

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

ORIGINAL

RECEIVED
CLERK'S OFFICE

FEB 28 2005

STATE OF ILLINOIS
Pollution Control Board

Petitioners)

v.)

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY and
VILLAGE OF WAUCONDA,

Respondents.)

PCB 05-55

(Permit Appeal -NPDES)

SLOCUM LAKE DRAINAGE
DISTRICT OF LAKE COUNTY,
ILLINOIS.

Petitioner)

v.)

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY and
VILLAGE OF WAUCONDA.

Respondents.)

PCB 05-58

(Permit Appeal-NPDES)

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, CHRISTINE DEVINEY)

Petitioners)

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

Respondents.)

PCB 05-59
(Permit Appeal-NPDES)

NOTICE OF FILING

TO: See attached Certificate of Service

Please take notice that on February 28, 2005, I filed with the Illinois Pollution Control Board an original and nine copies of this Notice of Filing and attached BRIEF IN LIEU OF HEARING, which are hereby served upon you.

Dated: February 28, 2005



Bonnie L. Macfarlane

BONNIE MACFARLANE, P.C.
106 W. State Road, P.O. Box 268
Island Lake, IL 60042
847-487-0700

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CLERK'S OFFICE

FEB 28 2005

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL
CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing BRIEF IN PLACE OF HEARING was mailed, by federal express, on February 28, 2005 to each of the following person:

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Bonnie L. Macfarlane

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**SLOCUM DRAINAGE DISTRICT OF LAKE COUNTY'S BRIEF IN LIEU OF
HEARING**

THIS COMES BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

("Board"), by Slocum Lake Drainage District of Lake County's ("District") Third Party NPDES Permit Appeal from the Illinois Environmental Protection Agency's ("IEPA") issuance of a modification to Permit No. IL0020109, which Permit was originally issued on November 6, 2000, and was made effective December 1, 2000. Thereafter, the IEPA approved the requested modifications to that Permit on December 30, 2003 and August 23, 2004. The Permit has an expiration date of November 30, 2005¹. The last NPDES modification request and issuance is the subject of this review by the Board.

¹IEPA Exhibit No. 285, Record p. 002210 thru 002250

I. DISTRICT JURISDICTION FOR REVIEW BY THIS BOARD:

The District has established their ability to have the NPDES Permit modification reviewed by the Illinois Pollution Control Board because at the public hearing held on September 9, 2003 (as well as comments submitted in opposition to the NPDES Permit during the public comment period), many individuals, representatives and residents commented, testified, and submitted exhibits, prior to the District's then representative, Ed McGlade. Most importantly, at the outset of the hearing, the Hearing Officer remarked, as follows:

“...And lastly, I would like to avoid unnecessary repetition, if possible. So, if anyone before you has already presented testimony that is contained in your written or oral comments, please skip over those issues when you testify. And remember, all written comments whether or not you say them out loud tonight will become part of the official hearing record and will be considered.”²

In addition, the Hearing Officer defined the public hearing as strictly an informational hearing; advised that the hearing was not “a contested hearing..”; no sworn testimony was taken; prohibited speakers from arguing, cross-examining, or engaging in a prolonged dialogue with the panel; and the Hearing Officer also limited individuals to five minutes and representatives of groups to ten minutes.³

The District maintains that any issues raised during and after Mr. McGlade's testimony are issues that should be allowed by this Review before this Board⁴.

²IEPA Hearing Transcript p. 7 thru 9.

³IEPA Hearing Transcript p. 7

⁴IEPA Hearing Transcript p. 110 thru 114.

Moreover, for the purposes of this Review, testimony by any witness at the public hearing held on September 9, 2003, is repetitive of those that would have been espoused by the District if the District's representative would have been given the opportunity.⁵

Through comments and testimony, the District has raised legal and scientific issues regarding deficiencies in the NPDES permit modification and the IEPA's NON-consideration of those relevant legal and scientific issues. Therefore, the District has demonstrated their jurisdictional ability to have this Board determine the issues presented by the District.

II. JURISDICTION:

Slocum Lake Drainage District of Lake County, Illinois is an Illinois Drainage District established pursuant to the Illinois Drainage Code.⁶ The District is a special purpose, non-profit entity that was originally established by the Circuit Court of Lake County in 1915, for which its purpose was to provide drainage of agricultural land. At present, the District is responsible for maintenance of approximately 17,900 linear feet of ditch line. Even though the IEPA stated that "Lake County Forest Preserve District (LCFPD) owns 2,600 lineal feet of Fiddle Creek which constitutes the northern boarder (sic) of the 517-acre Fox River Preserve,..." this property is subject to the District's rights of way for drainage tiles, ditches, feeders and laterals.⁷

In 1973, the Illinois legislature imposed a statutory duty upon the Commissioners of any drainage district to use all practicable means and measures to protect such environmental values such as trees, fish and wildlife habitats, and to avoid erosion and pollution of the land, water or

⁵IEPA Record at p. 000437

⁶70 ILCS 605/1-1 et seq.

⁷Exhibit "A" - Legal description of Lake County Forest Preserve's acquired property.

air.⁸

A water of the State of Illinois as defined at Section 3.56 of the Illinois Environmental Protection Act (“Act”)⁹

“WATERS” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

Section 3.55 of the Act,¹⁰ defines “water pollution” as follows:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

Section 3.06 of the Act, defines a “contaminant” is “any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.”¹¹

Section 12(a) of the Act, provides, in pertinent part as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.¹²

⁸70 ILCS 605/4-15.1

⁹415 ILCS 5/3.56 (2000)

¹⁰415 ILCS 5/3.55 (2000)

¹¹415 ILCS 5/3.06 (2000)

¹²415 ILCS 5/12(a) (2000)

Section 304.120(c) of this Board's Water Pollution Regulations¹³ provides as follows:

Except as provided in Section 306.103, all effluents containing deoxygenating wastes shall meet the following standards:

(c) No effluent whose dilution ratio is less than five to one shall exceed 10 mg/l of BOD or 12 mg/l of suspended solids,

Section 12(f) of the Act¹⁴, in pertinent part, provides as follows:

No person shall:

f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any Order adopted by the Board with respect to the NPDES program.

Section 309.102(a) of the Board Water Pollution Regulations¹⁵, titled, NPDES Permit

Required, provides as follows:

a. Except as in compliance with the provisions of the Act, Board regulations, and the Clean Water Act, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

Section 304.141(a) of the Board Water Pollution Regulation¹⁶, provides as follows:

No person to whom an NPDES permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.

In addition, Section 309.146(a)(1-4) of the Board Water Pollution Regulations, titled

¹³35 Ill. Adm. Code 304.120(c), titled Deoxygenating Wastes

¹⁴415 ILCS 5/12(f) (2000)

¹⁵35 Ill. Adm. Code 309.102(a), titled NPDES Permit Required

¹⁶35 Ill. Adm. Code 304.141(a), titled NPDES Effluent Standards

Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements,¹⁷ provides as follows:

- a. The Agency shall require every holder of an NPDES Permit, as a condition of the NPDES Permit issued to the holder, to:
 1. Establish, maintain and retain records;
 2. Make reports;
 3. Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
 4. Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as may be prescribed).

For purposes of this document, we have adopted the acronyms as stated in the IEPA Record at page 002249 and 001209, and those definitions set forth at IEPA Record p. 001729 and 001730.

The above constitutes jurisdictional (not all inclusive) bases for this Board to regulate the holder of a NPDES permit, and the administrative agency established and charged with the duty of enforcing the Act.

III. BACKGROUND OF WASTEWATER STREAM:

The Wauconda Wastewater Treatment Plant (“WWTP”) originally discharged its effluent into the Bangs Lake Drain Creek, which flows into Slocum Lake, exits through the Slocum Lake Drain into the District’s Ditch which ultimately joins the Fox River.

In 1977, this Board granted a variance to the Village of Wauconda from the phosphorus

¹⁷35. Ill.Adm.Code 309.146(a)(1-4)

standard in order for Wauconda's WWTP to have time to resolve the phosphorus problem.¹⁸

It was Ms. Moreno of the IEPA that stated:

"It was the Pollution Control Board back in the '80's who ordered the plant to change its point of discharge. And that was on the basis of a series of what we call variances, which there was a phosphorous limit in effect. And they and a lot of other people weren't being able to meet the phosphorous limit. So the Board said, Okay, under the Act we can give you a variance of a maximum of five years to give you time to figure out what you are going to do. As it turned out, what they ended up having to do was to move the discharge. So it was the Pollution Control Board that was in, I mean that was-- It basically is the equivalent of a court order. And I would just like to make that clear because I think there may have been some, you know, just some curiosity as to how it was that that came about. We didn't do it, the Board did it basically."¹⁹

Then in 1983, the Board terminated Wauconda's variance, whereupon the WWTP discharge was moved, by the Board's order, away from Slocum Lake to its present location in Fiddle Creek, which flows into the District's ditch and thereafter ultimately flows into the Fox River through the District's ditch.²⁰

At the Public Hearing held on September 9, 2003, the IEPA by Mrs. Moreno stated, "...that Fiddle Creek has previously been designated in Wauconda's NPDES Permit and other IEPA documents as '...an unnamed tributary to the Fox River' and that the Fox River is an **IMPAIRED WATERWAY.**" (Emphasis added).²¹ The Fox River is listed on the 303(d) list with Fiddle Creek coming into the tail portion of DT-22.²² The stream is rated as a "C" stream

¹⁸IEPA Record at p. 002213

¹⁹IEPA Hearing Transcript at p. 15-16

²⁰IEPA Record at p. 002213

²¹IEPA Record at p. 000305 thru 000310, 002213

²²IEPA Record at p. 001979

on the BSC.²³

The discharge point has been the same since 1983 into Fiddle Creek through the District's ditch to the Fox River.²⁴

Because of the plans for expansion of the WWTP in Wauconda, a modification of Permit No. IL0020109 was again requested and approved by the IEPA on August 23, 2004.²⁵ The contents of that Permit modification is the subject of this Review by this Board.

IV. THE IEPA'S ANTI-DEGRADATION ANALYSIS FAILED TO COMPLY WITH THE ANTI-DEGRADATION RULES²⁶

The IEPA Anti-degradation Assessment dated February 20, 2003, and the subsequent IEPA Anti-degradation Assessment dated April 14, 2003 is insufficient and does not comply with the relevant Rules.²⁷ Both of the IEPA's Anti-degradation Assessments were prepared by Jeff Hutton of the IEPA.²⁸

First, the IEPA anti-degradation assessment dated April 14, 2003 only refers to the water quality data from a September 15, 1993 facility stream survey conducted by the IEPA, which found "fair environmental conditions in Wauconda Creek with minor impact from the Wauconda

²³IEPA Record at p. 001979

²⁴IEPA Record at p. 002271 thru 002285 and p. 002213; Hearing Transcript p. 15-16

²⁵IEPA Record at p. 002211

²⁶35 Ill. Adm. Code 302.105(A)

²⁷IEPA Record at p. 001599 thru 001602 and 000995 thru 000997

²⁸IEPA Record at p. 001599 thru 001602 and 000995 thru 000997

sewage treatment plant discharge.”²⁹ The survey identified elevated levels of conductivity, nitrate plus nitrite, phosphorus, sodium, potassium, boron, strontium and oil downstream of the Wauconda outfall. Despite these findings by the IEPA, none of these contaminants were evaluated by the IEPA anti-degradation assessment in 2003.³⁰ Even the IEPA’s Anti-degradation Assessment maintains that”The stream [Wauconda Creek] will nonetheless experience an increase, over time, in loading due to the increase in the effluent discharge.”³¹ The relevant data basis date for anti-degradation analysis, in this instance, should be November 28, 1975,³² which was demonstrated by the Baxter & Woodman, Inc. report dated March 23, 1983.

Furthermore, the IEPA and the Village of Wauconda are required to follow, as well, the federal anti-degradation regulations.

“Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wild-life and recreation in and on the water, that quality shall be maintained and protected unless the State finds...that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the **State shall assure water quality adequate to protect existing uses fully**. Further, the **State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for nonpoint source control.**”³³ (Emphasis added).

²⁹IEPA Record at p. 000995

³⁰IEPA Record at p. 000995 thru001001

³¹IEPA Record at p. 000995

³²IEPA Record at p.

³³40 CFR 131.12, Anti-degradation Policy

Section 105(A) of the Illinois Administrative Code contain the Anti-degradation Rules required to be followed by the IEPA:

The purpose of this Section is to protect existing uses of all waters of the State of Illinois, maintain the quality of waters with quality that is better than water quality standards, and prevent unnecessary deterioration of waters of the State.

(a) Existing Uses

1. An action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity;
2. An action that would result in a loss of a resident or indigenous species whose presence is necessary to sustain commercial or recreational activities; or
3. An action that would preclude continued use of a surface water body or water body segment for a public water supply or for recreational or commercial fishing, swimming, paddling or boating.

