

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Petitioners,)

VS.)

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

Respondents.)

SLOCUM LAKE DRAINAGE DISTRICT)
OF LAKE COUNTY, ILLINOIS)

Petitioner)

VS.)

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

Respondents.)

PCB 05-55
(3RD Party NPDES Permit
Appeal)

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

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JAN 11 2005

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 and CHRISTINE DEVINEY,)

Petitioners)

VS.)

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

Respondents.)

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

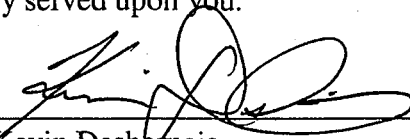
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 Pollution Control Board

NOTICE OF FILING

TO: See attached Certificate of Service

Please take notice that on January 11, 2005, I filed with the Illinois Pollution Control Board an original and nine copies of this **Notice of Filing and Response and Objection to Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend**, copies of which are attached hereto and hereby served upon you.

Dated: January 11, 2005



 Kevin Desharnais
 One of the Attorneys for the Village of Lake
 Barrington and Cuba Township

Percy L. Angelo
 Russell R. Eggert
 Kevin G. Desharnais
 Mayer, Brown, Rowe & Maw LLP
 190 South LaSalle Street
 Chicago, Illinois 60603
 312-782-0600

CERTIFICATE OF SERVICE

Kevin Desharnais, an attorney, hereby certifies that a copy of the foregoing **Notice of Filing and Response and Objection to Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend** was served on the persons listed below by First Class U. S. Mail, proper postage prepaid, on January 11, 2005.

Sanjay K. Sofat
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Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

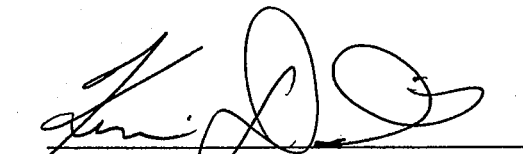
William D. Seith
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RESPONSE AND OBJECTION TO JOINT MOTION TO REALIGN AND/OR JOIN PARTIES AS THIRD PARTY RESPONDENTS AND LEAVE TO AMEND

The Village of Lake Barrington ("Lake Barrington") and Cuba Township ("Cuba Township"), by their attorneys Mayer, Brown, Rowe & Maw LLP, object and respond to the Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend ("Joint Motion") filed by Slocum Lake Drainage District of Lake County ("Drainage District") and the petitioners designating themselves as the Resident Group as follows:

1. The Drainage District and the Resident Group apparently seek to amend their petition for review of the NPDES permit issued to the Village of Wauconda ("Wauconda") on August 23, 2004, to add and realign the original petitioners in this matter, Lake Barrington and Cuba Township, as respondents rather than petitioners. This request must be rejected. There is no jurisdiction or authority for such an action in the Environmental

Protection Act ("Act") or the Board rules and no standing in the movants to make such request against fellow petitioners. If viewed as a permit appeal amendment, it is months beyond the time limits for NPDES permit appeals provided in the Act and the rules. It is based upon statements that are simply not correct, and it serves no apparent purpose other than a transparent attempt to harass or intimidate the original petitioners on this appeal by making them respondents. It should be denied.

2. The NPDES permit for an expansion of the Wauconda sewage treatment plant was issued August 23, 2004 after extensive public participation. As the discharge from that plant goes to Fiddle Creek which flows through Lake Barrington and Cuba Township, Lake Barrington and Cuba Township were significant participants in that public participation process, consulting with residents and environmental groups, retaining expert consultants, performing independent testing and submitting testimony and comments. On September 17, 2004, Lake Barrington and Cuba Township, along with certain citizens and the Sierra Club and Prairie Rivers Network, filed an appeal of certain substantive provisions of that permit. PCB 05-55. Ten days later, on September 27, 2004, the Drainage District and the Resident Group filed their own appeals of the permit. PCB 05-58 and 05-59. In addition to certain of the substantive issues raised by Lake Barrington and Cuba Township, the additional petitioners also challenged the Illinois Environmental Protection Agency procedures used in conducting the public participation process.

