

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 02 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  
(3<sup>rd</sup> 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  
(3<sup>rd</sup> 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  
(3<sup>rd</sup> 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 **AMENDED RECORD 2** 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 31, 2005  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 02 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  
(3<sup>rd</sup> 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  
(3<sup>rd</sup> 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  
(3<sup>rd</sup> Party NPDES Permit  
Appeal)  
(Consolidated)

**AMENDED RECORD 2**

Pursuant to the Hearing Officer's suggestion, the Agency has properly indexed and paginated the following documents and requests the Hearing Officer to make these documents as part of the Agency Record:

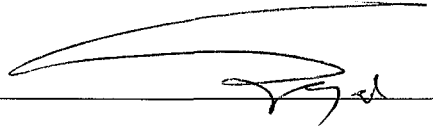
- 286. E-mail dated July 31, 2003, 3:32 p.m., from Chris Kallis to Toby Frevert and others.  
(p. 2263)
- 287. E-mail dated June 13, 2003, 9:50 a.m., from Rick Cobb to Renee Cipriano and others.  
(p. 2264)
- 288. E-mail dated June 25, 2004, 11:28 a.m., from Marcia Willhite to Bruce Yurdin and others.  
E-mail dated June 23, 2004, 12:11 p.m., from Gregg Good.  
E-mail dated June 23, 2004, 10:42 a.m., from Marcia Willhite.  
(pp. 2265-2266)
- 289. E-mail dated June 23, 2004, 2:44 p.m., from Lalit Sinha to Toby Frevert and others.  
(p. 2267)
- 290. E-mail dated September 23, 2003, 4:17 p.m., from Blaine Kinsley to Connie Tonsor.  
(p. 2268)
- 291. E-mail dated October 17, 2003, 9:41 a.m., from Chris Kallis to Renee Cipriano and others.  
(pp. 2269-2270)

292. Consent order entered December 13, 2000, State of Illinois v. Village of Wauconda,  
(99 CH 720). (pp. 2271-2285)

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_



Sanjay K. Sofat  
Assistant Counsel  
Division of Legal Counsel

DATED: January 31, 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

**SERVICE LIST**

Percy L. Angelo  
Russell R. Eggert  
Kevin G. Desharnais  
Mayer, Brown, Rowe & Maw, LLP  
190 S. LaSalle St.  
Chicago, IL 60603

Bonnie L. Macfarlane  
Bonnie Macfarlane, P.C.  
106 W. State Rd.  
P.O. Box 268  
Island Lake, IL 60042

Albert Ettinger  
Environmental Law and Policy Center  
35 E. Wacker Dr.  
Suite 1300  
Chicago, IL 60601

Jay J. Glenn  
Attorney at Law  
2275 Half Day Road  
Suite 350  
Bannockburn, IL 60015

William D. Seith  
Total Environmental Solutions, P.C.  
631 E. Butterfield Rd.  
Suite 315  
Lombard, IL 60148

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

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached **AMENDED RECORD 2** 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

**(FIRST CLASS)**

Percy L. Angelo  
Russell R. Eggert  
Kevin G. Desharnais  
Mayer, Brown, Rowe & Maw, LLP  
190 S. LaSalle St.  
Chicago, IL 60603

**(FIRST CLASS)**

Albert Ettinger  
Environmental Law & Policy Center  
35 E. Wacker Dr.  
Suite 1300  
Chicago, IL 60601

**(FIRST CLASS)**

William D. Seith  
Total Environmental Solutions, P.C.  
631 E. Butterfield Rd.  
Suite 315  
Lombard, IL 60148

**(FIRST CLASS)**

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

**(FIRST CLASS)**

Bonnie L. Macfarlane  
Bonnie Macfarlane, P.C.  
106 W. State Rd.  
P.O. Box 268  
Island Lake, IL 60042

**(FIRST CLASS)**

Jay J. Glenn  
Attorney at Law  
2275 Half Day Road  
Suite 350  
Bannockburn, IL 60015

**(FIRST CLASS)**

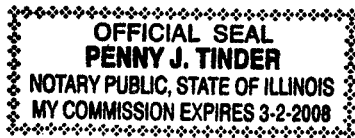
and mailing it from Springfield, Illinois on January 31, 2005, with sufficient postage affixed as indicated above.