In addition, Section 302.105(f) requires the IEPA to comply with certain procedures in conducting an anti-degradation assessment, as follows:

(f) In conducting an anti-degradation assessment pursuant to this Section, the Agency must comply with the following procedures:

1. A permit application for any proposed increase in pollutant loading that necessitates the issuance of amodified NPDES permitmust include, to the extent necessary for the Agency to determine that the permit application meets the requirements of this Section, the following information:
 - A. Identification and characterization of the water body affected by the proposed load increase or proposed activity and the existing water body's uses. Characterization must address physical, biological and chemical conditions of the water body.
 - B. Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters.
 - C. The purpose and anticipated benefits of the proposed activity. Such benefits may include:

- i. Providing a centralized wastewater collection and treatment system for a previously unsewered community;
- ii. Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;
- iii. Addition of a new product line or production increase or modification at an industrial facility; or
- iv. An increase or the retention of current employment levels at a facility.

D. Assessments of alternatives to proposed increases in pollutant loading or activities subject to Agency certification pursuant to Section 401 of the CWA that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives may include:

- i. Additional treatment levels, including no discharge alternatives;
- ii. Discharge of waste to alternate locations, including publicly-owned treatment works and streams with greater assimilative capacity; or
- iii. Manufacturing practices that incorporate pollution prevention techniques

2. The Agency must complete an Anti-degradation assessment in accordance with the provisions of this Section on a case-by-case basis.

A. The Agency must consider the criteria stated in Section 302.105(c)(2), which includes the requirement that "...All existing uses will be fully protected." 35 Ill. Adm. Code 302.105(c)(2)(B)(ii).³⁴

A. WATER QUALITY

The water quality from the outfall throughout the entire Fiddle Creek Ditch to the Fox River was not evaluated on a current basis by the IEPA, and the many engineers who have reviewed the conclusions of the IEPA disagree with those findings and conclusions without reservation. For instance, the Lake County Forest Preserve District retained the services of V3 consultants and Baetis Environmental Services, Inc. regarding the Wauconda Wastewater Treatment Plant Expansion.³⁵ These engineers based their findings on reports and data outlined

³⁴35 Ill. Adm. Code 302.105(f)

³⁵IEPA Record at p. 000314 thru 000345

beginning on Page 000335 of the IEPA Record. Upon field data obtained as well, these engineers published their professional opinion in a report dated September 5, 2003.³⁶

The findings of the Lake County Forest Preserve's report, after assessing the potential impacts of the proposed expansion and the modification to the existing permit, state that the "...effluent is causing downstream oxygen deficits, and that the proposed DO limits for the effluent will not likely be met."³⁷ These Forest Preserve engineers further state that

"The proposed effluent dissolved oxygen (DO) limit of 6 mg/L is not currently being met at the outfall or downstream...Early morning DO was measured as low as 3.3 mg/L in Fiddle Creek. We attribute these violations of water quality standards to the Village's wasteloads. The IEPA's Anti-degradation Assessment did not properly characterize the affected water body, and ...we ...request that the IEPA review these data, and information on subsequent sections of this report and to reconsider the Anti-degradation Assessment. Additional bio-chemical oxygen demand (BOD) wasteloads will degrade DO resources in the creek beyond existing conditions and the Village will not be in compliance with Special Condition 5 of the Modified NPDES Permit."³⁸

In addition, the Forest Preserve engineers went on to elaborate on the Biological Oxygen Demand (BOD), stating that,

"The Fiddle Creek channel at Roberts Road has a maintained lawn-type riparian zone and lacks shade or canopy. Because it is exposed to full sunlight, photosynthetic processes supersaturate the water with oxygen. At mid-day on August 14, 2003, a sunny day, we measured DO to be 11.86 mg/L, or 144% of saturation. On August 22, 2003, at 9:24 AM, DO at this same location was measured to be 5.06 mg/L, or only 60% saturation. We made DO measurements again at 5:20 AM on August 28, 2003 and found 3.34 mg/L (37% saturation). These large swings in DO concentration, particularly the nadirs (or low points), stress the aquatic ecosystem. We attribute the DO swings to high nutrient wasteloads in the Wauconda effluent. The nutrients feed algae and macrophytes, which respire and consume oxygen at night, and produce oxygen during daytime. There are parallel diel swings in dissolved carbon dioxide and pH.

³⁶IEPA Record at p. 000314 thru 000345

³⁷IEPA Record at p.000333

³⁸IEPA Record at p. 000321

The draft Modified NPDES Permit application projects BOD and nutrient wasteloads to increase with plant expansion. Given the water quality in the system under the existing wasteloads, **we disagree with the IEPA that the higher wasteloads will not degrade Fiddle Creek.** Preliminary analysis of wasteload assimilation in Fiddle Creek confirms this.”(Emphasis Added)³⁹

“In our report, we document existing violations of DO standards in Fiddle Creek and the likelihood of future violations as well.”⁴⁰

“...all potential environmental effects of the project have not been evaluated. In particular, the effects on the wetland plant community within the fen and within the riparian areas along Fiddle Creek are unknown. The potential impacts of this increased discharge on groundwater have not been investigated. We are concerned about the integrity of the vegetation community, particular within the fen. **The Village of Wauconda should prepare an ecological risk assessment to evaluate the effects of increased flows, groundwater changes, and higher nutrient wasteloads on the wetland communities....before a modified NPDES permit is issued by IEPA.**”(Emphasis added)⁴¹

The IEPA’s anti-degradation assessment is flawed when it concludes that the dissolved oxygen standards will not be violated by this discharge. As the monitoring done by Lake Barrington/Cuba Township has demonstrated, dissolved oxygen violations routinely occur due to the Wauconda discharge.⁴²

The final comment by the Forest Preserve engineers was that they requested the IEPA to review the data and reconsider its conclusions in the Anti-degradation Assessment.⁴³ The District concurs.

Yet, another environmental engineer retained by the Village of Lake Barrington and Cuba

³⁹IEPA Record at p. 000333

⁴⁰IEPA Record at p. 000335

⁴¹IEPA Record at p. 000335

⁴²IEPA Record at p. 000571

⁴³IEPA Record at p. 000335

Township, James E. Huff, advised that

“The February 20, 2003 IEPA memorandum regarding anti-degradation analysis has serious deficiencies and is flawed in its conclusions; and ...private water quality sampling of Fiddle Creek identified it as an impaired waterway because of elevated levels of nutrients and pathogens, and depressed levels of dissolved oxygen....”⁴⁴

Finding the same results as the Forest Preserve engineers, Huff & Huff, engineers retained by Lake Barrington and Cuba Township, state the results of their investigation of Fiddle Creek, wherein they

“...found dissolved oxygen (D.O.) Levels below 5.0 mg/L from the Wauconda outfall and along the entire Fiddle Creek. Near the outfall, total phosphorus averaged 3.9 mg/L and nitrates were 18.0 mg/L in the Creek. The Agency in 1993, found elevated nitrate plus nitrite, phosphorus, strontium, and oil downstream of the Wauconda outfall, consistent with the 2003 results....in addition, the IDNR collected fish from Fiddle Creek at Roberts Road in September 1997. The Starhead topminnow was collected at this sampling location by the IDNR. This fish species will be listed as a threatened species this summer....The presence of a threatened species increases the importance of identifying this stream as “impaired.”⁴⁵

The Huff & Huff letter concluded by stating that with the current levels of D.O., phosphorus, and nitrates, these properties alone were sufficient to list Fiddle Creek as “impaired” and should be on the Agency’s 303(d) list.⁴⁶

It should be noted that a Recording Form for the Citizen Monitoring Biotic Index taken on

⁴⁴IEPA Record at p. 000460

⁴⁵IEPA Record at p. 002106

⁴⁶IEPA Record at p. 002106 to 002107

September 15, 1993 for Fiddle Creek at the Site I.D. as C1 reflected an Index Score of 1.67 when the Health of the Stream is shown as “Poor” when the score is between 1.0 and 2.0.⁴⁷

The IEPA’s anti-degradation assessment utilized water quality samples taken in 1993 - over ten (10) years old. The statement in that assessment that “...ammonia and dissolved oxygen standards would not be exceeded...” was made on ten year-old information. When the IEPA, in their 2003 anti-degradation assessment discusses the phosphorus and total nitrogen issues, the analysis was deferred because the state standards were to be adopted in the future. This IEPA conduct does not comply with the requirements of Section 302.105.

Coincidentally, the environmental engineer for the Illinois Attorney General’s office articulated the same concern regarding the ten-year-old data when in a letter dated October 30, 2003, stated

“...Wauconda’s Anti-degradation Assessment indicated that the receiving stream has a 7Q10 flow of 0 cfs and is classified as a ‘General Use’ water. However, this evaluation was based on a 1993 stream survey. We do not believe that it is advisable or appropriate to rely on data generated ten years ago. **The surrounding area has experienced a significant growth in residential development since 1993 (that is the reason for the proposed plant expansion). The Anti-Degradation Assessment needs to evaluate future conditions, and Wauconda and the IEPA) should be required to prepare a new stream survey in order to satisfy the requirements of 35 Ill. Adm. Code 302.105.**⁴⁸ (Emphasis added).

⁴⁷IEPA Record at p. 001000

⁴⁸IEPA Record at p. 1031 thru 1034.

Clearly, the phosphorus level concern was the precise reason that this Board changed the location of the wastewater from the Wauconda plant to the Fiddle Creek. Without recent supporting data, the 2003 IEPA anti-degradation assessments conclude that the increased discharge “..will result in improved effluent quality.” Certainly, this Board should scrutinize such an insufficient analysis which clearly fails to meet the rule requirements. Therefore, this Board should require the IEPA to conduct additional evaluations of recent data gathered in order to comply with the anti-degradation Rules.

B. A PRE-TREATMENT PROGRAM FOR WAUCONDA WWTP

Section 301.350 provides for the definition of “Pretreatment Works” as follows:

“Pretreatment Works” means a treatment works designed and intended for the treatment of wastewater from an indirect discharge or industrial user as defined in 40 CFR 403, before introduction into a sewer system tributary to a publicly owned or publicly regulated treatment works.⁴⁹

The Office of the Attorney General in a letter dated October 30, 2003, stated that “...although Wauconda currently operates under a disinfection exemption, it has indicated that it will install an ultraviolet disinfection system and disinfect wastewater effluent upon startup of the new plant.”⁵⁰

That same letter by the Office of the Attorney General to the Hearing Officer of the IEPA stated that “...On September 19, 2000, Wauconda adopted an ordinance establishing a pretreatment Program. It has completed a survey and compiled a list of the non-residential users in the Village. However, it appears that Wauconda has not implemented and enforced the

⁴⁹IEPA Record at p. 001010

⁵⁰IEPA Record at p. 001033

Program. The proposed modifications to the NPDES permit should include provisions for Wauconda to provide monthly reports to the Agency, demonstrating its compliance with its Pretreatment Program. Recent events at the treatment plant, including a spill from the plant digester, have demonstrated an urgent need to implement an approved Pre treatment Program consistent with 35 Ill.Adm.Code Part 310.”⁵¹

In a memorandum dated September 3, 2003, from IEPA Chris Kallis to Lisa Moreno, Mr. Kallis states, “...regarding the Superfund site (Wauconda Sand and Gravel)...this issue will and already has expanded into different issues. One is that the expired permit required that Wauconda initiate a pretreatment program. This is not on the new permit because USEPA has stated in correspondence that Wauconda should not be required to administer one despite having at least two categorical industries....The reports show that Wauconda Task Group constantly violates the village ordinance for Boron and total dissolved solids. However as long as they are not on the pretreatment program, the Agency has no legal authority to force Wauconda to enforce its ordinance (self-imposed pretreatment program by Wauconda)....the annual report does confirm the presence of some organic compounds and poly aromatic hydrocarbons. Do we know if this affecting the plat or causing pass through? No, because they are not on the pretreatment program. Thus they are not required to sample and analyze for these compounds in their influent, effluent and sludge.”⁵²

However, with respect to a recent and last minute research investigation, your Petitioner has discovered that the Illinois Attorney General’s office filed a Complaint against the Village of Wauconda on August 17, 2004, relating to a violation of the Board’s Regulations, i.e.,

⁵¹IEPA Record at p. 001033

⁵²IEPA Record at p. 001766

1. 415 ILCS 5/12(a)(2002);
2. 415 ILCS 5/12(d)(2002)
3. 35 Ill.Adm. Code 302.203
4. 35 Ill.Am. Code 304.104 and 304.106⁵³
5. 415 ILCS 5/12(f)(2002) and NPDES Permit No. IL0020109.