3. In light of the importance of the substantive issues involved, following the filing of their appeal Lake Barrington and Cuba Township continued to discuss their substantive concerns relative to the permit with Wauconda with the aim of arriving at an Intergovernmental Agreement ("IGA") to settle those issues. While the law and the courts

encourage private discussions to settle litigation, in fact the discussions in this instance sought out public input. Contrary to the movants' characterization of these discussions as "secret negotiations" (Joint Motion ¶ 4), they were widely publicized. They were a regular public agenda item on the monthly Lake Barrington Village Board agenda; they were the subject of a locally televised PowerPoint presentation; and environmental groups and residents were regularly briefed and their views solicited along with those of other governmental entities. As a governmental party with the authority to enter into intergovernmental agreements, movant Drainage District was itself invited to participate in these discussions, received a working draft and did attend two sessions on September 15, 2004 and October 7, 2004 until it declined to attend further. It is simply not correct to describe these discussions as "secret negotiations." See the attached affidavit of Lake Barrington Village Trustee Kevin Richardson describing the public input process.¹ The discussions led to an IGA pursuant to 5 ILCS 220/1 et seq. between the governmental parties. Significantly, despite Movants' reference to "secret negotiations," there is no evidence or suggestion that improper procedures were employed in arriving at the IGA.

4. The IGA, which is attached to the Joint Motion, calls for Wauconda to meet more stringent standards than imposed in the NPDES permit under appeal (essentially barring any increase in pollutants over current pre-expansion levels) and to accept a revised

¹ Numerous efforts were also made by Lake Barrington officials to solicit views and input from Jay Glenn, a self-described leader of the Resident Group. It became apparent, however, that Mr. Glenn's objectives were focused on halting the Wauconda discharge altogether ("plug the pipe"). As Mr. Glenn recently wrote in one of his widely distributed emails attached to the affidavit of Trustee Kevin Richardson, "There should be a halt to development until traffic, water, sewer, schools, open space are resolved." (December 29, 2004). A previous email from Mr. Glenn, also attached to Trustee Richardson's affidavit, stated, "Any person attempting to negotiate on behalf of the Residents should understand the Resident bottom line: * * * 1. PLUG THE PIPE- The current WWTP/VOW pipe must be removed, there will be no connection between the WWTP/VOW and Fiddle Creek, Fiddle Marsh, Fiddle Lake, Slocum Lake or the adjacent wetlands;" (Sept 2, 2004).

NPDES permit incorporating those more stringent standards. Wauconda agrees to implement a pretreatment program and to design its facilities so as to accommodate nitrogen removal. In addition, the parties agree to work together to seek state funding for Wauconda so that it may implement nitrogen removal and undertake measures to restore the wetlands complex associated with Fiddle Creek. Lake Barrington will also receive copies of the Wauconda discharge results and a broad suite of sampling will occur at four groundwater monitoring wells to be installed by Wauconda. All sampling data will be made available to the public.

5. The IGA commits Wauconda to provide advanced treatment of its effluent – on information and belief, among the most advanced treatment in the State – and to collect effluent and groundwater data which will be invaluable in identifying the impacts of the Wauconda sewage treatment plant, an element which was very important to the environmental groups participating in the discussions. It further represents the success of a cooperative approach to community-based environmental disagreements, in full compliance with constitutional provisions supporting intergovernmental cooperation.

6. The movants' attack on the IGA and the parties which have entered into it is confusing and its purpose unclear. In the view of the original petitioners, the IGA resolves all of the well-founded substantive environmental objections to the Wauconda permit raised in the public participation process. As far as the IGA participating parties have been able to discern, the only substantive issue advanced by movants which is not specifically addressed in the IGA is the movants' desire to "plug the pipe" – that is, to bar any discharge by Wauconda to Fiddle Creek as an apparent way of limiting growth and development in Wauconda. After receiving expert advice and input from both environmental groups and the

Lake County Forest Preserve District, Lake Barrington and Cuba Township were persuaded that extending the Wauconda discharge to the Fox River through the construction of an underground pipe would be disruptive to the Fiddle Creek wetlands complex and serve merely to increase the negative impact to the Fox River where the discharge would empty. The apparent growth and development-related objectives of the movants are neither a relevant criterion nor appropriately considered in an NPDES permit appeal. Indeed, Lake Barrington and Cuba Township have not sought to attack the Agency's procedural process for permit review; rather, they have instead focused on achievement of resolution to the substantive issues of concern. Significantly, movants have not identified any substantive objections to the IGA which would explain their request for realignment of the original petitioners. Their extraordinary request to the Board deserves at least some explanation of their concern. In other words, even if realignment were available, why should it be provided? As a matter of the substance of the permit, what legitimate substantive goal do they seek which is not being addressed by Lake Barrington and Cuba Township? Their motion totally fails to address this central question.

