

ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

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FEB 28 2005

STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,)

v.)

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

Respondents.)

SLOCUM DRAINAGE DISTRICT OF)
LAKE COUNTY, ILLINOIS)

Petitioner,)

v.)

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

Respondents.)

PCB 05-55
(Third-Party NPDES Permit Appeal
Water)

PCB 05-58
(Third-Party NPDES Permit Appeal
Water)

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 HOMEOWNERS)
ASSOCIATION, JULIA TUDOR and)
CHRISTINE DEVINEY.)

Petitioners,)

v.)

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

Respondent.)

PCB 05-59

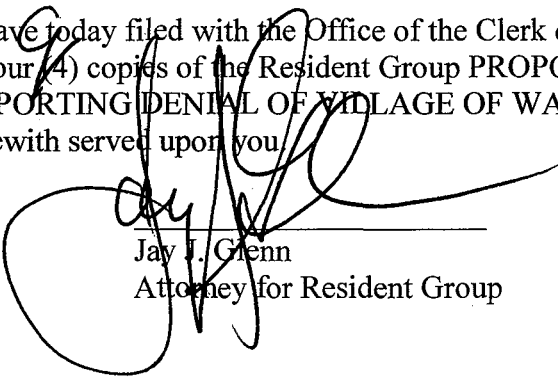
(Third-Party NPDES Permit Appeal
Water)

NOTICE OF FILING

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

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and four (4) copies of the Resident Group PROPOSED FINDINGS OF FACT AND BRIEF SUPPORTING DENIAL OF VILLAGE OF WAUCONDA NPDES PERMIT, a copy of which is herewith served upon you.


Jay J. Glenn
Attorney for Resident Group

Jay J. Glenn, Attorney at Law
2275 Half Day Road, Suite 350
Bannockburn, Illinois 60015
(847) 526-9202
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THIS FILING PRINTED ON RECYCLED PAPER

STATE OF ILLINOIS

COUNTY OF LAKE

ORIGINAL

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CLERK'S OFFICE

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STATE OF ILLINOIS
Pollution Control Board

Jay J. Glenn, an attorney, hereby certifies that a copy of the foregoing Notice of Filing, Certificate of Service and PROPOSED FINDINGS OF FACT AND BRIEF SUPPORTING DENIAL OF VILLAGE OF WAUCONDA NPDES PERMIT, were served on the persons listed below by electronic transfer on February 28, 2005 and were further served on the persons listed below by overnight mail on February 28, 2005.

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AL PHILLIPS, VERN MEYER, GAYLE)
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 (Third-Party NPDES Permit Appeal
 Water)

**PROPOSED FINDING OF FACT
 AND
 BRIEF SUPPORTING DENIAL OF
VILLAGE OF WAUCONDA NPDES PERMIT**

NOW COMES the RESIDENT GROUP, by and through their attorney JAY J. GLENN, and for their **PROPOSED FINDINGS OF FACTS, ARGUMENT AND BRIEF SUPPORT OF DENIAL OF VILLAGE OF WAUCONDA NPDES PERMIT** and states as follows:.

JURISDICTION

1. On August 23, 2004 the Illinois Environmental Protection Agency (“**Agency**”), approved the Final Modified [NPDES] Permit to the Village of Wauconda Wastewater Treatment Plant (“**WWTP**”) Permit No. IL0020109 (“**Permit**”)¹, further particularized as follows:²

Issue Date: November 6, 2000
Modification Date #1: December 30, 2003
Modification Date #3: August 23, 2004
Expiration Date: November 30, 2005³

2. In support of this decision, the Agency spread of record a collection of documents entitled **Wauconda Wastewater Treatment Plant NPDES Permit**⁴ consisting of the Table of Contents⁵, Agency Decision⁶, Hearing Record⁷, Background of Permit Modification⁸, Discharge History⁹, Public Hearing,¹⁰ September 9-10, 2003 Public Hearing¹¹, Coliform Bacteria¹², Disinfection Exemption Modification for Current Permit¹³, Local Government Meeting – December 10, 2003¹⁴ and Response to Comments, Questions and Concerns¹⁵, and a copy of the NPDES Permit.

¹ Reference to IPCB Doc. No.: _____, are to the Agency document submission to the Illinois Pollution Control Board.