Nancy J. D. Lampert

**SUBSCRIBED AND SWORN TO BEFORE ME**

this day of January 31, 2005.

Penny Tinder  
Notary Public



**THIS FILING PRINTED ON RECYCLED PAPER**



**From:** Chris Kallis  
**To:** Frevert, Toby; Gunnarson, Charles; Hammel, Bill; Keller, Al; Kluge, Tim; Mosher, Bob; Willhite, Marcia  
**Date:** 7/31/03 3:32PM  
**Subject:** Wauconda meeting

Here are my notes on the Wauconda meeting at the AGO. As a follow-up I recommend the following :

1. DLC should evaluate the allegation of the NPDES Permit application omitting required information.
2. Permits Section should review the data submitted by the Wauconda Task Group. I noted that there were some traces of Poly Aromatic Hydrocarbons but not those that mentioned of being of major concern by the citizens. One thing I did note in my cursory review was that Iron was extremely high as expected and so was the Boron. The one thing that may be of concern is that the Boron concentrations almost always significantly exceed Wauconda's rather stringent ordinance limit. What little I know about Boron is that it usually passes through the plant and Wauconda discharges to a zero flow stream. If the effluent and downstream exceeds 1 mg/l, it's a violation. That's why I had out sampling tech sample for metals and Boron recently.

**From:** Rick Cobb  
**To:** Cipriano, Renee; Frevert, Toby; Willhite, Marcia  
**Date:** 6/13/2003 9:50:27 AM  
**Subject:** Re: Wauconda

Toby, please see the attached. This is the citizens group that I had some extensive dialog with in regard questions that they had in regard to groundwater, drinking water and waste water.

Rick

---

Richard P. Cobb, P.G.  
Deputy Manager  
Division of Public Water Supplies  
Bureau of Water  
Illinois EPA  
Phone & Voice Mail: (217) 785-4787  
Fax: (217) 557-3182  
E-mail: rick.cobb@epa.state.il.us

>>> Renee Cipriano 06/13/03 09:42AM >>>

I received a very concerned call from a good friend of mine regarding n NPDES permit that is pending for the Village of Wauconda. The permit number is IL0020109 and is for an increase in discharge, I understand, from 4 million to 8 million into a tributary to Lake Lakeland and Slocum Lake (and ultimately the Fox Lake) called Fiddle Creek. Apparently, we had recently (I think within the last couple of years) allowed Wauconda and exemption for effluent disinfection for this same discharge.

There are many homes (approximately 100) in this area that are on private wells. My friend purchased a home in the Robert Bartlett Lakeland Estates and all of the homes in that subdivision are on private well water and are located along Fiddle Creek. Some of the neighbors have had their wells tested and the test have revealed high levels of fecal. Additionally, I am told, people and children play in these waters and fish in these waters. As you can imagine the neighbors are beside themselves. They have contacted Senator Peterson and Rep Beaubien. They are concerned that the permit will issue without their chance to share their concerns. They are also concerned with the no effluent disinfection decision that was made. At minimum, they want a hearing on the permit during the evening hours (after 6:00 pm.). Could someone please brief me on this matter and also let me know if we were aware of the private well situation? Monday is fine although I do not want the permit to issue before we have the chance to discuss. thanks

**CC:** Callaway, Roger; Cox, Karen; Elzinga, Sherrie; Gunnarson, Charles; Keller, Al; Killian, Bernie; Mosher, Bob; Pickens, Jessica

**From:** Marcia Willhite  
**To:** Bruce.Yurdin@epa.state.il.us, Gregg.Good@epa.state.il.us, Toby.Frevert@epa.state.il.us  
**Date:** Fri, Jun 25, 2004 11:28 AM  
**Subject:** Re: Fiddle Creek

I agree that setting up criteria and informing folks ahead of time is most desirable. Agency rules would probably be best.