7. Nothing in the IGA makes any party other than Wauconda responsible for treating the Wauconda wastewater. The original petitioners will not contribute wastewater to the Wauconda discharge or operate the Wauconda plant. The fact that the constitutional provision cited by movants authorizing IGAs is potentially broad does not mean that the parties to this agreement have used the breadth of that authority. Nothing in the IGA represents the formation of a governmental partnership "to move Wauconda wastewater/affluent [sic] through the corporate limits of Village of Lake Barrington and Cuba Township to the Fox River" as claimed by movants. (Joint Motion, ¶ 11). If that were

the case, every downstream government would be in partnership to “move” the wastewater of upstream dischargers – Peoria, for example, would “move” the wastewater from the Metropolitan Water Reclamation District. That clearly is not the law.

8. The Act and Board rules provide no basis for the movants’ request. They provide no authority for realignment. They give no authority to movants to claim against or seek relief from the original petitioners in this case by making them respondents. No precedent for such an extraordinary result is cited. The purpose and consequence of such an action are unclear and certainly unexplained by movants. Are original petitioners now to be considered the permittees? The joint motion appears to be nothing more than harassment of the original petitioners for failure to adopt the “plug the pipe” agenda demanded by movants.

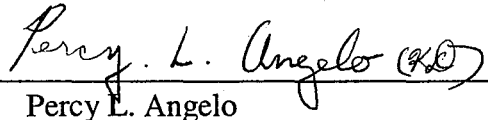
9. Further, the deadline for permit appeal filing in this matter was September 27, 2004. Movants’ request at this late date to add the original petitioners as respondents is untimely if considered as a permit appeal. If it is considered as an attempt to bring an action before the Board against Lake Barrington and Cuba Township, there is no basis for such action as neither is a permittee of the NPDES permit under review. Either way, there is no jurisdiction in the Board to grant the relief requested and the attempt to intimidate good faith petitioners such as Lake Barrington and Cuba Township who seek relief from the Board as authorized by statute by realigning them as respondents in Board proceedings should be strongly rejected as a matter of policy and so that future third party appellants under the statute should not be discouraged from responsible permit appeals.

Because there is no jurisdiction to grant the relief requested, because it is not contemplated by the Act or the Board rules and because it serves no apparent purpose other

than the harassment of the original petitioners in this appeal who have sought a responsible substantive resolution of the issues involved, the movants' joint motion should be denied.

January 11, 2005

Percy L. Angelo
Russell R. Eggert
Kevin G. Desharnais
Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, Illinois 60603
312-782-0600



Percy L. Angelo
One of the attorneys for the Village of
Lake Barrington and Cuba Township

State of Illinois)
) SS.
County of DuPage)

AFFIDAVIT

Kevin C. Richardson, being duly sworn on oath, deposes and says:

1) I am a Trustee of the Village of Lake Barrington and have been actively involved in the Village's efforts relative to the Wauconda NPDES permit, its appeal of that permit, and its participation in an Intergovernmental Agreement ("IGA") with the Village of Wauconda and Cuba Township.

2) Upon the August 23, 2004 issuance of the amended Wauconda NPDES permit, Lake Barrington believed that the permit failed to address a number of important substantive issues which continued to be of concern to the Village. In addition to filing an appeal of that permit with the Pollution Control Board, Lake Barrington continued discussions with the Village of Wauconda to try to resolve and settle those issues. Those discussions took place over several months and were successful in leading to additional limitations on and monitoring of the Wauconda discharge beyond those contained in the NPDES permit under appeal. Wauconda, Lake Barrington and Cuba Township embodied those agreements in the IGA which was executed December 17, 2004 and is attached to the Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend ("Joint Motion").

3) While settlement negotiations are generally not subject to disclosure, Lake Barrington sought to maximize public input into the IGA. An environmental engineering consulting firm was retained to provide expert technical advice. Regular progress reports were made at the publicly open portions of the monthly meetings of the Lake Barrington Village Board and an extensive PowerPoint presentation was made to the Village Board and broadcast to

the community over local cable access TV. While only governmental bodies or corporations may be parties to an intergovernmental agreement, citizens, environmental groups and other governmental entities (not a party to the IGA) were regularly consulted on the IGA and their views introduced into settlement deliberations.