² IPCB Doc's. No's.: #002195

³ IPCB Doc's No's.: #002251 thru #002262

⁴ IPCB Doc's. No's.: #002210 thru #002262 and #002251 thru #002262

⁵ IPCB Doc. No.: #002210

⁶ IPCB Doc. No.: #002211

⁷ IPCB Doc. No. :#002212

⁸ IPCB Doc.No.: #002213

⁹ IPCB Doc. No.: #002214

¹⁰ IPCB Doc. No.: #002214

¹¹ IPCB Doc. No.: #002213

¹² IPCB Doc.No.: #002214

¹³ IPCB Doc. No.: #002215

¹⁴ IPCB Doc. No.: #002215

Jurisdiction – Resident Group

3. On September 27, 2004 pursuant 415 ILCS 5/40(e)(1) and 35 Ill. Administrative Code Section 105, the Resident Group filed before this, The Honorable Illinois Pollution Control Board (“**Board**”) this **THIRD-PARTY PETITION FOR REVIEW OF A DECISION BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** (“**Resident Group Petition**”).

4. Pursuant to 415 ILCS 5/40(e)(2)(A) members of the Resident Group gave statements, made extensive comments and submitted numerous documents to the Agency at the September 9, 2003 and September 10, 2003 “informational hearing” and filed other documents prior to the close of the public record.

5. The Hearing Officer dictated specific meeting rules for the September 9, 2003 and September 10, 2003 “informational meeting” and individual members of the Resident Group participated and fully complied with the specific instructions of the Hearing Officer and the Resident Group is fully compliant with the jurisdictional requirements necessary to prosecute this Appeal from the Agency decision granting this Permit.

6. Additional jurisdictional compliance is of record in these proceedings in the Resident Group Petition and those facts are incorporated by reference herein as if fully set forth herein.

7. Most members of the Resident Group reside in the Village of Lake Barrington and Cuba Township.

8. The Village of Lake Barrington and Cuba Township have, jointly, filed a separate NPDES Appeal, PCB 05-55 which is consolidated herein.

¹⁵ IPCB Doc’s No’s.: #002216 thru #002250

9. The Resident Group notes that the Village of Lake Barrington and Cuba Township, (“**Municipal Petitioners**”) and others¹⁶, are captioned as Petitioners in these Consolidated Proceedings but the Resident Group advises this, The Honorable Illinois Pollution Control Board, that the activities and recent pleadings of the Municipal Petitioners are in conflict with the views of the Resident Group, and if implemented will endanger the health and safety of the Resident Group.

ACRONYMS

10. The Resident Group adopts the Agency Acronyms¹⁷ and a copy is attached hereto as **Exhibit A**. The Resident Group Supplements the Agency Acronyms and a copy is attached as **Exhibit B**.

CONSTITUTIONAL AND PROCEDURAL OBJECTIONS

11. This pleading is intended as a factual summary and argument supporting denial of the Permit based solely on the Record.

12. The Resident Group will raise additional constitutional, jurisdictional and procedural objections to the approval and/or implementation of this Permit in future pleadings. A brief overview of these additional grounds is summarized as follows:

PROCEDURAL DUE PROCESS

13. The Resident Group has by testimony at the “informational hearing”, in post-hearing comments and its filings in these proceedings charge that the Agency has institutionalized practices and procedures which result in the systematic denial of due

¹⁶ PCB 05-55

¹⁷ IPCD Doc. No.: #00249

process rights commonly associated with quasi-judicial proceedings guaranteed to interested parties in accordance with People ex re. ROBERT J. KLAEREN II et al. v. Village of Lisle et al. 202 Ill. 2d 164; 781 N.E.2d 223; 2002 Ill. LEXIS 9411; 269 Ill. Dec. 426 (2002).

REGULATORY TAKINGS

14. In 1994, the Court of Appeals in Loveladies Harbor, Inc. v. United States, 28 F.3d 1171, 1179 (Fed. Cir. 1994) outlined a 2-step test for determining whether a regulatory takings has occurred:

[T]here has been a regulatory taking if: (1) there was a denial of economically viable use of the property as a result of the regulatory imposition; (2) the property owner has distinct investment-backed expectations; and (3) it was an interest vested in the owner, as a matter of state property law, and not within the power of the state to regulate under common law nuisance doctrine.¹⁸

15. The land tracts of the Fiddle Creek Wetlands are privately owned, they are not the property of the Village of Wauconda, Village of Lake Barrington or Cuba Township.

16. If the current waste loading conditions are allowed to continue, the Village of Wauconda wastestream will reduce the Fiddle Creek Wetlands to a wastestream channel directly to the Fox River in 14 to 15 years¹⁹. If this Permit is allowed to proceed and become operational, the aging process will accelerate.