Marcia T. Willhite  
Chief  
Bureau of Water  
217/782-1654  
marcia.willhite@epa.state.il.us  
>>> Bruce Yurdin 06/23/04 2:40 PM >>>

You're lurching toward rulemaking, which in this case may not be a bad idea. Simple Agency rules could be done relatively quickly for the 2006 IR. The trick would be to keep them simple and away from data quality issues (recall the problems with data quality laws in Iowa, Arizona, etc., most of which dealt with data age). I also suggest you revise the too rigid time frame, as in "Data packages will be accepted through May 1, 2005." Make the rule applicable to whatever year we want, as in "Data packages will be accepted through May 1 of the year prior to Integrated Report submittal."

If we stick with May 1 as the submittal date, rules will need to be drafted, vetted by a workgroup, published and approved by JCAR by late March--early April of 2005.  
bjy

Bruce Yurdin  
Manager, Watershed Management Section  
Bureau of Water  
Illinois EPA  
1021 North Grand Avenue East  
Springfield, IL 62794  
phone 217/782-3362  
fax 217/785-1225

>>> Gregg Good 6/23/2004 12:11:30 PM >>>

For our next report, the 2006 Integrated 305(b)/303(d) report, I have drafted a policy regarding the who's, what's, where's, when's, and why's of submitting "outside data" for use in that assessment/listing process (see attached draft). This draft was developed to meet data solicitation guidance from USEPA. Basically, ISAPI wants to insure that states let outside entities know that we are required and will review (not necessarily use) "readily available data."

Personally, I am opposed to any routinely used "mid-term" listing process. I believe we need to finalize the attached, send it out to those we work with on a daily basis, send out a news release regarding it's availability, and put it on our website so that all of Illinois knows our requirements for using outside data in our ultimately regulatory 303(d) program. It should be clear, simple, and if the data requirements aren't met, so be it. This is my biased monitoring/science (we must have a cutoff date) perspective!

However, like Toby suggests, I do believe that we have the obligation of reviewing and considering outside data provided to us almost anytime, especially during a formal 303(d) comment period on a hot-button issue like Lake Barrington/Wauconda/Fiddle Creek. We shouldn't automatically discount the data only on the basis that it wasn't QAPPed. In this case, we should say "thanks for the information; we need to investigate your claim further," and in Fiddle Creek's case, "we'll do some follow-up monitoring of our own." On the other hand, we shouldn't and CAN'T just take outside data at face value. We need to know the objectives of monitoring programs, how data was gathered, how it was analyzed, etc., before we can use it. This takes time. If our objective is to find D.O. violations to prove a CWA violation, we can find them if we simply monitor at i.e., 6:30 a.m. That objective is totally different than if our objective is to

collect appropriate data, for passage through IEPA assessment/listing methodologies, to get something on or off the 303(d) list for any of a number of the uses that we assess.

Ultimately, if data is submitted to us "way after the fact," but we ultimately find it credible after investigation, we can and should use it in the NEXT listing cycle.

>>> Marcia Willhite 6/23/2004 10:42:57 AM >>>

Can we modify a 303(d) list at any time? List something, for example? That may be our approach here. Do our own work to further evaluate and assess, then initiate a "mid-term" listing process, if appropriate.

Marcia T. Willhite  
Chief  
Bureau of Water  
217/782-1654  
marcia.willhite@epa.state.il.us

>>> Toby Frevert 6/23/2004 10:30:53 AM >>>

My take on this matter is that we have information from outside parties and an assertion that Fiddle Creek exceeds applicable WQS and may be impaired to some degree. Irrespective of the veracity of the QAPP associated with the info we cannot merely disregard it. The logical response is to view the situation as indeterminate and warranting additional monitoring on our part. We have already started with a visit to the creek yesterday and will be doing additional data collection in the future. We will probably also require Wauconda to conduct stream monitoring as well through a permit condition.