PLEASE NOTE that this filing occurred only days prior to the approval by the IEPA of the modified permit for the Village of Wauconda. The complaint involved a violation of the permit which occurred on September 24, 2003. The Consent Order, entered on December 10, 2004, mandates that the Village of Wauconda must implement and enforce the pretreatment program in accordance with the Village ordinance 2000-0-31, adopted by the Village on September 19, 2000. The same ordinance that was not being implemented or enforced by the Village previously. **NOW**, as of December 10, 2004, the Village of Wauconda is court ordered to legally implement its Pretreatment Program. Any permits issued by the Village of Wauconda to industrial users shall, at a minimum, include the elements listed in 40 CFR 403.8(f)(1)(iii). Furthermore, the Village of Wauconda is required to file an annual report describing the year's program activities. Such a report must conform to the Illinois EPA's POTW Pretreatment Report Package. The Village of Wauconda is court ordered to maintain all pretreatment data and records for a minimum of three (3) years. However, what happens after the "minimum of three (3) years?" Furthermore, the Village of Wauconda is ordered to monitor its influent, effluent and sludge on an annual basis for 24 different parameters. In addition, within six (6) months of the entry date (12/10/04) of the Consent Order, the Village of Wauconda is ordered to conduct an analysis of 110 organic priority pollutants identified in 40 CFR 122 Appendix D. Table II, as amended. This

⁵³Exhibit "B" - Consent Order entered 12/10/2004 - Lake Cty. Case No. 04CH1206

monitoring shall be done annually. However, is the monitoring of these indices on an annual basis enough in order to protect the receiving down stream waters as well as the overall watershed?

Certainly, once again please note, the IEPA had knowledge and knew of the filing of this complaint prior to the August 23rd permit approval announcement.

C. THE RECEIVING WATER.

The September 5, 2003, Lake County Forest Preserve District study was conducted by engineers retained by the Lake County Forest Preserve District⁵⁴ with respect to the Wauconda Wastewater Treatment Plant Expansion. The findings of that report were as follows:⁵⁵

- “1. Based on our findings regarding water quality within Fiddle Creek, we believe that the Village of Wauconda should improve their wastewater treatment facility in order to comply with the water quality standards already required by the existing NPDES permit. This warrants action regardless of the Modified NPDES Permit being issued by IEPA.
2. We understand that the Village of Wauconda has recently withdrawn its request for a renewed waiver of effluent disinfection. We request that the IEPA consider removing this waiver from the existing NPDES Permit, in the event that the Modified NPDES Permit is not issued.
3. The Modified NPDES Permit projects BOD and nutrient wasteloads to increase with plant expansion. Given the poor water quality in the suystem under the existing wasteloads, we disagree with the IEPA that the higher wasteloads will not

⁵⁴IEPA Record at p. 000314 thru 000345

⁵⁵IEPA Record at p. 000335

further degrade Fiddle Creek. In our report, we document exist violations of DO standards in Fiddle Creek and the oikelihood of future violations as well...

4. If the IEPA were to issue a Modified NPDES Permit for increased effluent discharge, we recommend that the IEPA add nutrient (Phosphorus and nitrogen) monitoring in the Moidified Pemit....”

Moreover, the Office of the Attorney General in a letter dated October 30, 2003, stated that “...the proposed increase in flow to Fiddle Creek from 1.4 million galls per day to 7.93 million gallons per day is significant. It stated, “[w]e do not believe that Wauconda has adequately demonstrated that the receiving waters have sufficient hydraulic capacity to accept this increased flow without contributing to flood downstream segments during wet weather flows. The Village needs to consider the possibility that, under these conditions, flood waters may become contaminated with inadequately treated wastewater.”⁵⁶

Their letter goes on to state “...Wauconda should provide appropriate documentation such as Federal Emergency Management Administration (FEMA) flood maps identifying the flood plain and flood prone areas. Wauconda should also conduct a risk assessment to determine the potential risk to public health under wet weather conditions. Because downstream wetlands would be affected by a wet-weather flow increase, the Village should include U.S. Army Corps of Engineers or Lake County Advance Identification maps to delineate sensitive wetland areas.”⁵⁷

The Northeastern Illinois Planning Commission , in their report dated July 2, 2002, with respect to their Water Quality Review, stated that “...the Staff would recommend that a detailed study of the impact of the increased flow on the receiving stream be conducted before issuing a

⁵⁶IEPA Record at p. 001031 thru 001032

⁵⁷IEPA Record at p. 001031 thru 001032

permit for the requested discharge.”⁵⁸

In August, 2002, Marcia T. Willhite “... deferred action on the Village’s request to amend the WQMP to reflect the expansion of Wauconda’s wastewater treatment plant from 1.4 mgd to 2.4 mgd. The receiving stream for the discharge associated with the proposed wastewater treatment plant does not appear to be included on the Illinois EPA’s Clean Water Action Section 303(d) list at this time. However, the point of discharge must be re-evaluated during the preparation of engineering report(s) and permit application(s) to determine possible relevant limitations upon the treatment plant’s size, design, and location.”⁵⁹

In a memorandum to James Cowles and Blaine Kinsley from Al Keller on September 15, 2003, Mr. Keller admonished Blaine Kinsley by stating, “...we may need to make sure these permits undergo more scrutiny, with actual finished water supply data and effluent data form compliance with Water Quality Standards.”⁶⁰

It should be noted that a letter dated May 24, 2004, sent to Bruce Yurdin, Manager of the Watershed Management Section of the IEPA from James E. Huff, engineer for the Village of Lake Barrington and Cuba Township, requested that Fiddle Creek in Lake County be added the Illinois List of Impaired Waterways i.e., the 303(d) list.⁶¹ The data was collected in August 2003 by Huff & Huff, in accordance with 40 CFR 130.7(b)(5), and the Quality Assurance Project Plans were followed and was appropriate for the IEPA to consider the collected data in their 303(d) listing. The investigation conducted in August 2003 found dissolved oxygen levels below 5.0

⁵⁸IEPA Record at p. 1583

⁵⁹IEPA Record at p. 001591; IEPA Exhibit 96

⁶⁰IEPA Record at p. 001769

⁶¹IPEA Record at p. 002106 thru 002139

mg/L from the Wauconda outfall and along the entire Fiddle Creek, as well as levels of phosphorus at 3.9 mg/L and nitrates at 18.0 mg/L levels. The stream also has a threatened species i.e., the Starhead topminnow, which elevates the importance of identifying the stream as “impaired”.

It is apparent that the anti-degradation assessments conducted by the IEPA were inadequate and completely inconsistent with the findings and conclusions of other professionals investigating the current conditions of the District’s ditch, i.e., Fiddle Creek. Given the data reviewed and analyzed from more current sources than used by the IEPA allows this Board to require the IEPA to re-investigate their assessment according to the statutory and federally mandated requirements, and to require the IEPA to utilize more current collected data prior to allowing the issuance of the modified NPDES Permit to the Village of Wauconda.

V. THE IEPA’S DISREGARD FOR THE PRIOR PERMIT VIOLATIONS BY THE VILLAGE OF WAUCONDA

The IEPA has knowledge and has known of the many violations of the current NPDES Permit by the Village of Wauconda. Yet, the IEPA apparently those violations were not significant enough while considering the issuance of a modification of the existing Permit for an increase in wasteload to the watershed. If as many violations occurred at a lower level of waste stream loading, would it not be an appropriate consideration to determine how the increased loading of a modified permit would be monitored in order to lower significantly the possibility of future violations of an anticipated modified permit? Apparently not, since the IEPA has repeatedly stated in this proceeding that the prior violations were not a consideration in the process of making their decision to issue the modified NPDES Permit.

An IEPA attorney at the public information hearing on September 9, 2003, stated⁶²

“Now yes, it is true that through the ‘90’s, it (sic Wauconda) had a lot of problems. No questions about that. But it doesn’t have those same problems anymore. What happened basically is that in 2000, 1999 and 2000, we had the Attorney General’s office file suit against the Village to force them to take care of some of these problems.”

On June 28, 1999, the Attorney General of the State of Illinois filed a complaint for injunction and other relief against the Village of Wauconda for violations which occurred on May 20, 1996, and February 20 and 21, 1997, when Wauconda allowed untreated raw sewage to be pumped from six different locations totaling approximately 1,530,390 gallons into Bangs Lake Creek which contained 28.4 mg/L of total suspended solids. A consent order was entered December 13, 2000 between the Illinois Attorney General and the Village of Wauconda, which states “...**Defendant shall cease and desist from future violations of the Act and Board regulations, ...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.**”⁶³ (Emphasis added). The Complaint in that proceeding detailed violations of the current NPDES Permit conditions.⁶⁴

Notwithstanding the Consent Order directive, the records available through the USEPA’s Permit Compliance System (PCS) database reflected that the effluent compliance records for the Village of Wauconda’s discharge for the period, April 2001 to May 2003, included the following recorded violations:⁶⁵

⁶²Hearing Transcript at p. 18-19.

⁶³IEPA Record at p. 002271 thru 002285

⁶⁴Exhibit “C” attached hereto and made a part hereof.

⁶⁵IEPA Record at p. 000319

1. September, 2001 - Copper in discharge exceeded permit limitation
2. November, 2001 - Copper in discharge exceeded permit limitation
3. June, 2002 - Total ammonia nitrogen in the discharge exceeded the permit
4. February, 2003 - Copper in discharge exceeded permit limitation

In 1997, the IEPA stated that the results of a six-month monitoring of the WWTP effluent exceeded water quality standards for Copper and Silver, and recommended permit limits (IL0020109) be.⁶⁶

Copper:
Daily Maximum .05 mg/L
30 Day Average .03 mg/L

Silver:
Daily Maximum .005 mg/L

Yet, in 2001 and 2003, there continued to be violations of the Copper permit limits. The memorandum also concluded that “..no mixing is available in this receiving stream.”⁶⁷

Again, on August 23, 29th and 30th, 2003, the Wauconda WWTP had foam leaking out of the west aerobic digester, running downhill surrounding a control building and entering a storm sewer tributary to the Bangs Lake Drain, which are violations of the permit requirements.⁶⁸

A memorandum dated October 6, 2003 from Chris Kallis of the IEPA to Roger Callaway regarding the August 23, 2003 violation, stated that

“ The Wauconda Wastewater Treatment Plan has been shown to be in violation of Section 12 (a) and (d) of the Illinois Environmental Protection Act, 35

IllAdm.Code 304.106 and 35 IllAdm.Code304.105 because the discharge of sludge

⁶⁶IEPA Record at p. 001520

⁶⁷IEPA Record at p. 001520 - 001521

⁶⁸IEPA Record at p. 000611 thru 000614

from the digester to the Waters of the State is considered an offensive discharge that resulted in offensive conditions in Bangs Lake Drain in violation of 35 IllAdm.Code 302.203.”⁶⁹

Shortly thereafter, another violation occurred during the night on September 23, 2003. ⁷⁰

A Lakeland Newspaper article in October, 2003, reported the violation to the public, stating that

“...a foam out situation had occurred with the aerobic digester during the night of September 23. Foam containing fecal coliform bacteria had overflowed a four-foot containment wall, spilled onto the floor of the facility, out the door, and into a storm sewer leading to the Bangs Lake drain....’This wasn’t pure raw sewage, but it was diluted raw sewage’”⁷¹

Given the numerous violations of the current NPDES permit by the Wauconda WWTP in the past, what basis does the Board believe would justify believing that the WWTP will comply with the additional conditions set forth in the permit modification requested currently or modified by the Agency?

THIS BOARD SHOULD TAKE NOTICE: The IEPA failed to produce any records during this proceeding relative to a Complaint filed in Lake County, Illinois, by the Attorney General’s Office against the Village of Wauconda, on August 17, 2004, ---just six (6) days prior to the IEPA’s approval of the NPDES permit modification on August 23, 2004.⁷² The complaint concerned the September 24, 2003 violation as discussed above. The IEPA attorneys knew of the pending lawsuit against the Village of Wauconda and should have produced all of the documents

⁶⁹IEPA Record at p. 001788 thru 001791

⁷⁰IEPA Record at p. 000609 thru 000630

⁷¹IEPA Record at p. 000609

⁷²Exhibit “B” - Consent Order - Case No. 04 CH 1206 - filed 12/10/2004 attached hereto.

surrounding the complaint in this proceeding before this Board. The IEPA attorneys had actual knowledge, and by omitting such documents acted arbitrary and capriciously in excluding relevant documents from your Petitioner, and in effect, preclude this Board from having all relevant information before it.

This Board has the authority to devise additional methods and conditions to ensure Wauconda WWTP's compliance by denying the modification until additional objective data is compiled, which would substantiate a more informed decision by this Board.

It should be noted that the data compiled by the Village of Wauconda's engineers has been based solely upon the water quality standards at the outfall and not on an overall basis for the watershed or for the receiving stream, the Fox River, which is an impaired waterway.

The engineers, other than the Village of Wauconda's engineers, have repeatedly determined that the compiled data is weak and inconclusive—that additional water quality data should be collected and analyzed to determine the impact on the watershed as a whole—not just at the point of the outfall. Further, based on such additional collected data, the additional quantity and quality of wastewater anticipated by the modified permit should be analyzed as to the degradation to the receiving stream and ultimate receiving impaired waterway which would comply with the federal and state anti-degradation rules.