¹⁸ ABA Environment, Energy, and Resources Law – The Year in Review 2002 at page 346

¹⁹ IPCB Doc. No.: #000475

17. When the Village of Wauconda, apparently with Board approval, moved its wastestream to the Fiddle Creek Wetlands, the predictable consequence of that action, the death of the Fiddle Creek Wetlands became possible.

18. In 1993 the Fiddle Creek Wetlands open water had an area of about 180 acres, at the present time little or no open water is present²⁰.

19. No riparian owner or property owner in the Fiddle Creek Wetlands has been told “During the wet weather flow conditions an out-of-bank condition occurs along the east-west portion of Fiddle Creek during the 1-year, 12-hour storm event”²¹

20. No riparian owner or property owner in the Fiddle Creek Wetlands has been told that “The analysis did not include the influence from the Fox River backwater and applied a nominal flow at the Slocum Lake Drain confluence based on the data provided in the FIS. Further detailed studies would be required to assess the full effects of the watershed variables. The analysis presented is intended to address the anticipated overbank conditions and the impact of the increased flows from the wastewater treatment plant as critical locations along Fiddle Creek.”²²

²⁰ IPCB Doc. No.: #000475

²¹ IPCB Doc. No.: #002057

²² IPCB Doc.: #002058

21. In Cooley v. United States²³ 324 F.3d 1297 (Fed. Cir. 2003)

the Court held that a takings claim became ripe upon issuance of the Corps issuance of a final decision.

PUBLIC USE REQUIREMENT OF THE FIFTH AMENDMENT

22. The United States Supreme Court has just heard [February, 2005] oral arguments in Kelo, et al. v. City of New London, et al. Case No. 04-108, and the Supreme Court has been asked, as follows:

QUESTION PRESENTED

What protection does the Fifth Amendment's public use requirement provide for individuals whose property is being condemned, by to eliminate slums or blight, but for the sole purpose of "economic development" that will perhaps increase tax revenues and improve the local economy?

23. While it is true that Kelo is currently undecided and focused on the use of condemnation for the sole purpose of economic development the language challenged in Kelo is substantially identical to the language used by the Agency in its justification of this Permit.

CONFLICTS OF INTEREST

A.

Agency says **"We didn't do it, the Board did it basically"**

24. On September 9, 2003, the Agency, by its attorney, began the "informational hearing" with the following statement:

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 ,

²³ ABA – Environment, Energy, and Resources Law, The Year in Review 2003 at p. 142

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.²⁴

25. In a document entitled WAUCONDA WASTEWATER TREATMENT PLANT decision²⁵ the Agency stated in the DISCHARGE HISTORY, as follows:

“In 1977, the Illinois Pollution Control Board (Board) granted Wauconda a variance from the phosphorus standard in order to have time to resolve the problem. In 1983 the Board terminated the variance, whereupon the discharge was moved away from Slocum Lake to its resent location in Fiddle Creek. (Fiddle Creek has previously been designated in Wauconda’s NPDES permit and other Illinois EPA documents as “an unnamed tributary to the Fox River” or Wauconda Creek;” however, the permitted discharge point has been the same since 1983).”²⁶

26. This Record and the relevant Statutes give this Board both the grounds and authority to deny and/or terminate the Village of Wauconda NPDES Permit.

²⁴ Hearing Transcript at p. 15 – 16

²⁵ IPCB Doc's No's.: #002220 thru 002262

²⁶ IPCB Doc. No.: #002213

27. Prior to the September 9, 2003 “informational hearing” the Agency contacted numerous Residents near the Fiddle Creek Wetlands and advised that this Permit would be granted. A review of this Record indicates that the Agency is in the business of approving NPDES Permits and is failing to protect our wetlands and surface waters.

28. The Resident Group seeks Justice, sees no worse Municipal neighbor than the Village of Wauconda and no worse guardian than the Agency.

29. The Agency has by words and documents has shifted the responsibility for the current degradation of the Fiddle Creek Wetlands to the Illinois Pollution Control Board.

30. This Record with these Respondents creates a unique opportunity review a past decision, revealing the environmental consequences of that decision and providing an opportunity to correct a problem. The Resident Group believes, if there were ever grounds for Permit denial or revocation, this Record, the environmental history of the Village of Wauconda warrant serious consideration.