>>> Bruce Yurdin 6/22/2004 10:02:24 AM >>>

Based on a short talk with Al and another with Lalit, I assume a decision was made on 6/17/04 that the data submitted by the Village of Lake Barrington in response to the draft 2004 303(d) List would not be accepted and that Fiddle Creek would remain unassessed. If this is the case, Fiddle Creek would not be added to the 2004 List.

The unacceptability of the data seems to have focused on the lack of a QAPP, and not on the data proper. If this is the case, we have precedent to the contrary made during the public participation process for the 2002 List. How we arrived at the Fiddle Creek decision in the face of a previous, opposing determination will need to be clarified for the responsiveness summary. On the other hand if the lack of a QAPP was not the basis for our decision, we will need to have Wally or staff review the data and document why impairment has not been identified. In either case we will need a written record of the decision for the responsiveness summary and subsequent discussions with Region 5 on this matter.

bjy

Bruce Yurdin  
Manager, Watershed Management Section  
Bureau of Water  
Illinois EPA  
1021 North Grand Avenue East  
Springfield, IL 62794  
phone 217/782-3362  
fax 217/785-1225

CC: Al.Keller@epa.state.il.us,Lalit.Sinha@epa.state.il.us,Mike.Henebry@epa.state.il.us

**From:** Lalit Sinha  
**To:** Frevert, Toby; Good, Gregg; Willhite, Marcia; Yurdin, Bruce  
**Date:** Wed, Jun 23, 2004 2:44 PM  
**Subject:** Re: Fiddle Creek

What is the purpose of holding a public hearing if the Agency is not going to be truly responsive to comments and data and information provided by public during this process?

>>> Gregg Good 6/23/2004 12:11:30 PM >>>

For our next report, the 2006 Integrated 305(b)/303(d) report, I have drafted a policy regarding the who's, what's, where's, when's, and why's of submitting "outside data" for use in that assessment/listing process (see attached draft). This draft was developed to meet data solicitation guidance from USEPA. Basically, ISAPI wants to insure that states let outside entities know that we are required and will review (not necessarily use) "readily available data."

Personally, I am opposed to any routinely used "mid-term" listing process. I believe we need to finalize the attached, send it out to those we work with on a daily basis, send out a news release regarding it's availability, and put it on our website so that all of Illinois knows our requirements for using outside data in our ultimately regulatory 303(d) program. It should be clear, simple, and if the data requirements aren't met, so be it. This is my biased monitoring/science (we must have a cutoff date) perspective!

However, like Toby suggests, I do believe that we have the obligation of reviewing and considering outside data provided to us almost anytime, especially during a formal 303(d) comment period on a hot-button issue like Lake Barrington/Wauconda/Fiddle Creek. We shouldn't automatically discount the data only on the basis that it wasn't QAPPed. In this case, we should say "thanks for the information; we need to investigate your claim further," and in Fiddle Creek's case, "we'll do some follow-up monitoring of our own." On the other hand, we shouldn't and CAN'T just take outside data at face value. We need to know the objectives of monitoring programs, how data was gathered, how it was analyzed, etc., before we can use it. This takes time. If our objective is to find D.O. violations to prove a CWA violation, we can find them if we simply monitor at i.e., 6:30 a.m. That objective is totally different than if our objective is to collect appropriate data, for passage through IEPA assessment/listing methodologies, to get something on or off the 303(d) list for any of a number of the uses that we assess.

Ultimately, if data is submitted to us "way after the fact," but we ultimately find it credible after investigation, we can and should use it in the NEXT listing cycle.

>>> Marcia Willhite 6/23/2004 10:42:57 AM >>>

Can we modify a 303(d) list at any time? List something, for example? That may be our approach here. Do our own work to further evaluate and assess, then initiate a "mid-term" listing process, if appropriate.