4) The allegation in the Joint Motion that the IGA was arrived at in "secret negotiations" is simply not correct. Movant Slocum Drainage District was provided an early draft of the IGA and invited to participate in discussions. It attended two meetings (September 15, 2004 and October 7, 2004) and then declined to participate further. Additionally, I had numerous communications with Jay Glenn, who represented himself to be a leader of a resident group and is currently representing Movant Resident Group. Mr. Glenn indicated that his goal was to end the Wauconda discharge into Fiddle Creek entirely. His shorthand description of this position was to "plug the pipe." He made it clear that the negotiation of more stringent permit limitations with Wauconda was an unacceptable alternative to "plugging the pipe". Under these circumstances, further communication with Mr. Glenn became unavailing. Copies of two emails widely circulated by Mr. Glenn are attached and express the same positions he communicated to me in response to my attempts to elicit his constructive involvement in the Lake Barrington efforts. They also state his view that area development should be halted until his issues were resolved. (See emails dated September 2, 2004 and December 29, 2004).

5) The IGA achieved with Wauconda and attached to the Joint Motion meets all of the substantive environmental objectives of Lake Barrington in the public proceedings leading up to the NPDES permit and in Lake Barrington's appeal of that permit. Mr. Glenn never identified

any environmental objectives he desired in the permit, beyond those sought by Lake Barrington, other than his statements regarding the total elimination of the Wauconda discharge into Fiddle Creek.

Further affiant sayeth not.

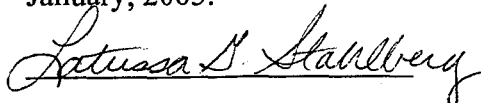


Kevin C. Richardson

Subscribed and sworn to

before me this 10th day of

January, 2005.



Reply Reply to all Forward Close

Help

From: GlennAtty@aol.com [GlennAtty@aol.com]

Sent: Thu 9/2/2004 3:14 PM

To: jemliceli@sbcglobal.net; alphillips@one2onetech.com; mgdavey@sbcglobal.net; lodell@asap.com; roger_wojcicki@ameritech.net; vern@theherbalgarden.com; redhairedgirl777@yahoo.com; dkbii@email.msn.com; cdeviney@crownssearch.com; rob@neff.net; DJarchow@ameritech.net; raine@raineray.com; amannm1@hotmail.com; jpselp@peoplepc.com; cskrukud@earthlink.net; nsdobner@msn.com; KevinR57@aol.com; Neddaglenn@cs.com; mxblack@mac.com; JAP19472002@YAHOO.COM; Wpial@aol.com; alphillips@mail.one2onetech.com; jjackson@ensr.com; Schleir@hotmail.com; MHARKBHS@worldnet.att.net; CLARSEN847@aol.com; Kiparbs@aol.com; j.agnoletti@bacog.org; SZingle@aol.com; Baumling@aol.com; elizabethhubbard@netzero.com; TimMary747@aol.com; cheryldoros@comcast.net; catdoglover1@juno.com; frvg@netzero.net; carle.smith@gsa.gov; Lmarvet@yahoo.com; DEBBIEATMK@aol.com; delia_ramirez@ltgov.state.il.us; Joe1940@earthlink.net; Nice40sgal@aol.com; ms_adams@sbcglobal.net; federico48@EarthLink.net; AEttinger@ELPC.org; ww-secy@illinois.sierraclub.org; jack.darin@sierraclub.org; nunda@mc.net; g.fmeade@interaccess; jeffrey_mengler@fws.gov; gabythyme3@earthlink.net; clorensen@softhome.net; EGL2B@juno.com; BGBattle@msn.com; juliatudor@yahoo.com; Ilmbland@cs.com; bherman25@yahoo.com; jap19472202@yahoo.com; splendorlex@earthlink.net; SJNanner@compuserve.com; edmundharas@sbcglobal.net; pc61048@yahoo.com; m.gariepy@comcast.net; dier@write.me.com; litigate@interaccess.com; feigen@sbcglobal.net

Cc:

Subject: UPDATE

Attachments:

[View As Web Page](#)

Good Afternoon All

I am on a timeline and I am preparing to file an Appeal of the WWWTP/VOW NPDES Permit.

I have a number of Residents who have asked to be named.