B.
TARKOWSKI SUPERFUND SITE (“**Superfund 2**”)

31. The Fiddle Creek Wetlands contains a Superfund Site [the second of two involved in this Permit Appeal] identified as LAKELAND ESTATES, 431 S. Lakeview, Wauconda, Illinois²⁷ which is owned by a Mr. John Tarkowski.²⁸

²⁷ IPCB Doc. #000382

²⁸ Tr.: 187, IPCB Doc’s No’s.: #000382 thru #00387, #000580, #000807,

32. Prior to September 9, 2003, the Agency was, on actual knowledge, that this Superfund Site would be raised by Residents at the “informational hearing”. numerous documents and photographs were submitted during the hearing and in the post hearing comment period.

33. On September 9, 2003, the Agency, by its attorney, advised that the Agency was aware of the Tarkowski matter²⁹ and advised the public of a decision in United States of America v. John Tarkowski³⁰

34. Mayer, Brown & Platt, represented Mr. Tarkowski in those proceedings.

35. Mayer Brown, Rowe & Maw LLP have filed their Appearance in these proceedings and represents the Village of Lake Barrington and Cuba Township.

36. The entrance to Superfund 2 is through Lakeland Estates and Superfund 2 is a 16 acre tract which is in and adjacent to the Fiddle Creek Wetlands, and parts of Superfund 2 are adjacent to the Slocum Lake Drainage District channels which currently carries the WWTP wastestream to the Fox River.

37. Superfund 2 has been come under aerial surveillance and the Agency has produced no documents relating to this active investigation. The Resident Group has additional information relating to Superfund 2 which is Confidential, and cannot become part of the public record.

38. The existence of Superfund 2 was raised by Residents at the “Informational Hearing” and this Appeal but the Agency has failed to disclose any

²⁹ Tr.: 196 - 197

³⁰ IPCB Doc's No's.: #000807 thru #000828

information relating to Superfund 2 in any documents, and its antidegradation analysis has failed to mention it even though even though the Wauconda wastestream flows through Superfund 2.

RESIDENT GROUP

39. The approximate 500 individuals,³¹ standing before this Board, represent a small cross-section of the actual Resident property owners of Cuba Township and Wauconda Township. Almost all members of the Resident Group live downstream of the WWTP outfall, and are so situated as to be affected by this Permit and by offensive conditions and other violations of the water quality standards of the Environmental Protection Act in the Fiddle Creek Wetlands, Fox River and Illinois River.

40. The members of this Resident Group have children, and the Resident Group represents them in these proceedings, they swim, hike, play and fish in the Fiddle Creek Wetlands.

41. Most members of Resident Group are in daily, intimate contact with the Fiddle Creek Wetlands. The Agency is on actual notice "It is reported that many of the wells in the area use a very shallow aquifer"³². Our wells are linked to groundwaters under this wetland and the Resident Group know their wells are subject to surface and subsurface contamination from the Village of Wauconda wastestream.

42. On July 29, 2003 a group of Residents requested a meeting with the Illinois Attorney General and requested an investigation of the Agency³³

43. The Residents raised the possibility of contamination in wells near the landfill.³⁴

³¹ Resident Group Appearance in these proceedings

³² IPCB Doc. No.: #000475

³³ IPCB Doc's No's.: #001744 thru #001746

44. The Residents then mentioned the possibility that contaminants associated with Superfund 1 leachate going to the WWTP and passing through to receiving stream and affecting the wells in North Barrington [Lake Barrington].³⁵

45. The consequences of aquifer pollution and existence of a leachate plume from Superfund 1 is now a matter of public record. It has been sixteen months since our neighbors in the Hillcrest Subdivision in un-incorporated Wauconda Township were told that cancer causing chemicals (Vinyl Chloride) was in their wells.

46. In the last 16 months, the Elmcrest, Spencer Highlands, Wellesmere Heights and North Shore Subdivisions and Residents living near Superfund 1 have been made aware of the danger of groundwater contamination and several hundred residents are receiving bottled water.

47. The Agency is on actual notice that Superfund 1, under a 2nd NPDES Permit issued to WTG recovers leachate runoff through a system of drain tiles which is pumped to the WWTP and is dumped into the Village of Wauconda wastestream and then is discharged into the Fiddle Creek Wetlands.

48. The Residents then raised the possibility of contaminates associated with leachate going to the STP and passing through to receiving stream affecting wells of wells downstream of the WWTP Outfall on Anderson Road.³⁶

49. The Resident Group recognizes that the WWTP wastestream is a clear and present danger to health and safety of downstream Residents, their families, their wells and the environment.