VI. RELIEF REQUESTED

Each and every point discussed herein and the conclusions drawn enables the District to request the following relief from this Honorable Board:

1. Order the IEPA to conduct a rule compliant anti-degradation assessment, including, but not limited to the following:

- A. IEPA be ordered to review each and every alternative(s) for discharge other than to Slocum Lake Drainage Ditch;
- B. IEPA be ordered to comply with all rules protecting the existing uses of the receiving waters, and the Fox River – an impaired waterway.
- C. Consideration of additional treatment levels, i.e., the impact of chlorination on the downstream environment and impaired waterway;
- D. Increase the Monitoring Requirements by the Village of Wauconda from the Wauconda WWTP and in the downstream receiving waters (Fiddle Creek and the Fox River) for dissolved oxygen levels and other water quality Standard requirements.

2. Because of Wauconda's numerous past permit violations, this Board should order the IEPA to closely monitor and test (monthly basis) the Village of Wauconda's influent, affluent, and sludge, as well as any discharge for organics and heavy metals and all other priority toxic pollutants.

3. For such other relief as may be deemed appropriate and reasonable under the circumstances by this Board.

SLOCUM LAKE DRAINAGE DISTRICT
OF LAKE COUNTY

BONNIE MACFARLANE, P.C.

BY: 

Bonnie L. Macfarlane, its attorney

TRUSTEES DEED IN TRUST

Know All Men, by These Presents, THE THE GRANTOR, McHENRY STATE BANK, a duly organized Trust Company, organized and existing under the laws of the State of Illinois as Trustee under the provisions of a Trust Agreement dated 1-30-84 and known as Trust No. 2915 and party of the first part, and having its principal business office in the City of McHenry, County of McHenry, and State of Illinois, for the consideration of TEN AND NO/100 DOLLARS does hereby convey and quit claim unto AMERICAN NATIONAL BANK & TRUST CO. OF CHICAGO as Trustee under the provision of a certain Trust Agreement dated the 29TH day of JUNE, 1989 and known as Trust No. 108688-00, party of the second part, the following described premises, to wit:

SEE ATTACHED EXHIBIT "A"

RECORDED
LAKE COUNTY, ILLINOIS
1989 AUG 30 PM 4:00
2825909

subject to restrictions of record.

Permanent Index Number 13-04-200-001; 13-03-100-010; 13-04-200-007; 13-04-400-003
09-33-300-008; 09-33-300-009; 09-33-300-011; 09-33-400-007; 13-04-100-002; 13-04-200-012
TO HAVE AND TO HOLD the said real estate with the appurtenances, upon the trusts, and for the uses and 13-04-400-001
purposes herein and in said Trust Agreement set forth. 09-33-302-014

THE TERMS CONDITIONS APPEARING ON THE REVERSE SIDE OF THIS INSTRUMENT ARE MADE A PART HEREOF.

And the said grantor hereby expressly waives and releases any and all right of benefit under and by virtue of any and all statutes of the State of Illinois, providing for exemption or homesteads from sale on execution or otherwise.

This deed is executed by the party of the first part, as Trustee, as aforesaid, pursuant to direction and in the exercise of the power and authority granted to and vested in it by the terms of said Deed or Deeds in Trust and the provisions of said Trust Agreement above mentioned, including the authority to convey directly to the Trustee grantee named herein, and of every other power and authority thereunto enabling. This deed is made subject to the liens of all trust deeds and/or mortgages upon said real estate, if any, recorded or registered in said county.

In Testimony Whereof, the McHenry State Bank duly organized Trust Company of McHenry, Illinois as Trustee as aforesaid hath hereunto caused its corporate seal to be affixed and these presents to be signed by PHILIP S. KING, its Vice President and SR. TRUST OFFICER and attested by GERALD L. HELT, its Trust Officer, this 24TH day of AUGUST, 1989.

McHENRY STATE BANK, as Trustee aforesaid,

By Philip S. King
Vice President

Attest
Trust Officer
STATE OF ILLINOIS
COUNTY OF McHENRY

I, the undersigned JEANNE E. KERN, a Notary Public in and for and residing in the said County in the State aforesaid, DO HEREBY CERTIFY, THAT PHILIP S. KING presently known to me to be the Vice President and SR. TRUST OFFICER of McHenry State Bank, McHenry, Illinois, and GERALD L. HELT, personally known to me to be the Trust Officer of said Corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such VICE PRESIDENT and TRUST OFFICER, they signed and delivered the said instrument of writing as officers of said Corporation, and caused the seal of said Corporation to be affixed thereto pursuant to authority given by the Board of Directors of said Corporation as their free and voluntary act and deed of said Corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 24TH day of AUGUST 1989.

Jeanne E. Kern
Notary Public

CHICAGO TITLE TRUST CO.
CHICAGO, ILLINOIS

CHICAGO TITLE INSURANCE CO. Document prepared by:

Grantee's address:
AMERICAN NATIONAL BANK & TRUST CO.
OF CHICAGO
33 N. LA SALLE ST.
CHICAGO, IL 60603
The tax bills go to
Mornings on Fox River Ltd. Partnership
2333 Waukegan Rd, #S-200
Bannockburn IL 60015.

This document prepared by:
JEANNE E. KERN
McHenry State Bank
P.O. Box 398
McHenry, Illinois 60050-0398

"OFFICIAL SEAL"
Jeanne E. Kern
Notary Public, State of Illinois
My Commission Expires Nov. 9, 1992

Notary Public
JEANNE E. KERN
Notary Public, State of Illinois
My Commission Expires Nov. 9, 1992
After recording return to:
D. Scott Hagadon
70 W. Madison St. #3200
Chicago IL 60607

Full power and authority is hereby granted to said Trustee to improve, manage, protect and subdivide said real estate or any part thereof, to dedicate parks, streets, highways or alleys, to vacate any subdivision or part thereof, and to resubdivide said real estate as often as desired, to contract to sell, to grant options to purchase, to sell on any terms, to convey either with or without consideration, to convey said real estate or any part thereof to a successor(s) in trust and to grant to such successor(s) in trust all of the title, estate, powers and authorities vested in said Trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said real estate, or any part thereof, to lease said real estate, or any part thereof, from time to time, in possession or reversion, by leases to commence in present or in future, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the term of 99 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter, to contract to make leases and to grant options to lease and options to renew leases and options to purchase the whole or any part of the reversion and to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said real estate, or any part thereof, for other real or personal property, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said real estate or any part thereof, and to deal with said real estate and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said Trustee, or any successor in trust, in relation to said real estate, or to whom said real estate or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said Trustee, or any successor in trust, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on said real estate, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the authority necessity or expediency of any act of said Trustee, or be obliged or privileged to inquire into any of the terms of said Trust Agreement and every deed, trust deed, mortgage, lease or other instrument executed by said Trustee, or any successor in trust, in relation to said real estate shall be conclusive evidence in favor of every person (including the Registrar of Titles of said county) relying upon or claiming under any such conveyance, lease or other instrument, (a) that at the time of the delivery thereof the trust created by this Indenture and by said Trust Agreement was in full force and effect, (b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in said Trust Agreement or in all amendments thereof, if any, and binding upon all beneficiaries thereunder, (c) that said Trustee or any successor in trust, was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor(s) in trust, that such successor(s) in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

This conveyance is made upon the express understanding and condition that neither Grantee, individually or as Trustee, nor its successor(s) in trust shall incur any personal liability or be subjected to any claim, judgment or decree for anything it or they or its or its agents or attorneys may do or omit to do in or about the said real estate or under the provisions of this Deed or said Trust Agreement or any amendment thereto, or for injury to person or property happening in or about said real estate, any and all such liability being hereby expressly waived and released. Any contract, obligation or indebtedness incurred or entered into by the Trustee in connection with said real estate may be entered into by it in the name of the then beneficiaries under said Trust Agreement as their attorney-in-fact, hereby irrevocably appointed for such purposes, or at the election of the Trustee, in its own name, as Trustee of an express trust and not individually (and the Trustee shall have no obligation whatsoever with respect to any such contract, obligation or indebtedness except only so far as the trust property and funds in the actual possession of the Trustee shall be applicable for the payment and discharge thereof). All persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filing for record of this Deed.

The interest of each and every beneficiary hereunder and under said Trust Agreement and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or any other disposition of said real estate, and such interest is hereby declared to be personal property, and no beneficiary hereunder shall have any title or interest, legal or equitable, in or to said real estate as such, but only an interest in earnings, avails and proceeds thereof as aforesaid, the intention hereof being to vest in said Grantee the entire legal and equitable title in fee simple, in and to all of the real estate above described.

If the title to any of the above real estate is now or hereafter registered, the Registrar of Titles is hereby directed not to register or note in the certificate of title or duplicate thereof, or memorial, the words "in trust," or "upon condition," or "with limitations," or words of similar import, in accordance with the statute in such case made and provided.

2825909

2

EXHIBIT "A"

THE WEST HALF OF LOT 1 OF THE NORTH WEST QUARTER OF SECTION 3,
TOWNSHIP 43 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN,
IN LAKE COUNTY, ILLINOIS.

THAT PART OF THE SOUTH EAST QUARTER OF THE NORTH EAST QUARTER AND
OF THE WEST HALF OF THE NORTH EAST QUARTER OF SECTION 4, TOWNSHIP
43 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING
NORTHERLY AND EASTERLY OF FOX RIVER, IN LAKE COUNTY, ILLINOIS.

THAT PART OF THE EAST HALF OF THE EAST HALF OF THE NORTH WEST QUARTER
OF SECTION 4, TOWNSHIP 43 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL
MERIDIAN, LYING NORTHERLY OF THE FOX RIVER, IN LAKE COUNTY, ILLINOIS.

THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 33,
TOWNSHIP 44 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN,
LYING SOUTH OF THE NORTH LINE OF THE SOUTH 5 ACRES AND 132 PERCHES
OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION
AND SOUTHWESTERLY OF THE CENTERLINE OF THE PUBLIC HIGHWAY KNOWN AS
STATE AID ROUTE # 35, AS SHOWN ON PLAT OF SURVEY RECORDED AS DOCUMENT
#523755 IN BOOK 29 OF PLATS, PAGE 12, (EXCEPT THE WEST 2 RODS THEREOF
AND EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING
AT THE INTERSECTION OF THE CENTERLINE OF THE PUBLIC HIGHWAY AS FORMERLY
LOCATED AND THE NORTH LINE OF THE SOUTH 5 ACRES AND 132 PERCHES OF THE
NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 33, THENCE
WEST 74 RODS; THENCE SOUTH 8 RODS; THENCE EAST 2 RODS; THENCE NORTH 6
RODS; THENCE EAST 72 RODS AND THENCE NORTH 2 RODS TO THE PLACE OF
BEGINNING) AND (EXCEPTING THEREFROM FOX RIVER ESTATES, ACCORDING TO
THE PLAT THEREOF RECORDED OCTOBER 9, 1959, AS DOCUMENT # 1047902 IN
LAKE COUNTY, ILLINOIS). ALL CONTAINING 27.70 ACRES MORE OR LESS,
IN LAKE COUNTY, ILLINOIS.

THE WEST HALF OF THAT PART OF THE EAST HALF OF THE NORTH WEST QUARTER
LYING NORTH OF FOX RIVER IN SECTION 4, TOWNSHIP 43, NORTH, RANGE 9,
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS.

THAT PART OF THE SOUTH WEST QUARTER OF THE SOUTH EAST QUARTER OF
SECTION 33, TOWNSHIP 44 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL
MERIDIAN, LYING SOUTH WESTERLY OF THE CENTER LINE OF STATE AID ROUTE
#35, IN LAKE COUNTY, ILLINOIS.

THAT PART OF THE FRACTIONAL NORTH HALF OF THE SOUTH EAST QUARTER OF
SECTION 4, TOWNSHIP 43 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL
MERIDIAN, LYING EAST OF THE FOX RIVER IN LAKE COUNTY, ILLINOIS.

LOT B IN FOX RIVER ESTATES, A SUBDIVISION IN LAKE COUNTY, ILLINOIS.
According to the plat recorded October 9, 1959 as document 1047902.

SUBJECT TO: See attached.

Street Address
27034 Roberts Road
Barrington Lake IL, 60010

2825909

THAT PART OF THE EAST 1/2 OF THE SOUTH WEST 1/4 OF SECTION
33, TOWNSHIP 44 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN,
LYING SOUTHWESTERLY OF THE CENTER LINE OF STATE AID ROUTE NO. 35
(ROBERTS ROAD) AS SHOWN ON THE PLAT OF SURVEY RECORDED AS DOCUMENT
523755, IN BOOK 29 OF PLATS, PAGE 12, IN LAKE COUNTY, ILLINOIS.

* (excepting therefrom the West 450 feet of the
East 725 feet thereof)

SUBJECT TO:

RIGHTS OF WAY FOR DRAINAGE TILES, DITCHES, FEEDERS AND LATERALS.