Marcia T. Willhite  
Chief  
Bureau of Water  
217/782-1654  
[marcia.willhite@epa.state.il.us](mailto:marcia.willhite@epa.state.il.us)

>>> Toby Frevert 6/23/2004 10:30:53 AM >>>

My take on this matter is that we have information from outside parties and an assertion that Fiddle Creek exceeds applicable WQS and may be impaired to some degree. Irrespective of the veracity of the QAPP associated with the info we cannot merely disregard it. The logical response is to view the situation as indeterminate and warranting additional monitoring on our part. We have already started with a visit to the creek yesterday and will be doing additional data collection in the future. We will probably also require Wauconda to conduct stream monitoring as well through a permit condition.

>>> Bruce Yurdin 6/22/2004 10:02:24 AM >>>

Based on a short talk with AI and another with Lalit, I assume a decision was made on 6/17/04 that the

No. 290

**From:** Blaine Kinsley  
**To:** Tonsor, Connie  
**Date:** Tue, Sep 23, 2003 4:17 PM  
**Subject:** Re: Wauconda

Upon further review of 40 CFR 122.62, I agree with your determination of the need for major modification to remove the disinfection exemption.

>>> Connie Tonsor 09/23/03 03:23PM >>>

Attached is a draft of the "**immediate**" modification options. As indicated at the meeting, I **do not** believe that we can eliminate the chlorine exemption without going through notice, etc. This would be a change in a substantive condition and thus would be a major modification. This would not be sensible timewise since it is proposed for elimination with the permit modification currently in post hearing comment.

However, we could with a little slight of hand and the cooperation of the permittee modify to increase monitoring to reflect the chlorination and as for fecal samples pending the issuance of the modified permit.

All correction and criticism accepted.

**From:** Chris Kallis  
**To:** Cipriano, Renee; Frevert, Toby; Keller, Al; Willhite, Marcia  
**Date:** 10/17/03 9:41AM  
**Subject:** Re: Wauconda

It just so happens that I talked with Mr. Devry two days ago on another matter. He did discuss the problems he had with the content of my memo. One was using the Lake County Health Department sampling data which showed high fecal coliform in the Bangs Lake Drain. He complained that LCHD did not take an upstream sample at the Bangs Lake overflow and that there some rain the night before. I found that complaint quite curious since Wauconda sewers entirely surround Bangs Lake. Nonetheless, I informed that Wauconda was not cited for fecal Coliform violations since standards are based on geometric mean. The sampling results were included in support of the LCHD stream site assessment (which we routinely have them do for us by contract) as a follow-up to this incident and was used in support of the evidence I contributed.

He also had problems with my comments on the lack of industrial monitoring. I reminded him that similar incidents happened before and the Village did not have a clue on how to track it down before their was never any field confirmation on the industrial survey which they conducted by mail. It is a weak system when an outsider who has never seen the survey points them in the right direction. He countered that this could have happened if they were on the pretreatment program. I countered that it would be highly unlikely that a company would dump a slug load if they were aware of an ordinance which the likely culprit didn't. They would be even less likely if they would be willing top enforce which we know they are not. He disputed my statement that the Village does not have a handle on when industries move in, which was a concern expressed by the POTW staff. He said the building department knows when a industry hooks up. I asked do they inform the POTW. He could not answer. I asked if the building would know if an electroplater moved in the rental industrial park. He could not answer.

If anyone has a problem with the content of my findings let me know. In the meantime I got a phone message and E mail from Howard Chin of the IAGO. He wants a copy of the Village Ordinance.

>>> Al Keller 10/16/03 05:12PM >>>

I talked with Bob Devery, village consultant, today about the letter I sent to the village and him concerning the disinfection exemption withdrawal letter we requested from the village. Devery's main question was what was our definition of primary contact. He thought we were changing our definition to fit Wauconda's situation. I said first of all we are not changing any rules to fit Wauconda's situation. I said the letter expressly said potential for primary contact and that was due to a change in the situation with housing developments near the stream. I stated there was more of a potential for kids to play in or near the stream. I acknowledged that it is not directly adjacent to the houses but there were actual paths leading to the stream area. He wanted to discuss boating, skiing and swimming in this 6 inch deep creek but I stated wading was a subset of swimming activities and there was a potential for contact with kids wading or playing near streams. I advised we knew there was not going to be any boating or swimming but there can be contact thru wading. He finally somewhat agreed with me.