³⁴ Ibid at #001745

³⁵ Ibid

³⁶ Ibid

50. The leachate recovery system was specifically installed at Superfund 1 to keep leachate from discharging directly to Mutton Creek.

51. The Discharge of leachate from the landfill to the City of Wauconda (one of the PRP's) was permitted by the Agency in 1991. The leachate does contain some VOC's, heavy metals, and boron. Boron elevated.³⁷

52. A list of Superfund 1 PRP's is attached hereto as Exhibit C. Prior to 1983 there were no STP or WWTP discharges into the Fiddle Creek Wetlands.

**False NPDES Application submitted by Village of Wauconda
and
Agency approval of NPDES Permit knowing Permit False**

53. Form 1 General Information for Consolidated Permits Program is EPA Form 3510-1 and the EPA Description of Consolidated Permit Application Forms, Form 1 Package Table of Contents, Section A – General Instructions, Section B – Form 1 line-by-line instructions, Section C, Section D – Glossary and blank Form 1 are attached hereto as Group Exhibit D.

54. Page 1-4 of the NPDES instructions in Item XIII state, in relevant part as follows:

a. 18 U.S.C. Section 1001 provides that:

“Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.”

³⁷ IPCB Doc. No.:#001843

b. Section 309(c)(2) of the Clean Water Act provides:

“any person knowingly makes any false statement, representation, or certification in any application,... shall upon conviction, be punished by a fine of no more than \$10,000 or by imprisonment of not more than six months, or both.”

c. Section 3008(d)(3) of the Resource Conservation and Recovery Act provides:

“for a fine up to \$25,000 per day or imprisonment up to one year, or both, for a first conviction or making a false statement in an application under the Act, and for double these penalties upon subsequent convictions”.

55. In the State of Illinois, the current statutory authority to deny an NPDES permit is found at 35 Ill. Adm. Code 309.105, a copy of which is attached hereto as

Exhibit E.

56. 35 Ill. Adm. Code 309.103 states as follows:

a) Application Forms

1) An applicant for a National Pollution Discharge Elimination System (NPDES) Permit shall file an application, in accordance with Section 309.223 hereof, on forms provided by the Illinois Environmental Protection Agency (Agency). Such forms shall comprise the NPDES application forms promulgated by the U.S. Environmental Protection Agency for the type of discharge for which an NPDES Permit is being sought...”

57. Pursuant to 35 Ill. Adm. Code 309.182(b)(2) this Board has Authority to Modify, Suspend or Revoke Permits, as follows:

The Pollution Control Board, after complaint and hearing in accordance with the Act and its Procedural Rules, may modify, suspend or revoke any NPDES permit in whole or in part in any manner consistent with the Act, applicable

Board regulations and federal requirements, upon proof of cause including, but not limited to, the following:

- 1) Violation of any terms or conditions of the permit (including, but not limited to, schedules of compliance and conditions concerning monitoring, entry and inspection);**
- 2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or**
- 3) A change in any circumstance that mandates either a temporary or permanent reduction or elimination of the permitted discharge.**

58. On March 19, 2003, the Village of Wauconda, by Bonestroo Devery & Associates³⁸ filed with the Agency two copies of an executed NPDES Permit Application and supplemental documentation for a wastewater treatment plant³⁹.

59. Two completed NPDES Permit Applications, without the Table in Section B.6 on page 8 of 21 were received by the Agency on March 23, 2003⁴⁰.

60. On April 3, 2003, the Village of Wauconda, by Bonestroo Devery & Associates filed with the Agency two copies of the completed Table in Section B.6 on page 8 of 21 in its NPDES Permit Application⁴¹

61. On April 7, 2003 the Agency received the copies of the Table in B.6 on page 8 of 12.

³⁸ IPCB Doc's No.: #001608 - #001609

³⁹ IPCB Doc's No's.: #001610 -001670

⁴⁰ IPCB Doc. No.: #001608

⁴¹ IPCB Doc. No.: #001671

62. Seven days latter, on April 14, 2003, J. Hutton in a Memorandum to D. Netemeyer⁴² advised that the Antidegradation assessment was completed pursuant to 35 Ill. Adm. Code 302.105 was compliant with Antidegradaton standard⁴³.