**RIGHTS OF THE PUBLIC AND THE ADJOINING OWNERS TO THE FREE AND UNOBSTRUCTED FLOW OF THE WATERS OF ANY UNNAMED STREAM OR BODY OF WATER LOCATED ON THE LAND AND THE USE OF THE SURFACE OF SAID STREAM OR BODY OF WATER.
(AFFECTS PARCELS 2, 3, 4, 5, 7 AND 9).**

**RIGHTS OF THE UNITED STATES OF AMERICA, STATE OF ILLINOIS, THE MUNICIPALITY AND THE PUBLIC IN AND TO THAT PART OF THE LAND LYING WITHIN THE BED OF THE FOX RIVER AND THE RIGHTS OF OTHER OWNERS OF LAND BORDERING ON THE RIVER IN RESPECT TO THE WATER OF SAID RIVER.
(AFFECTS PARCELS 2, 3, 7 AND 9).**

**RIGHTS OF THE PUBLIC AND OF THE STATE OF ILLINOIS, IN AND TO SO MUCH OF THE LAND AS DEDICATED FOR ROAD PURPOSES BY INSTRUMENTS, ONE DATED AUGUST 14, 1942 AND RECORDED FEBRUARY 1, 1943 AS DOCUMENT 523775; AND ONE DATED SEPTEMBER 19, 1942 AND RECORDED FEBRUARY 2, 1943 AS DOCUMENT 523829 AND ANOTHER DATED DECEMBER 28, 1942 AND RECORDED FEBRUARY 2, 1943 AS DOCUMENT 523828 AND SHOWN ON PLATS OF SURVEY RECORDED FEBRUARY 1, 1943 AS DOCUMENTS 523754, 523755 AND 523775 IN BOOK 29 OF PLATS PAGES 11 AND 12.
(AFFECTS PART OF PARCELS 4, 5 AND 6 LYING WITHIN 40 FEET OF THE CENTER LINE OF ROBERTS ROAD).**

RIGHTS, IF ANY, OF THE SLOCUM DRAINAGE DISTRICT, LAKE COUNTY, ILLINOIS, IN AND TO THAT PART OF THE LAND CONDEMNED FOR DRAINAGE DITCHES AND DRAINAGE RIGHTS OF WAY OR TAKEN OR USED FOR DRAINAGE PURPOSES BY PROCEEDINGS HAD IN THE COUNTY COURT OF LAKE COUNTY, ILLINOIS, (GENERAL NO. 6828) ON PETITION FILED SEPTEMBER 17, 1914.

~~**RIGHT OF NORTHERN ILLINOIS GAS COMPANY, AN ILLINOIS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO A PERPETUAL EASEMENT AND RIGHT OF WAY FOR THE PURPOSE OF LAYING, MAINTAINING, OPERATING, RENEWING, REPLACING AND REMOVING A GAS MAIN AND ANY NECESSARY GAS FACILITIES APPURTENANT THERETO, TOGETHER WITH THE RIGHT OF ACCESS THERETO FOR SAID PURPOSES IN, UPON, UNDER, ALONG AND ACROSS THE LAND HEREIN IN A LOCATION SHOWN ON EXHIBIT "A" ATTACHED THERETO, AS GRANTED BY THE INSTRUMENT DATED MARCH 24, 1965 AND RECORDED APRIL 13, 1965 AS DOCUMENT 1259529.
(AFFECTS PARCEL 5).**~~

EXISTING LEASES.

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EASEMENT FOR UTILITIES OVER THE EAST 10 FEET OF LOT "B" AS SHOWN ON THE PLAT OF SAID SUBDIVISION.
(AFFECTS PARCEL 10).

RIGHT OF INGRESS AND EGRESS OVER 20 FEET OF LAND LYING SOUTH OF LOT "A" IN FOX RIVER ESTATES TO CHANNEL EAST OF LOT 12 TOGETHER WITH THE RIGHT TO BUILD A PIER OR MOOR A BOAT IN THIS CHANNEL, AS GRANTED IN THE AGREEMENT RECORDED JUNE 9, 1960 AS DOCUMENT 1071653 AND DEED RECORDED FEBRUARY 10, 1965 AS DOCUMENT 1253885, AND AS AMPLIFIED BY AFFIDAVIT RECORDED APRIL 5, 1989 AS DOCUMENT 2780058.
(AFFECTS THE NORTH 10 FEET OF PARCEL 10 AND PART OF THE LAND HEREIN COVERED BY THE CHANNEL.).

EASEMENT FOR INGRESS AND EGRESS OVER A TWENTY FOOT STRIP BETWEEN GERALDINE LANE AND THE CHANNEL EAST OF FOX RIVER ESTATES DESCRIBED AS COMMENCING AT A POINT ON THE WEST LINE AND 10 FEET NORTH OF THE SOUTHWEST CORNER OF LOT "A" IN SAID SUBDIVISION; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT "A" AND LOT "B" A DISTANCE OF 20 FEET; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT "A" 245 FEET; THENCE NORTH 40 FEET, MORE OR LESS, TO THE WATERS EDGE OF THE CHANNEL; THENCE WESTERLY ALONG THE WATERS EDGE OF SAID CHANNEL 20 FEET, MORE OR LESS, TO A POINT 25 FEET EAST OF THE EAST LINE OF SAID LOT "A"; THENCE SOUTH 20 FEET, MORE OR LESS, TO A POINT WHICH IS 10 FEET NORTH OF THE EXTENSION EAST OF THE SOUTH LINE OF SAID LOT "A", SAID POINT ALSO BEING 25 FEET EAST OF THE EAST LINE OF SAID LOT "A"; THENCE WEST 225 FEET, ALONG A LINE 10 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT "A" TO THE POINT OF BEGINNING; TOGETHER WITH THE RIGHT TO BUILD A PIER IN THE CHANNEL AND THE RIGHT TO MOOR BOAT IN THE CHANNEL, AS GRANTED BY WARRANTY DEED RECORDED JULY 26, 1966 AS DOCUMENT 1311302, CONVEYING LOT 13 IN SAID SUBDIVISION AND ALSO CONTAINED IN VARIOUS OTHER GRANTS AND CONVEYANCES OF LOTS IN SAID SUBDIVISION, AND AS AMPLIFIED BY AFFIDAVIT RECORDED APRIL 5, 1989 AS DOCUMENT 2780058.
(AFFECTS THE NORTH 10 FEET OF PARCEL 10 AND PART OF PARCEL 4 AND PART OF THE LAND FALLING IN THE CHANNEL).

RIGHT OF COMMONWEALTH EDISON COMPANY AND ILLINOIS BELL TELEPHONE COMPANY, THIS SUCCESSORS AND ASSIGNS, TO AN EASEMENT TO CONSTRUCT, MAINTAIN, ETC., THEIR FACILITIES USED IN CONNECTION WITH OVERHEAD AND UNDERGROUND TRANSMISSION AND DISTRIBUTION OF ELECTRICITY, SOUNDS AND SIGNALS, TOGETHER WITH RIGHT OF ACCESS THERETO, OVER THE SOUTH 10 FEET OF THE NORTH 30 FEET OF PARCEL 1 AND THE SOUTH 10 FEET OF THE NORTH 30 FEET OF PART OF PARCEL 2 IN THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4 AND ALSO OVER THE SOUTH 10 FEET OF THE NORTH 30 FEET OF THE EAST 140 FEET OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4 AS GRANTED BY INSTRUMENT RECORDED MAY 6, 1977 AS DOCUMENT 1834912 AND CORRECTED BY GRANT RECORDED APRIL 10, 1989 AS DOCUMENT 2781084.
(AFFECTS PARCELS 1 AND 2).

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RIGHT OF COMMONWEALTH EDISON COMPANY, ITS SUCCESSORS AND ASSIGNS, TO AN EASEMENT TO CONSTRUCT, MAINTAIN, ETC., THEIR FACILITIES USED IN CONNECTION WITH OVERHEAD AND UNDERGROUND TRANSMISSION AND DISTRIBUTION OF ELECTRICITY, SOUNDS AND SIGNALS, TOGETHER WITH RIGHT OF ACCESS THERETO, OVER THAT PORTION OF PARCELS 2 AND 9 AS SHOWN ON EXHIBIT "A" OF THE INSTRUMENT AS GRANTED BY INSTRUMENT RECORDED JUNE 14, 1984 AS DOCUMENT 2289835. (AFFECTS PARCELS 2 AND 9).

ATTENTION IS DIRECTED TO ORDINANCES BY THE COUNTY OF LAKE ONE RECORDED AS DOCUMENT 2037978, OTHERS RECORDED FROM TIME TO TIME, RELATING TO THE PAYMENT OF CERTAIN CHARGES AS A CONDITION PRECEDENT TO PERMISSION TO TAP INTO A SEWER OR WATER SYSTEM. SAID INSTRUMENTS SHOULD BE CONSIDERED WHEN DEALING WITH THE PROPERTY INSURED HEREIN.

SLOCUM DRAINAGE DISTRICT, WARRANT NO. 73 MR 107 (68 MR 3626 COUNTY COURT, LAKE COUNTY, ILLINOIS) FOR DRAINAGE PURPOSES CONFIRMED OCTOBER 9, 1968 FOR \$16.00 ON THE NORTH 1/2 OF THE EAST 1/2 OF THE EAST 1/2 OF THE NORTH OF RIVER OF SECTION 4, TOWNSHIP 43 NORTH, RANGE 9, PAYABLE WITH GENERAL REAL ESTATE TAXES. THE 1976 ANNUAL INSTALLMENT HAS BEEN PAID (NOT LEVIED FOR THE YEARS 1977 THROUGH 1987).

SLOCUM DRAINAGE DISTRICT, WARRANT NO. 73 MR 107 (68 MR 3626 COUNTY COURT, LAKE COUNTY, ILLINOIS) FOR DRAINAGE PURPOSES CONFIRMED OCTOBER 9, 1968 FOR \$14.00 ON THE EAST 20 ACRES (EXCEPT FOX RIVER ESTATES AND EXCEPT THE WEST 2 RODS) SOUTH WEST SOUTH WEST SECTION 33, TOWNSHIP 44 NORTH, RANGE 9, PAYABLE WITH GENERAL REAL ESTATE TAXES. THE 1987 ANNUAL INSTALLMENT HAS BEEN PAID (NOT LEVIED FOR THE YEAR 1977 THROUGH 1984).

SLOCUM DRAINAGE DISTRICT, WARRANT NO. 73 MR 107 (68 MR 3626 COUNTY COURT, LAKE COUNTY, ILLINOIS) FOR DRAINAGE PURPOSES CONFIRMED OCTOBER 9, 1968 FOR \$14.00 (EXCEPT CASHMORE ROBERTS ROAD ACRE) PART LYING SOUTHERLY SLOCUM DRAINAGE DISTRICT PART OF THE EAST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 33, TOWNSHIP 44 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN; PAYABLE WITH GENERAL REAL ESTATE TAXES. THE 1987 ANNUAL INSTALLMENT HAS BEEN PAID. (NOT LEVIED YEARS 1977 THROUGH 1984).

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SLOCUM DRAINAGE DISTRICT, WARRANT NO. 73 MR 107 (68 MR 3626 COUNTY COURT, LAKE COUNTY, ILLINOIS) FOR DRAINAGE PURPOSES CONFIRMED OCTOBER 9, 1968 FOR \$14.00 ON PERMANENT INDEX NUMBER 1304100003, PAYABLE WITH GENERAL REAL ESTATE TAXES. THE 1987 ANNUAL INSTALLMENT HAS BEEN PAID.

~~ENCROACHMENT OF A FRAME BARN AND METAL SHED OVER THE NORTHERN ILLINOIS GAS MAIN GRANTED BY DOCUMENT 1259529 AS DISCLOSED BY A SURVEY IN FILE.~~

RIGHTS OF PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND RENEW "POLE LINE EQUIPMENT" AND "GAS MAIN EQUIPMENT" IN THE PUBLIC HIGHWAY KNOWN AS ROBERTS ROAD AS GRANTED BY AN UNRECORDED EASEMENT DATED MARCH 15, 1940, A COPY OF WHICH IS IN OUR FILE.
(AFFECTS PART OF PARCELS 2, 4, AND 5 IN ROBERTS ROAD).

RIGHTS OF THE COMMONWEALTH EDISON COMPANY AND ILLINOIS BELL TELEPHONE COMPANY, THEIR SUCCESSORS AND ASSIGNS, TO CONSTRUCT, LAY, MAINTAIN, ETC., THEIR EQUIPMENT CONSISTING OF POLES, ETC., IN, UPON, UNDER AND ALONG THE WEST 10 FEET OF THE EAST 160 FEET OF THE NORTH 1500 FEET OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 4, AS GRANTED BY INSTRUMENT DATED JUNE 12, 1957 AND RECORDED JUNE 19, 1957 AS DOCUMENT 954371.
(AFFECTS PARCEL 2).

