge that further detailed studies are required to assess the full effects of the watershed variables.

Deny. Bob Mosher.

Objection: The request is irrelevant to this permit appeal as it is outside the scope of the permitting decision process to make such decisions. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit to the Village of Wauconda, not whether detailed studies are required to assess the full effects of the watershed variables.

37. (Listed as 35). The IEPA has actual knowledge that on 09-10-04 the WWTP discharged Bromodichloromethane in excess of reporting limits.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as no such information was considered during the permitting decision process. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit that was issued on August 23, 2004, to the Village of Wauconda. The request seeks the Agency to admit to the facts that occurred after the permit has been issued.

38. (Listed as 36). The IEPA has actual knowledge that on 09-10-04 the WWTP discharged Chloroform in excess of reporting limits.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as no such information was considered during the permitting decision process. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit that was issued on August 23, 2004, to the Village of Wauconda. The request seeks the Agency to admit to the facts that occurred after the permit has been issued.

39. (Listed as 37). The IEPA has actual knowledge that on 09-10-04 that WWTP discharged Dichloromethane in excess of the reporting limits.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as no such information was considered during the permitting decision process. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit that was issued on August 23, 2004, to the Village of Wauconda. The request seeks the Agency to admit to the facts that occurred after the permit has been issued.

40. (Listed as 38). The IEPA has actual knowledge that on 09-10-04, the WWTP discharged Methyl-tert butyl ether (MTBE) in excess of the reporting limits.

Deny. Don Netemeyer.

Objection: The request is irrelevant to this permit appeal as no such information was considered during the permitting decision process. Further, the request is improper as to that the matter before the Board relates to issuance of an NPDES permit that was issued on August 23, 2004, to the Village of Wauconda. The request seeks the Agency to admit to the facts that occurred after the permit has been issued.

41. (Listed as 39). The IEPA has not conducted detailed independent analytical tests of the effluent discharged into the Fiddle Creek Wetlands.

Deny. Bob Mosher.

Objection: The request is incorrect as to that it implies that the IEPA has never conducted independent analytical tests of the Wauconda WWTP's effluent discharge. The Agency on numerous occasions collected and analyzed BOD, TSS, and ammonia from the Wauconda

WWTP's effluent.

42. (Listed as 40). The IEPA has not conducted detailed independent analytical tests of the sediment at the WWTP outfall and downstream.

Admit. Bob Mosher.

43. (Listed as 41). The IEPA is on actual knowledge that the Village of Wauconda uses deep wells for part of its municipal water supply but the IEPA has not conducted independent analytical tests of radium discharges into the Fiddle Creek Wetlands.

Admit. Bob Mosher.

44. (Listed as 42). The IEPA is on actual knowledge that the Wauconda Sand and Gravel Superfund discharges leachate into the WWTP.

Admit. Don Netemeyer.

45. (Listed as 43). The IEPA has failed to require WWTP to fully treat this leachate prior to discharge into the Fiddle Creek Wetlands.

Deny. Don Netemeyer.

Objection: The request seeks a conclusion by stating that the IEPA has failed to require WWTP fully treat this leachate prior to discharge into the Fiddle Creek Wetlands. Permit 2001-EP-3444 has a special condition prohibiting discharge to the sewer system if a bypassing at the Village of Wauconda's WWTP may occur due to the wet weather conditions. Further, the NPDES permit issued to the Village of Wauconda requires the WWTP to treat all influent prior to discharging into the receiving stream.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

DATED: January 6, 2005
Illinois Environmental Protection Agency
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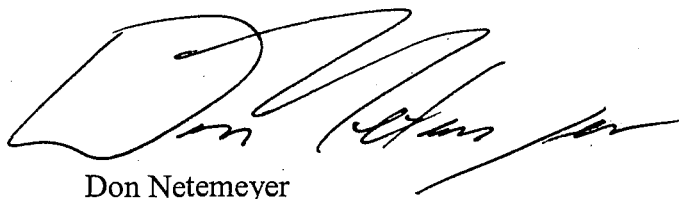
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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

SS

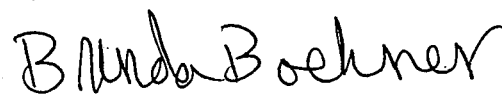
VERIFICATION

Don Netemeyer, being duly sworn, states that he is the permit engineer, Water Pollution Control Program, Illinois EPA; that he is duly authorized to provide the foregoing answers to request to admit on behalf of Illinois Environmental Protection Agency; and that he makes said answers based upon his personal knowledge, his review of documents that he reasonably believes to be accurate, and information provided to him by other section units that he reasonably believes to be accurate.



Don Netemeyer

Subscribed and sworn to before me, a notary public in and for said County and State, this 6th day of January, 2005.



Notary Public



My Commission Expires:

11-14-05

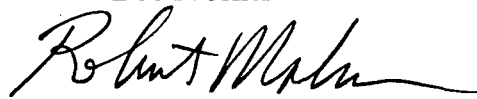
STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

SS

VERIFICATION

Bob Mosher, being duly sworn, states that he is the Manager of the Water Quality Standards Section within Water Pollution Control Program, Illinois EPA; that he is duly authorized to provide the foregoing answers to request to admit on behalf of Illinois Environmental Protection Agency; and that he makes said answers based upon his personal knowledge, his review of documents that he reasonably believes to be accurate, and information provided to him by other section units that he reasonably believes to be accurate.

Bob Mosher



Subscribed and sworn to before me, a notary public in and for said County and State, this 6th day of January, 2005.



Notary Public



My Commission Expires:

11-14-05

SERVICE LIST

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STATE OF ILLINOIS
COUNTY OF SANGAMON

)
)
)
)
)
SS

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **RESPONSE 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
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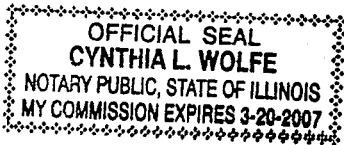
and mailing it from Springfield, Illinois on January 6, 2005, with sufficient postage affixed as indicated above.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME

this day of January 6, 2005.

Cynthia L. Wolfe
Notary Public



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