63. On July 31, 2003, a group of Residents requested, and were granted, a meeting with the an Assistant Attorney General, Chris Grant, Esq. and the false NPDES Permit Application, filed by the Village of Wauconda, dated March 21, 2003 was raised.⁴⁴

64. C. Kallis, an investigator with the IEPA was present and he prepared the above MEMORANDUM which was forwarded to Mr. Don Netemeyer⁴⁵.

65. At the "informational hearing" a Resident had reviewed the modified permit and directly questioned the truth of Village of Wauconda answers to the NPDES Permit Application⁴⁶.

66. On the Village of Wauconda NPDES Application at page 19, under CERCLA superfund wastewater, RCRA remediation, corrective action, wastewater, and other remediation activity wastewater, the Village of Wauconda answered NA when they knew they were receiving wastewater from Superfund 1 going into the Village of Wauconda wastestream⁴⁷.

VIOLATION OF PERMIT

67. On September 9, 2003 the Agency, by its attorney, summarized the history of the Village of Wauconda and its Waste Water Treatment Plant as follows:

⁴² IPCB Doc's No's.: #001677 thru #001679

⁴³ Further comment can be found at Agency Response to Request to Admit p. 6

⁴⁴ IPCB Doc's No's.: #001744 thru #001746

⁴⁵ IPCB Doc's No's.: #001744 thru #001746

⁴⁶ Tr. 90 - 96

⁴⁷ Ibid

“Now, yes, it is true that through the ‘90’s it had a lot of problems. No question 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. And there was a consent decree entered into here in Lake County in Chancery Court. And for those of you who might be interested, it’s No. 99CH720. It was entered on December 12, 2000. And basically what it did, it ordered Wauconda to fix its sewer problems and to put in an excess-flow facility, that that the excess flow when there --- and these guys will explain to you, when there is excess flow, this facility holds it and treats it.”⁴⁸”

68. The 2001 SUMMARY REPORT OF SLOCUM LAKE

(“**Slocum Report**”) which was prepared by the Lake County Health Department was entered into the record.⁴⁹

69. The Slocum Report put the Agency on actual notice that the eutrophication of Slocum Lake was accelerated by years of discharge from the Wauconda Wastewater Treatment Plant⁵⁰

70. WWTP was built in the early 20th century and discharged treated effluent into Bangs Lake Drain which empties into Slocum Lake⁵¹.

71. Historically WWTP has had many problems with discharge of raw sewage into the Bangs Lake Drain when flow exceeded the plant’s maximum capacity⁵².

⁴⁸ Tr. p18 – 19

⁴⁹ IPCB Doc’s.: #000388 thru #000421

⁵⁰ IPCB Doc. No.: #000392

⁵¹ IPCB Doc. No.: #000392

⁵² IPCB Doc. No.: #000392

72. According to the Lake County Health Department, in 1986 the Bangs Lake Drain Bypass was built, and treated effluent was to be diverted into Fiddle Marsh [Fiddle Creek Wetlands] and eventually enter the Slocum Lake Drain, downstream of the lake [Slocum Lake]⁵³.

73. From 1986-1996, WWTP illegally bypassed the Bangs Lake Drain bypass, continuing to discharge raw sewage into Slocum Lake⁵⁴.

74. In 1997, the IEPA required WWTP to address this illegal conduct.

75. In 2002 LCHD concluded “Regardless of the improvements that have come about over the past decade, much of the damage to the lake [Slocum Lake] has already been done⁵⁵.”

PEOPLE OF THE STATE OF ILLINOIS v. VILLAGE OF WAUCONDA
99 CH 720

76. On June 28, 1999 in case No. 99 CH 720, Attorney General of the State of Illinois, on behalf of the Agency filed a **COMPLAINT FOR INJUNCTION AND OTHER RELIEF (“1999 Litigation”)** which is attached hereto as **Group Exhibit F** [Agency did not disclose either the litigation or document].

77. In Count 1 – WATER POLLUTION, the State of Illinois alleged that on May 20, 1996, February 20, 1997 and February 21, 1997, the Village of Wauconda

⁵³ IPCB Doc. No.: #000392

⁵⁴ IPCB Doc. No.: #000392

⁵⁵ IPCB Doc. No.: #000392

violated Section 12(a) of 415 ILCS 5/12(a) (1996) and allowed untreated raw sewage to be pumped from six different locations totaling approximately 1,530,390 gallons into Bangs Lake Creek.