~~BUILDING LINE 30 FEET EAST OF THE WEST LINE OF LOT "B" AS SHOWN ON THE PLAT OF SAID SUBDIVISION.
(AFFECTS PARCEL 10).~~

~~MATTERS OF SURVEY AS THEY RELATE TO THE EASTERLY BOUNDARY LINE OF PARCEL 1 ONLY.
(AFFECTS PARCEL 1).~~

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Certified Copy
from
Circuit Court of THE NINETEENTH JUDICIAL CIRCUIT,
Lake County, Illinois

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FILED
OCT 5 1982

STATE OF ILLINOIS)
) SS.
COUNTY OF L A K E)

Lucy M. Coffey
CIRCUIT CLERK

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

LAKE COUNTY FOREST PRESERVE)
DISTRICT, etc., et al.,)

Plaintiff,)

vs.)

GEN. NO. 92 ED 69

AMERICAN NATIONAL BANK & TRUST)
COMPANY, etc., et al.,)

PARCEL NO. FRP-1

Defendant.)

JUDGMENT ORDER

This cause coming on to be heard on the Second Amended Complaint for Condemnation of the LAKE COUNTY FOREST PRESERVE DISTRICT to ascertain the just compensation for the taking of certain property for forest preserve purposes, as set forth in the Second Amended Complaint for Condemnation;

AND the plaintiff appearing by JOSEPH T. MORRISON of MORRISON & MORRISON, P.C., and the defendants, AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated June 29, 1989, and known as Trust Number 108688-00, and MOORINGS ON FOX RIVER LTD. PARTNERSHIP, appearing by Thomas Z. Hayward, Jr. of BELL, BOYD & LLOYD; and defendant, BOULEVARD BANK N.A., as Mortgagee under the Mortgage recorded as Document No. 2825912, appearing by Michael Weininger of KATZ, RANDALL & WEINBERG, and defendant, VILLAGE OF FOX RIVER VALLEY GARDENS, appearing by Samuel Diamond of DIAMOND, LESUEUR & ROTH ASSOCIATES;

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AND it appearing to the Court that all defendants to this proceeding have been served by process as provided by statute and have entered their Appearances and have had due notice of these proceedings, and that the Court has jurisdiction of the subject matter of this proceeding and of all parties hereto;

AND the Court being fully advised that all of the parties have entered into a Settlement Stipulation waiving view of the premises and jury prove-up;

AND the terms of that Settlement Stipulations are incorporated into this Judgment Order by agreement;

AND the Court being fully advised in the premises,

On motion of plaintiff,

IT IS THEREFORE ORDERED THAT:

1. Pursuant to the Stipulation between the parties, the sum of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 (\$5,800,000.00) DOLLARS constitutes the just compensation to the owner or owners of or party and parties interested in Parcel FRP-1 for the taking thereof by the plaintiff of fee simple title thereto, and judgment is herein entered accordingly.

2. Upon payment by the plaintiff within thirty (30) days to the Treasurer of Lake County, Illinois, of the sum of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 (\$5,800,000.00) DOLLARS, and upon Motion of plaintiff providing proof of deposit of said sum, the plaintiff shall be vested with fee simple title to the following described land as of October 15, 1992:

PARCEL FRP-1: SEE EXHIBIT "A"

3. The terms of the Settlement Stipulation filed herein as to Parcel FRP-1 are hereby incorporated into and made a part of this Judgment Order, and the Court retains jurisdiction to enforce the terms of that Settlement Stipulation, and further retains jurisdiction to place plaintiff in full, complete and quiet possession of Parcel FRP-1 on October 15, 1992, by writ of assistance or otherwise.

4. This Court shall retain jurisdiction to hear and determine all claims and all rights in and to the just compensation for Parcel FRP-1 pursuant to the Code of Civil Procedure, Sections 7-123 and 7-127.

5. Prior to October 15, 1992, the defendants, except the VILLAGE OF FOX RIVER VALLEY GARDENS, will convey to the plaintiff by Bill of Sale or otherwise, good and merchantable title to the personal property described on Exhibit "B". This personal property shall be in good and working condition, taking into account the age of the equipment and normal wear and tear.

6. Prior to October 15, 1992, the defendants, except the VILLAGE OF FOX RIVER VALLEY GARDENS, will cause to have the horses, video games, Coke machines, other vending machines, duck blinds, and inoperable boats removed from the property.

7. This cause is set for further status on October 14, 1992, at 9:00 a.m., to determine whether the plaintiff has been provided with

sufficient cooperation under the terms of the Settlement Stipulation to take title to the subject property.

ENTER:

WILLIAM D. BLOCK

J U D G E

ORDER PREPARED BY:

Joseph T. Morrison
DONALD T. MORRISON
& ASSOCIATES, P.C.
32 N. West Street
Waukegan, Illinois 60085
708/244-2660
\fpdfrpl\jo

36
↓
Statement total
34⁰⁰

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL NO. 1: That part of the West half of the Southwest Quarter of Section 33, Township 44 North, Range 9, East of the Third Principal Meridian, lying South of the North line of the South 5 acres and 132 perches of the Northwest Quarter of the Southwest Quarter of said Section and Southwesterly of the Centerline of the Public Highway known as State Aid Route #35, as shown on plat of survey recorded as Document No. 523755 in Book 29 of Plats, page 12, (except the West 2 rods thereof and except that part thereof described as follows, to-wit: Commencing at the intersection of the Centerline of the public highway as formerly located and the North line of the South 5 acres and 132 perches of the Northwest Quarter of the Southwest Quarter of said Section 33; thence West 74 rods; thence South 8 rods; thence East 2 rods; thence North 6 rods; thence East 72 rods and thence North 2 rods to the place of beginning) and (excepting therefrom Fox River Estates, except Lot B, according to the Plat thereof recorded October 9, 1959, as Document No. 1047902), except any part thereof heretofore dedicated and used for highway purposes, in Lake County, Illinois.

PARCEL NO. 2: That part of the East half of the Southwest Quarter of Section 33, Township 44 North, Range 9, East of the Third Principal Meridian, (except that part thereof lying Northeast of the Centerline of Roberts Road State Aid Route #35) and (except any part thereof heretofore dedicated and used for highway purposes), in Lake County, Illinois.

PARCEL NO. 3: The West half of that part of the East half of the North West quarter lying North of the centerline of the Fox River in Section 4, Township 43 North, Range 9, East of the Third Principal Meridian, in Lake County, Illinois.

PARCEL NO. 4: That part of the East half of the East half of the North West Quarter of Section 4, Township 43 North, Range 9, East of the Third Principal Meridian, lying Northerly of the centerline of the Fox River, in Lake County, Illinois.

PARCEL NO. 5: That part of the South East Quarter of the North East Quarter and of the West half of the North East Quarter of Section 4, Township 43 North, Range 9, East of the Third Principal Meridian, lying Northerly and Easterly of the centerline of the Fox River, except any part thereof heretofore dedicated and used for highway purposes, in Lake County, Illinois.

PARCEL NO. 6: The West half of Lot 1 of the North West Quarter of Section 3, Township 43 North, Range 9, East of the Third Principal Meridian, in Lake County, Illinois.

PARCEL NO. 7: That part of the Fractional North half of the South East Quarter of Section 4, Township 43 North, Range 9, East of the Third Principal Meridian, lying East of the centerline of the Fox River, in Lake County, Illinois.

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PARCEL NO. 10: That part of the Northeast Quarter of the Northeast Quarter of Section 4, Township 43 North, Range 9, East of the Third Principal Meridian, described as follows: Beginning at the Southwest

corner of Roberts Road Estates Subdivision, a subdivision recorded January 13, 1981 as Document 2097169; thence South along the West line of said quarter quarter section 270 feet to the Southwest corner of said quarter quarter section; thence East along the South line of the said quarter quarter section to a point 61.3 feet West of the Southeast corner thereof; thence Northwesterly 200 feet to a southeast corner of premises conveyed by Document 2307038 recorded August 30, 1984; thence West along the South line of premises conveyed by Document 2307038 to the Southwest corner of premises conveyed by said document; thence North 70 feet along the West line of premises conveyed by said Document and said West line extended to a point 270 feet North of the South line of said quarter quarter section and thence West along the North line of the South 270 feet of said quarter quarter section to the point of beginning, in Lake County, Illinois.

PARCEL NO. 11: That part of the South West quarter of the South East quarter of Section 33, Township 44 North, Range 9, East of the Third Principal Meridian, lying South Westerly of the centerline of Roberts Road (State Aid Route 35), except any part thereof heretofore dedicated and used for highway purposes, in Lake County, Illinois.

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EXHIBIT "B"

1. All piers, both channels.
2. Floating pier at launching ramp.
3. 1972 Dodge truck with tank.
4. Center vise and workbench (on south side of shop wall).
5. 1 ton electric hoist and trolley on rail in shop.
6. All office furniture in office.
7. 1 1/2 HP air compressor.
8. Liquid Propane Pump.
9. "Big boat" trailer.
10. Hydraulic boat trailer.
11. Pontoon boat trailer.
12. Old huff for lifting boats.
13. John Deere tractor - BackHoe and loader 3020.
14. Case tractor and 6' mower.
15. I.H. 140 and 5' mower.
16. Kubota G6200 and 4' mower.
17. Welder.
18. Double wide trailer with existing recreation room (and no washrooms).

Exhibit "B"

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

FILED

DEC 10 2004

[Signature]
CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Plaintiff,)
)
v.)
)
VILLAGE OF WAUCONDA,)
an Illinois Municipal Corporation,)
)
Defendant.)

No. 04 CH 1206

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, VILLAGE OF WAUCONDA, have agreed to the making of this Consent Order and submit it to this Court for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a trial were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this Court approves and enters this Consent Order, Defendant agrees to be bound by the

Consent Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I.
JURISDICTION

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002).

II.
AUTHORIZATION

The undersigned 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 them to it.

III.
STATEMENT OF FACTS

A. Parties

1. On August 17, 2004, a Complaint was filed on behalf of the People of the State of Illinois by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2002), against the Defendant.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).

3. At all times relevant to the Complaint, Defendant was and is an Illinois municipal corporation, organized and operating under the laws of the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Defendant owned and operated a municipal waste water treatment plant ("POTW"), located at 302 Slocum Lake Road, Wauconda, Lake County, Illinois ("facility" or "site").

2. On September 24, 2003, a malfunction at Defendant's POTW resulted in the discharge of untreated and partially treated sewage into storm sewers leading to Bangs Lake Drain.

C. Allegations of Non-Compliance

Plaintiff contends that the Defendant has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:

- Count I: WATER POLLUTION, violation of 415 ILCS 5/12(a) (2002);
- Count II: CREATING A WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2002);
- Count III: VIOLATION OF WATER QUALITY STANDARDS, violation of 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 302.203;
- Count IV: VIOLATION OF EFFLUENT STANDARDS, violation of 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 304.104 and 304.106;
- Count V: NPDES PERMIT VIOLATIONS, violation of 415 ILCS 5/12(f) (2002), and NPDES Permit No. IL0020109.

D. Admission of Violations

The Defendant neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

IV.
APPLICABILITY

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

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Defendant under this Consent Order. In the event of any conveyance of title, easement or other interest in the facility, the Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, the Defendant and a contemplated future owner or operator of the facility may jointly request, and the Plaintiff, in its discretion may consider, modification of this Consent Order to obligate the proposed

purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant.

C. In the event that the Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, the Defendant shall notify the Plaintiff 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Defendant shall make the prospective purchaser or successor's compliance with this Consent Order a condition of any such sale or transfer and shall provide a copy of this Consent Order to any such successor in interest. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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

VI.

VENUE

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

VII.
SEVERABILITY

It is the intent of the Plaintiff and Defendant that the provisions of this Consent Order shall be severable, and should any provision 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.