He also inquired what other issues may be included with the disinfection exemption withdrawal. He asked if nutrient removal or other special designations would be included. I said I thought we were pretty clear that we were only looking at the one issue. The withdrawal would only include requiring disinfection and including a fecal coliform limit in the existing permit. That would be all it would include. All other issues would be addressed in the responsive summary for the stp expansion modification. He again asked if it would slow down the other request and I said no.

He again advised that the village would have to decide on the issue and there meeting was Monday. (The village attorney advised me that the meeting was next Tuesday) Devery asked how soon would we want any letter. I said we wanted it ASAP and actually wish we already had the letter. He said he understood the urgency.

I also talked to Rudy Magna, attorney for the village, and discussed 4 items. They were:

1. disinfection exemption withdrawal letter

2. joint press release

3. comments on his draft letter to Toby

4. changes to Agency memo and protocol.

Concerning the first 2 items, I first told him I had expressed to Bob Devery that the Agency wishes to receive the letter asap after the meeting and that we had hoped to have it sooner. I further expressed to him that there were no hidden agendas and no other issues included with this. It only requires full time disinfection and incorporation of a fecal coliform number in the permit. I said the Agency was still interested in a press release. He understood the issue and will discuss at the village board meeting.

Concerning item 3, I advised that we actually had no comments on their letter. Magna discussed the whole issue about rules for the committee, hidden agendas, the trust issue, timing of the project team, etc. I said why don't you propose some rules for the committee and also advise us what you want the committee to discuss. I said the draft letter articulated more problems with the project team and what you didn't want to discuss. I said maybe you want to show a more positive side at what you want to have the team discuss and offer some rules. He said he would consider that and will finalize the letter.

Concerning item 4, he asked how he could get us to change any correspondence specifically Chris' memo on the foaming incident. He said the village feels there were some inaccuracies in the memo. I said he needs to express them to Chris and if they want to document anything, they should do it by letter. He inquired about how they got the letter from Bonnie T-C. I said that Bonnie sent in a FOIA request and received the memo in that fashion. He understood that ok and inquired why didn't proper authorities receive copies of reports on their facilities. I advised him we are going to review our present policy on that issue and he was ok with that response.

I said thanks and we will be talking to him and the village officials.

CC: Kluge, Tim; Netemeyer, Don; Patel, Jay



IEPA EXHIBIT

No. 292

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

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

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 ("WWWTP") located at 302 Slocum Lake Road, Wauconda, Lake County, Illinois. The legal description of the WWWTP is the Southeast Quarter of Section 26 Township 44N, Range 09E, Lake County, Illinois.

The WWWTP 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, 20<sup>th</sup> 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.

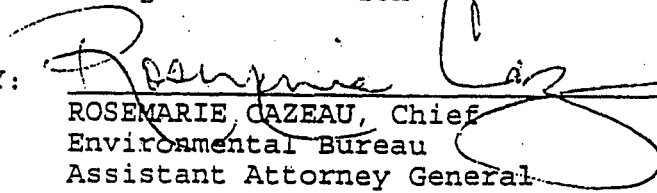
WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to the Court that it may be approved and entered.

PEOPLE OF THE STATE OF ILLINOIS,

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

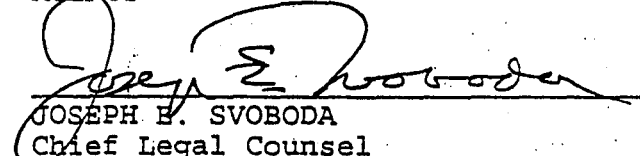
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

Date: 12/4/00

BY:   
ROSEMARIE GAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

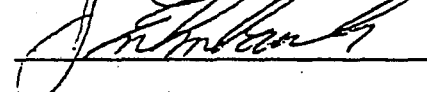
ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

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

H:\Common\Environmental\Carmel\WaucondaConsent.wpd