78. In Count II – VIOLATION OF GENERAL EFFLUENT STANDARDS, the State of Illinois alleged that in February, 1997, the Village of Wauconda violated the Illinois Pollution Control Board, Water Pollution Regulations, 35 Ill. Adm., Code 304.120(c) – Deoxygenating Wastes in that in February, 1997 caused or allowed 28.4 milligrams per liter (“mg/l”) of total suspended solids (“TSS”) to be discharged into Bangs Lake Creek.

79. In Count III – VIOLATION OF NPDES PERMIT EFFLUENT LIMITS, the State of Illinois charged that the Village of Wauconda violated its NPDES Permit No IL0020109 which was issued on June 7, 1995 and expired on May 31, 2000 in that the Village of Wauconda with exceeded the chlorine residual limits 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.

80. In Count IV – VIOLATION OF NPDES PERMIT REPORTING REQUIREMENTS the State of Illinois charged that Village of Wauconda did not provide representative flow monitoring required under the NPDES Permit.

81. In Count V – VIOLATION OF PERFORMANCE CRITERIA the State of Illinois charged that the Village of Wauconda on February 20 and 21, 1997 allowed excessive inflow/infiltration into its collection system leading to sewer overflow.

82. On February 20 and 21, 1997 the Village of Wauconda allowed overflows to occur during wet weather periods and did not receive primary treatment and disinfection prior to discharge.

83. In County VI – VIOLATIONS OF NPDES PERMIT CONDITIONS, the State of Illinois charged that the Village of Wauconda

- a. Failed to provide representative flow monitoring;
- b. Failed to take samples;
- c. Failed to submit its sludge analyses and its semi-annual sludge management report;
- d. Failed to submit a completed industrial survey.

84. On December 13, 2000, the Village of Wauconda and State of Illinois entered into a CONSENT ORDER⁵⁶ which required, among other relief, as follows:

- a. Elimination of hydraulic bottleneck at headworks;
- b. Limit hydraulic loading to treatment units downstream of headworks, with exception of Bio Towers; and
- c. Conform “Basis of Design” report for WWTP “Wet Weather Flow Improvements”
- d. Wauconda shall complete construction by October 14, 2001;
- e. Cease and Desist order was entered from future violations of the Act and Board regulations.

85. The CONSENT ORDER charged the Village of Wauconda with a Civil Penalty of Twenty Thousand Dollars (\$20,000.00).

PEOPLE OF THE STATE OF ILLINOIS v. VILLAGE OF WAUCONDA
Case No. 04 CH 1206

86. On August 17, 2004, prior to the issuance of the Permit, the Attorney General of the State of Illinois, in its own name and on behalf of the Agency filed a complaint (“2004 – Litigation”).

⁵⁶ IPCB Doc’s.: #2271 thru #2284 produced in these proceedings in AMENDED RECORD 2 on January 31, 2005.

87. On December 10, 2004 a CONSENT ORDER was entered in this proceedings, a copy of said Order is attached hereto as **Group Exhibit G**. [Agency did not disclose this document]

88. That the CONSENT ORDER memorializes violations by the Village of Wauconda of the following Illinois Pollution Control Board Regulations:

- a. Water Pollution - violation of 415 ILCS 5/12(d) 2002);
- b. CREATING A WATER POLLUTION HAZARD – violation of 415 ILCS 5/12(d) (2002);
- c. VIOLATION OF WATER QUALITY STANDARDS – violation of 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 302.203;
- d. VIOLATION OF EFFLUENT STANDARDS – violation of 415 ILCS 5/12(a)(2002), and 35 Ill. Adm. Code 304.104;
- e. NPDES PERMIT VIOLATIONS – violation of 415 ILCS 5/12(f)(2002) and NPDES Permit No. IL 00200109.

89. The Resident Group did not receive any documents from the Agency relating to the 2004 Litigation;

90. The Resident Group notes for this record that the Attorney General for the State of Illinois and Agency file a law suit against the Village of Wauconda on August 17, 2004;

91. The Agency choose to issue this contested NPDES Permit to the Village of Wauconda 7 days after filing suit against this same Village of Wauconda For: Water Pollution, Creating a Water Pollution Hazard; Violation of Water Quality Standards, Violations of Effluent Standards and NPDES Permit Violations.

92. The 2004 Consent Order mandates that the Village of Wauconda to implement and enforce its pretreatment program in accordance with its Ordinance 2000-0-31, adopted September 19, 2000.

93. The 2004 Litigation resulted in the Village of Wauconda being issued a civil penalty of Ten Thousand Dollars (\$10,000.00).