VIII.
JUDGMENT ORDER

This Court, having jurisdiction over the parties and subject matter, the parties having appeared, due notice having been given, the Court having considered the stipulated facts and being advised in the premises, this Court finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Penalty

1. a. The Defendant shall pay a civil penalty of Ten Thousand Dollars (\$10,000.00) within thirty (30) days of the date of entry of this Consent Order.

b. Payment shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency

Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

c. The name, case number, and the Defendant's Federal Employer Identification Number ("FEIN") shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 West Randolph St., Suite 2001
Chicago, Illinois 60601

2. For purposes of payment and collection, the Defendant's attorney may be reached at the following address:

Mr. Rudolph F. Magna
Magna & Johnson
495 N. Riverside Drive, Suite 201
Gurnee, Illinois 60031

3. For purposes of payment and collection, Defendant may be reached at the following address:

Mayor
Village of Wauconda
100 South State Street
Wauconda, Illinois 61065

4. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. Future Compliance

1. The Defendant shall implement and enforce a pretreatment program in accordance with Village of Wauconda

Ordinance 2000-O-31, adopted on September 19, 2000, and all subsequent modifications thereto. The Defendant shall maintain legal authority adequate to fully implement its Pretreatment Program. The Defendant shall:

- a. Carry out independent inspection and monitoring procedures at least once per year, which will determine whether each significant industrial user ("SIU") is in compliance with applicable pretreatment standards;
 - b. Perform an evaluation, at least once every two (2) years, to determine whether each SIU needs a slug control plan. If needed, the SIU slug control plan shall include the items specified in 40 CFR ' 403.8 (f) (2) (v);
 - c. Update its inventory of industrial users (IU's) at least annually and as needed, or as required by an NPDES Permit, to ensure that all SIUs are properly identified, characterized, and categorized;
 - d. Receive and review self monitoring and other IU reports to determine compliance with all pretreatment standards and requirements, and obtain appropriate remedies for noncompliance by any IU with any pretreatment standard and/or requirement;
 - e. Investigate instances of noncompliance, collect and analyze samples, and compile other information with sufficient care as to produce evidence admissible in enforcement proceedings, including judicial action;
 - f. Require development, as necessary, of compliance schedules by each industrial user for the installation of control technologies to meet applicable pretreatment standards; and,
 - g. Maintain an adequate revenue structure for continued operation of Defendant's pretreatment program.
2. The Defendant shall issue/reissue permits or equivalent control mechanisms to all SIUs prior to expiration of existing permits or prior to commencement of discharge in the case of new

discharges. The permits at a minimum shall include the elements listed in 40 CFR 403.8(f)(1)(iii).

3. The Defendant shall develop, maintain, and enforce, as necessary, local limits to implement the prohibitions in 40 CFR 403.5 which prohibit the introduction of specific pollutants to the waste treatment system from any source of nondomestic discharge.

4. In addition to the general limitations expressed in Paragraph 3 above, applicable pretreatment standards must be met by all industrial users of the POTW. These limitations include specific standards for certain industrial categories as determined by Section 307(b) and 8 of the Clean Water Act, State limits, or local limits, whichever are more stringent.

5. The Defendant shall provide an annual report briefly describing the Defendant's pretreatment program activities over the previous calendar year. Such report shall be submitted no later than January 31 of the following year, and shall be in the format set forth in Illinois EPA's POTW Pretreatment Report Package which contains information regarding:

- a. An updated listing of the Defendant's industrial users.
- b. A descriptive summary of the compliance activities including numbers of any major enforcement actions, (i.e., administrative orders, penalties, civil actions, etc.), and the outcome of those actions. This includes an assessment of the compliance status of the Defendant's industrial users and the effectiveness of the Defendant's

pretreatment program in meeting its needs and objectives.

- c. A description of all substantive changes made to the Defendant's pretreatment program.
- d. Results of sampling and analysis of POTW influent, effluent, and sludge.
- e. A summary of the findings from the priority pollutants sampling.

6. The Defendant shall maintain all pretreatment data and records for a minimum of three (3) years.

7. The Defendant shall provide written notification to the Bureau of Water's ("BOW's") Managing Attorney, Illinois EPA, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 within five (5) days of receiving notice that any industrial user of its sewage treatment plant is appealing to the circuit court any condition imposed by the Defendant in any permit issued to the industrial user by the Defendant. A copy of the industrial user's appeal and all other pleadings filed by all parties shall be mailed to the BOW Managing Attorney within five (5) days of the pleadings being filed in circuit court.

8. The Defendant shall monitor its influent, effluent and sludge and report concentrations of the following parameters on monitoring report forms provided by the Illinois EPA and include them in its annual report. Samples shall be taken at least once per year, at the indicated detection limit or better and consist of a 24-hour composite unless otherwise specified below. Sludge

samples shall be taken of final sludge and consist of a grab sample reported on a dry weight basis.

<u>STORET</u> <u>CODE</u>	<u>PARAMETER</u>	<u>Minimum</u> <u>detection limit</u>
01097	Antimony	0.07 mg/L
01002	Arsenic	0.05 mg/L
01022	Boron*	0.005 mg/l
01007	Barium	0.5 mg/L
01012	Beryllium	0.005 mg/L
01027	Cadmium	0.001 mg/L
01032	*Chromium (hex - grab not to exceed 24 hours)	0.01 mg/L
01034	Chromium(total)	0.05 mg/L
01042	Copper	0.005 mg/L
00718	Cyanide (grab) (weak acid dissociable)	10.0 ug/L
00720	Cyanide (grab) (total)	10.0 ug/L
00951	*Fluoride	0.1 mg/L
01045	Iron (total)	0.5 mg/L
01046	*Iron (Dissolved)	0.5 mg/L
01051	Lead	0.05 mg/L
01055	Manganese	0.5 mg/L
71900	Mercury	0.2 ug/L
01067	Nickel	0.005 mg/L
00536	*Oil (hexane soluble or equivalent) (Grab)	1.0 mg/L
32730	Phenols (grab)	0.005 mg/L
01147	Selenium	0.002 mg/L
01077	Silver (total)	0.003 mg/L
01059	Thallium	0.3 mg/L
01092	Zinc	0.025 mg/L

*(Influent and effluent only)

Unless otherwise indicated, concentrations refer to the total amount of the constituent present in all phases, whether solid, suspended or dissolved, elemental or combined including all oxidation states. Where constituents are commonly measured as other than total, the phase is so indicated.

9. Within six (6) months of the date of entry of this Consent Order, the Defendant shall conduct an analysis for the one hundred and ten (110) organic priority pollutants identified in 40 CFR 122 Appendix D, Table II as amended. This monitoring shall be done annually and reported on monitoring report forms provided by the Illinois EPA and shall consist of the following:

- a. The influent and effluent shall be sampled and analyzed for the one hundred and ten (110) organic priority pollutants. The sampling shall be done during a day when industrial discharges are expected to be occurring at normal to maximum levels.

Samples for the analysis of acid and base/neutral extractable compounds shall be 24-hour composites.

Five (5) grab samples shall be collected each monitoring day to be analyzed for volatile organic compounds. A single analysis for volatile pollutants (Method 624) may be run for each monitoring day by compositing equal volumes of each grab sample directly in the GC purge and trap apparatus in the laboratory, with no less than one (1) mL of each grab included in the composite.

Wastewater samples must be handled, prepared, and analyzed by GC/MS in accordance with USEPA Methods 624 and 625 of 40 CFR 136 as amended.

- B. The sludge shall be sampled and analyzed for the one hundred and ten (110) organic priority pollutants. A sludge sample shall be collected concurrent with a wastewater sample and taken as final sludge.

Sampling and analysis shall conform to USEPA Methods 624 and 625 unless an alternate method has been approved by Illinois EPA.

- C. Sample collection, preservation and storage shall conform to approved USEPA procedures and requirements.

10. In addition, the Defendant shall monitor any new toxic substances as defined by the Clean Water Act, as amended, following notification by the Illinois EPA.

11. The Defendant shall report any noncompliance with effluent or water quality standards within 24 hours of Defendant's knowledge of such occurrence. Such report shall be made to Plaintiff's representatives, as listed in Section VIII.H. of this Consent Order.

12. Analytical detection limits shall be in accordance with 40 CFR 136. Minimum detection limits for sludge analyses shall be in accordance with 40 CFR 503.

C. Stipulated Penalties

1. If the Defendant fails to complete any required activity as specified in Section VIII.B. of this Consent Order, the Defendant shall provide notice to the Plaintiff of each failure to comply with this Consent Order. In addition, the Defendant shall pay to the Plaintiff, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of Two Hundred Fifty Dollars (\$250.00) until such time that compliance is achieved.

2. Following the Plaintiff's determination that the Defendant has failed to complete performance of any task or other portion of work, or failed to provide a required submittal, including any report or notification, Plaintiff may make a demand

for stipulated penalties upon the Defendant for its noncompliance with this Consent Order. Failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties.

3. All penalties owed the Plaintiff under this section of this Consent Order that have not been paid shall be payable within thirty (30) days of the date the Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

4. a. All stipulated penalties shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF and delivered to:

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

b. The name and number of the case and the Defendant's FEIN shall appear on the face of the check. A copy of the check(s) and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

5. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the

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use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

D. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty amount owed by the Defendant 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) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. All interest on penalties owed the Plaintiff shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Defendant's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

E. Future Use

Notwithstanding any other language in this Consent Order to the contrary, this Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Sections 39(a)(i) and/or 42(h) of the Act, 415 ILCS 5/39(a)(i) and/or 5/42(h) (2002).

F. Force Majeure

1. For the purposes of this Consent Order, *force majeure* is an event arising solely beyond the control of the Defendant which prevents the timely performance of any of the requirements of this Consent Order. For purposes of this Consent order *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant.

2. When, in the opinion of the Defendant, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the Plaintiff within 48 hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence.

3. Failure by the Defendant to comply with the notice requirements of the preceding paragraph shall render this section voidable by the Plaintiff as to the specific event for which the Defendant has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

4. Within 10 calendar days of receipt of the *force majeure* notice required under Section VIII.F.2, the Plaintiff shall respond to the Defendant in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order pursuant to the modification procedures established in this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such delay.

5. If the Plaintiff does not accept the Defendant's claim of a *force majeure* event, the Defendant may submit the matter to

this Court within 20 calendar days of receipt of Plaintiff's determination for resolution to avoid payment of stipulated penalties, by filing a petition for determination of the issue. Once the Defendant has submitted such a petition to the Court, the Plaintiff shall have 20 calendar days to file its response to said petition. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant, including any entity controlled by the Defendant, and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

5. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant under the provisions of this section of this Consent Order from a failure to comply with such a requirement.

G. Dispute Resolution

1. The dispute resolution procedure provided by this section shall be available to resolve all disputes arising under this Consent Order, except as otherwise provided in Section VIII.F. regarding force majeure, and except where the Defendant

unless the parties' representatives agree to shorten or extend this period.

4. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within 20 calendar days of the Defendant's receipt of the written summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument within 20 calendar days of such filing.

5. 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 failure or noncompliance during the period of dispute resolution.

6. Notwithstanding any other provision of this Consent Order, this Court shall make its decision based on the administrative record and shall not draw any inferences nor establish any presumptions adverse to any party as a result of invocation of this section or the parties' inability to reach agreement with respect to the disputed issue.

7. As part of the resolution of any dispute, the parties, by agreement, or by order of this Court, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

H. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Consent Order, except for payments pursuant to Sections VIII.A. and C. of this Consent Order shall be submitted as follows:

As to the Plaintiff

Chris Kallis
Environmental Protection Specialist
Illinois EPA
9511 W. Harrison Street
Des Plaines, Illinois 60016

Charles Gunnarson
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Defendant

Mayor
Village of Wauconda
100 South State Street
Wauconda, Illinois 61065

I. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Defendant's POTW facility, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives may take photographs, samples, and collect information, as they deem necessary.

J. Cease and Desist

The 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 outlined in Section III.C. of this Consent Order.

K. Release from Liability

In consideration of the Defendant's payment of any specified costs, a Ten Thousand Dollar (\$10,000.00) penalty, and upon the completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other

than those expressly specified in Plaintiff's Complaint filed on August 17, 2004. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), or entity other than the Defendant.

L. Retention of Jurisdiction

This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this Consent Order, except that the parties may, by mutual written consent, extend any compliance dates or modify the terms

of this Consent Order without leave of court. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the court and incorporated into this Consent Order by reference.

M. Enforcement of Consent Order

1. Upon the entry of this Consent Order, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Consent Order. This Consent Order is a binding and enforceable order of this Court and may be enforced as such through any and all available means.

2. Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

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

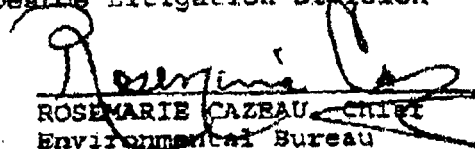
AGREED:

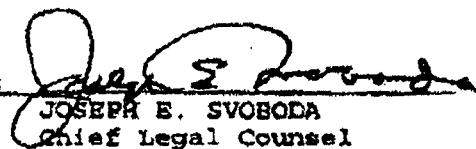
FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 11/18/04

DATE: 11/16/04

Exhibit "C"

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

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. JAMES E. RYAN, Attorney)
General of the State of Illinois)

Plaintiff,)

vs.)

VILLAGE OF WAUCONDA, an)
Illinois municipal corporation)

Defendant.)

FILED
JUN 28 1999

99 CH 720

Richard Coffelt
CIRCUIT CLERK

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

NOW COMES the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, and complains of Defendant, VILLAGE OF WAUCONDA, as follows:

COUNT I

WATER POLLUTION

1. This Count is brought pursuant to Section 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d) and (e) (1996), on behalf of the 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, and is an action to restrain ongoing violations of the Act and for civil penalties.

2. The Illinois Environmental Protection Agency ("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 (1996), and charged, *inter alia*, with the duty of enforcing the Act.

The Illinois EPA is further charged 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. Sec. 1342(b)(7).

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

4. 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.