I have been told that there are negotiations between Village of Wauconda and Village of Lake Barrington. I am not now and I have never been a part of those negotiations. No one has shared a Draft of any Intergovernmental Agreement with me.

I will file on September 20th, 18 days from now.

Any person attempting to negotiate on behalf of the Residents should understand the Resident bottom line:

1. PLUG THE PIPE - The current WWWTP/VOW pipe must be removed, there will be no connection between the WWWTP/VOW and Fiddle Creek, Fiddle Marsh, Fiddle Lake, Slocum Lake or the adjacent wetlands;
2. Any Agreement must satisfy 100% of the water quality goals of the Sierra Club, Friends of Fox and Prairie River Network experts. I want our efforts to result in a benchmark for river discharges, respecting the river, and those who depend on it.
3. No increase in discharge will be permitted, so no temporary increased discharges pending construction of new sewage transmission infrastructure will not be agreed to.

4. Wauconda must begin to finance repair of the environmental damage it has caused to downstream Residents, both the wetlands, drainage ditch and Slocum Lake.

I don't believe I can state the Resident case any clearer.

Jay Glenn

----- Message from GlennAtty@aol.com on Wed, 29 Dec 2004 12:20:55 EST -----

To: BHolleman2@aol.com, To: federico48@earthlink.net, SZingle@aol.com, abmaine@comcast.net, evan.craig@illinois.sierraclub.org, raine@raineray.com, Sterling@stans.com, mikesands@prairiecrossing.com, betsydietael@pcbb.net, dlothspeich@longgrove.net, aparker527@ameritech.net, saneiderlander@comcast.net, sandycole@comcast.net, TimMary747@aol.com, berlysouth@earthlink.net, tonydean@mindspring.com, PGeisel@aol.com, cskrukrud@earthlink.net, afbassi@attbi.com, GrdnDzn@aol.com, cheryldoros@comcast.net, sriess@virtuallyhired.com, c_niec@yahoo.com, jfelice@megsinet.net, GlennAtty@aol.com, CStark@insulco.biz, boglady@owc.net, Baumling@aol.com, sbarg@libertyprairie.org, mxblack@mac.com, g.vogt@sbcglobal.net, mcdef@owc.net, stevecarl@comcast.net, dherrington@sbcglobal.net, catdoglover1@juno.com, RPOWERS1@aol.com, vanganson@juno.com, therobertshouse@yahoo.com, TCSpartners@prodigy.net;

Subj Check out <http://www.brookings.edu/es/urban/pa/chapter2.pdf>
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<http://www.brookings.edu/es/urban/pa/chapter2.pdf>

Good Morning All

I am not sure how many Lake County Residents went to the listening sessions and asked our County Board to raise sales taxes. My bet is that the Lake County PR machine interpereted every Resident comment as a silent request to raise taxes. We will see about that.

I have followed this discussion and note common developments and activities.

One year ago next week, I forwarded to the entire County Board and others the attached study dealing with Pennsylvania, note the link. I was home last Christmas (2003) and everyone was discussing the Brookings Study. The sturctural problems outlined in Pennsylvania are the same FUNDAMENTAL ISSUES facing Illinois and Lake County. As usual, our elected have chosen to ignore both the possible identification of the structural problems and possible solutions. Illinois is mentioned as the worst State in the United States, by the way, in a Small Box way.

Now one year latter The Brookings Institute is reviewing progress in Pennsylvania, and a number of Lake County "elected" and others are still dancing around the real problem. Until we discuss the Big Box and Small Box issue, nothing will change. Special interest groups [builders/highways companys/tollway authority/chamber of commerce] will push their agenda. On the other side "others" will dance with the traffic issue.

Maryland has stopped construction of new superhighways, they don't work.

I will not vote for any increase in any taxes [sales, property tax]

I am taking orders for a new collectors set of Bobblehead Dolls of each of our Lake County Board Members.

I write this from Wauconda Township, Lake County, Illinois. This Township may be the most polluted area in the United States. Many hundreds of my upstream neighbors can no longer use their wells because of a toxic leachate plume from Wauconda Sand & Gravel Superfund Site has contiminated their groundwater. My downstream neighbors are currently litigating to protect our groundwater, surface waters and and environment from further degredation from the Village of Wauconda. Individuals and organizations on this E-List do not agree. Perhaps they know better, we will know soon.

There should be a halt to development until traffic, water, sewer, schools, open space are resolved.

Jay Glenn