5. At all times relevant to this Complaint, the WWWTP provides preliminary, primary, secondary and tertiary treatment, and consists of a raw sewage pumping station, aerated grit tank, comminutor, primary clarifiers, primary effluent pumping station, bio packed towers, solids contact tank, secondary clarifiers, sand filters, chlorine contact tank, aerobic digesters and sluge pumps.

6. The WWWTP discharges to an unnamed tributary to 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 (1996).

Section 3.56

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

7. Section 3.55 of the Act, 415 ILCS 5/3.55 (1996), defines water pollution as follows:

Section 3.55

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

8. Section 3.06 of the Act, 415 ILCS 5/3.06 (1996), defines a contaminant as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

9. Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), provides, in pertinent part as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

10. On May 20, 1996, and February 20, and 21, 1997, Wauconda allowed untreated raw sewage to be pumped from six different locations totaling approximately 1,530,390 gallons into Bangs Lake Creek, a water of the State of Illinois, so as to cause or tend to cause water pollution in Illinois, in violation of the Act.

11. The untreated raw sewage is a contaminant as that term is defined in Section 3.06 of the Act, 415 ILCS 5/3.06(1996).

12. Defendant, by its actions alleged herein, has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (1996).

13. Plaintiff is without an adequate remedy at law.

Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant a preliminary injunction and after a trial, a permanent injunction in favor of Plaintiff and against Defendant Wauconda:

1. Finding that Wauconda has caused or allowed violations of Section 12(a) of the Act;

2. Enjoining Defendant from further violations of the Section cited above, by ordering Defendant to take whatever steps are necessary to bring the WWTP into compliance with the Act;

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Wauconda for each and every violation of Section 12(a) of the Act, plus an additional Ten Thousand Dollars (\$10,000.00) per day for each day the violation of Section 12(a) continues;

4. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

5. Granting such other relief as this Court deems just and equitable.

COUNT II

VIOLATION OF GENERAL EFFLUENT STANDARDS

1-10. Plaintiff realleges and incorporates by reference

herein, paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count II.

11. Section 304.120(c) of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 304.120(c), titled, Deoxygenating Wastes, provides as follows:

Except as provided in Section 306.103, all effluents containing deoxygenating wastes shall meet the following standards:

- c) No effluent whose dilution ratio is less than five to one shall exceed 10 mg/l of BOD₅ or 12 mg/l of suspended solids, ...

12. In February 1997, Wauconda caused or allowed 28.4 milligrams per liter ("mg/l") of total suspended solids ("TSS") to be discharged into Bangs Lake Creek, a water of the State of Illinois, in violation of 35 Ill. Adm. Code 304.120(c).

13. Defendant, by its actions alleged herein, has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(1996), and 35 Ill. Adm. Code 304.120(c).

14. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant a preliminary injunction and after a trial, a permanent injunction in favor of Plaintiff and against Defendant Wauconda:

1. Finding that Wauconda has caused or allowed violations of Section 12(a) of the Act and 35 Ill. Adm. Code 304.120(c);

2. Enjoining Defendant from further violations of the Sections cited above, by ordering Defendant to take whatever steps are necessary to bring the WWTP into compliance with the Act and the Board Water Pollution Regulations;

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Wauconda for each and every violation of Section 12(a) of the Act and 35 Ill. Adm. Code 304.120(c), plus an additional Ten Thousand Dollars (\$10,000.00) per day for each day the violation of Section 12(a) and 35 Ill. Adm. Code 304.120(c) continues;

4. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

5. Granting such other relief as this Court deems just and equitable.

COUNT III

VIOLATION OF NPDES PERMIT EFFLUENT LIMITS

1-10. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count III.

11. Section 12(f) of the Act, 415 ILCS 5/12(f) (1996), provides as follows:

No person shall:

- f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for

point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation if any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any Order adopted by the Board with respect to the NPDES program.

12. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), titled, NPDES Permit Required, provides as follows:

- a. Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

13. Section 304.141(a) of the Board Water Pollution Regulation, 35 Ill. Adm. Code 304.141(a), titled, NPDES Effluent Standards, provides as follows:

- a. No person to whom an NPDES permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.

14. Section 304.120(c) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(c), titled, Deoxygenating Wastes, provides as follows:

Except as provided in Section 306.103, all effluents containing deoxygenating wastes shall meet the following standards:

No effluent whose dilution ration is less than five to one shall exceed 10 mg/l of BOD5 or 12 mg/l of suspended solids...

15. The Illinois EPA issued to Defendant NPDES Permit No. IL0020109 on June 7, 1995, with an expiration date of May 31, 2000.

16. Defendants' NPDES Permit No. IL0020478 contains effluent

limits for, among other things, TSS and total residual chlorine.

17. The NPDES effluent limit for TSS is 12 mg/l and 0.05 mg/l for residual chlorine.

18. Wauconda exceeded its NPDES permit limits for TSS and chlorine residual by discharging 28.4 mg/l of TSS on February 20, 1997, and 0.68 mg/l and 0.69 mg/l of residual chlorine on both February 20 and 21, 1997.

19. Defendant, by its actions alleged herein, has violated Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (1996), and Sections 309.102(a), 304.141(a) and 304.120(c) of 35 Ill. Adm. Code 309.902(a), 304.141(a), and 304.120(c).

20. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, a permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant a preliminary injunction, and after a trial, a permanent injunction in favor of Plaintiff and against Defendant Wauconda:

1. Finding that Wauconda has caused or allowed violations of Section 12(a) and (f) of the Act and 35 Ill. Adm. Code 309.102(a), 304.141(a) and 304.120(c);

2. Enjoining Defendant from further violations of the Sections cited above, by ordering Defendant to take whatever steps are necessary to bring the WWTP into compliance with the Act and the Board Water Pollution Regulations;

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Wauconda for each and every violation of Section 12(a) of the Act and 35 Ill. Adm. Code 304.141(a) and 304.120(c), plus an additional Ten Thousand Dollars (\$10,000.00) per day for each day the violations of Section 12(a) and 35 Ill. Adm. Code 304.141(a), and 304.120(c) continue; and \$10,000.00 (Ten Thousand Dollars) per day for each day of violation of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);

4. Taxing all costs in this action, pursuant to Section 42 (f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

5. Granting such other relief as this Court deems just and equitable.

COUNT IV

VIOLATION OF NPDES PERMIT REPORTING REQUIREMENTS

1-8. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 8 of Count I and paragraph 11 of Count III as paragraphs 1 through 9 of this Count IV.

10. Section 305.102(a) and (b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(a) and (b), titled, Reporting Requirements, provides as follows:

- a) Every person within this State operating a pretreatment works, treatment works, or wastewater source shall submit operating reports to the Agency at a frequency to be determined by the Agency. "Agency" means the Illinois Environmental Protection Agency. Such reports shall contain information regarding the quantity of influent and of effluent discharged, or wastes bypassed and of combined sewer overflows; the concentrations of those physical,

chemical, bacteriological and radiological parameters which shall be specified by the Agency; information concerning the biological impact of the discharge as specified by the Agency, pursuant to Section 39 of the Act; and any additional information the Agency may reasonably require.

- b) Every holder of an NPDES (National Pollutant Discharge Elimination System) permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

11. Defendant did not provide representative flow monitoring, as required by its NPDES Permit.

12. By not providing representative flow monitoring, as required by its NPDES permit, Wauconda violated 35 Ill. Adm. Code 305.102(a) and (b) and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (1996).

13. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court grant preliminary injunction, and after a trial, a permanent injunction in favor of Plaintiff and against Defendant Wauconda:

1. Finding that Wauconda has caused or allowed violations of Section 12(f) of the Act and 35 Ill. Adm. Code 305.102(a) and (b);

2. Enjoining Defendant from further violations of the Sections cited above, by ordering Defendant to take whatever steps are necessary to bring the WWTP into compliance with the Act and

the Board Water Pollution Regulations;

3. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Wauconda for each and every violation of Section 12(f) of the Act and 35 Ill. Adm. Code 305.102(a) and (b);

4. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

5. Granting such other relief as this Court deems just and equitable.

COUNT V

VIOLATION OF PERFORMANCE CRITERIA

1-9. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 9 of Count IV as paragraphs 1 through 9 of this Count V.

10. Section 306.303 of the Board Water Pollution Regulations 35 Ill. Adm. Code 306.303, titled, Excess Infiltration, provides as follows:

Excess infiltration into sewers shall be eliminated, and the maximum practicable flow be conveyed to treatment facilities.

11. Section 306.304 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.304, titled, Overflows, provides as follows:

Overflows from sanitary sewers are expressly prohibited.

12. Section 306.305(b) of the Board Water pollution Regulations, 35 Ill. Adm. Code 306.305(b), titled, Treatment of Overflows and Bypasses, provide as follows:

All combined sewer overflows and treatment plant bypasses

shall be given sufficient treatment to prevent pollution, or the violation of applicable water quality standards unless an exception has been granted by the Board pursuant to Subpart D.

Sufficient treatment shall consist of the following:

- b) Additional flows, as determined by the Agency but not less than ten times the average dry weather flow for the design year, shall receive a minimum of primary treatment and disinfection with adequate retention time.

13. On February 20 and 21, 1997, Wauconda allowed excessive inflow/infiltration into its collection system leading to sewer overflow in violation of 35 Ill. Adm. Code 306.303.

14. On February 20 and 21, 1997, Wauconda allowed sewer overflows to occur during wet weather periods that did not receive primary treatment and disinfection prior to discharge to the environment.

15. By allowing excessive inflow/infiltration and overflows and by failing to give primary treatment and disinfection prior to discharge, Wauconda violated Sections 306.303, 306.304, and 306.305(b) of 35 Ill. Adm. Code, and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (1996).

16. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant a preliminary injunction, and after a trial, a permanent injunction in favor of Plaintiff and against Defendant

Wauconda:

1. Finding that Wauconda has caused or allowed violations of Sections 306.303, 306.304, and 306.305(b) of 35 Ill. Adm. Code and Section 12(f) of the Act;

2. Enjoining Defendant from further violations of the Sections cited above, by ordering Defendant to take whatever steps are necessary to bring the WWWTTP into compliance with the Act and the Board Water Pollution Regulations;

3. Assessing against Wauconda a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation of Section 12(f) of the Act and 35 Ill. Adm. Code 306.303, 306.304, and 306.305(b);

4. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

5. Granting such other relief as this Court deems just and equitable.

COUNT VI

VIOLATION OF NPDES PERMIT CONDITIONS

1-9. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 9 of Count V as paragraphs 1 through 9 of this Count VI.

10. Section 309.146(a) (1-4) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.146 (a) (1-4) titled, Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements, provides as follows:

a) The Agency shall require every holder of an NPDES Permit, as a condition of the NPDES Permit issued to the holder, to:

- 1) Establish, maintain and retain records;
- 2) Make reports;
- 3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
- 4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as may be prescribed).

11. By failing to provide representative flow monitoring, as required by its NPDES Permit, Wauconda violated 35 Ill. Adm. Code 309.146(a)(3).

12. By failing to take samples as per the requirements of its NPDES Permit regarding frequency, Wauconda violated 35 Ill. Adm. Code 309.146(a)(4).

13. By failing to submit its sludge analyses and its semi-annual sludge management report as required by its NPDES Permit, Wauconda violated 35 Ill. Adm. Code 309.146(a)(2).

14. By failing to submit a completed industrial survey to the Illinois EPA as required by its NPDES Permit, Wauconda violated 35 Ill. Adm. Code 309.146(a)(1) and (2).

15. Violations of 35 Ill. Adm. Code 309.146(a)(1-4) are also violations of Section 12(f) of the Act, 415 ILCS 5/12(f)(1996).

16. Defendant by its action alleged herein has violated Section 12(f) of the Act, 415 ILCS 5/12(f)(1996), and 35 Ill. Adm. Code 309.146(a)(1-4).

17. Plaintiff is without an adequate remedy at law.

Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court grant a preliminary injunction, and after a trial, a permanent injunction in favor of Plaintiff and against Defendant Wauconda:

1. Finding that Wauconda has caused or allowed violations of Section 12(f) of the Act and 35 Ill. Adm. Code 309.146(a)(1-4);

2. Enjoining Defendant from further violations of the Sections cited above, by ordering Defendant to take whatever steps are necessary to bring the WWTP into compliance with the Act and Board Water Pollution Regulations;

3. Assessing against Wauconda a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation of Section 12(f) of the Act, and 35 Ill. Adm. Code 309.146(a)(1-4);

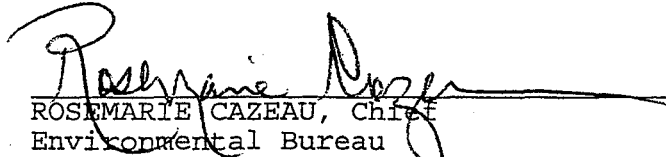
4. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

5. Granting such other relief as this Court deems just and equitable.

PEOPLE OF THE STATE OF ILLINOIS
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