Additional Reported Violations

94. V2 Consultants reviewed USEPA'S Permit Compliance System (PCS) and in the period April 2001 to May 2003 found the following violations;

- a. Total ammonia nitrogen in discharge exceeded the permit limitation in June 2002⁵⁷;
- b. Copper in the discharge exceed the permit limitation on three occasions February 2003, November 2001, and September 2001⁵⁸.

95. April 17, 2003 R. Coob advised that the Agency had sent the Village of Wauconda a violation notice in regard to water main and sewer main permit violations in the Liberty Lakes Development (Town and Country Homes)

96. Agency records show that Wauconda Task Group constantly violates the Village of Wauconda Ordinance for Boron and total dissolved solids, however as long VOW is not on the pretreatment program, the Agency has no legal authority to force VOW to enforce its ordinance.⁵⁹

97. The annual report confirms the presence of some organic compounds and poly aromatic hydrocarbons. Do we know if this is affecting the plant 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.

⁵⁷ IPCB Doc.: #000319

⁵⁸ IPCB Doc.: #000319

⁵⁹ IPCB Doc. No. #001766

98. Memo from Chris Kallis to Lisa Moreno, Al Keller, Don Netemeyer and Scott Twait which states that there is a memo from Dan Ray to Don Netermeyer concerning Wauconda's omission of the landfill leachate in their industrial survey that was required under the old permit⁶⁰

Fecal Foam Out

99. On September 24, 2003, WWTP foam was leaking out of the west aerobic digester, running downhill surrounding a control building and entering a storm sewer tributary to the Bangs Lake Drain.⁶¹

100. This same problem with the aerobic digester was seen by the WWTP staff on August 29, 2003 and August 20, 2003, they didn't know the source.⁶²

RECORD

101. On November 30, 2004, after requesting and being granted an extension, the Agency filed herein, what it represented as the complete RECORD, consisting of Two Thousand Sixty- Two (2,262) pages. On December 10, 2004 the Agency Amended the Record herein for the First time with the inclusion of the Transcript of the September 9, 2003 – September 10, 2003 Agency hearing.

102. On December 17, 2004 Attorney Glenn representing the Resident Group and Attorney Macfarlane representing the Slocum Lake Drainage District of Lake County, at the invitation of the Agency, traveled to Springfield and reviewed, what the

⁶⁰ IPCB Doc. No. #001766

⁶¹ IPCB Doc No. #000611 thru 000614

⁶² IPCB Doc. No. #611

Agency represented as all documents not heretofore submitted into the record. This document review was highly controlled and restricted and resulted in the Resident Group filing a MOTION FOR SANCTIONS AND TO COMPEL.

103. In the Agency RESPONSE TO MOTION FOR SANCTIONS AND TO COMPEL, filed on January 7, 2005, the Agency, in its Attachment A, filed 47 individual responses and attached 8 additional documents [un-numbered].

104. In the Agency RESPONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION AND LITIGATION RECORD, filed on January 6, 2005, the Agency filed 19 individual responses but attached the CONSENT ORDER in Case No. 99 CH 720 [un-numbered].

105. On January 31, 2005, the Agency filed its **AMENDED RECORD 2** which numbered the above records from 2263 thru 2285.

106. On February 8, 2005, the Agency filed its third amended record entitled DOCUMENTS SUBMITTED PURSUANT TO THE HEARING OFFICER ORDER DATED FEBRUARY 3, 2005 and these third amended documents are numbered P-1 thru P-36.

107. On February 10, 2005, the day of the IEPA Hearing, the Village of Wauconda and Agency advised that the PRELIMINARY DESIGN REPORT for WWTP was not in the record, and on or about February 15, 2005, a copy of this report was tendered, and is identified in this pleading as Amended Record 4, and has identification numbers HO-1 through HO-47.

ARGUMENT

Pursuant to 35 Ill. Adm. Code 105.116 the Agency is required to file the Agency Record with the Board within (30) days after receipt of the Petition. Section 40 ILCS 5/40(e)(3) provides that the Board shall hear the petition “exclusively on the basis of the record before the Agency. Pursuant to Section 105.212(b). The Agency states that it did not rely upon information in making its final decision.

FEDERAL OVERVIEW

108. The CWA requires that State water quality standards include an antidegradation policy and implementation procedures that are consistent with the requirements of the federal policy outlined in 40 C.F.R. § 131.12 a copy of which is attached hereto as **Exhibit H**.

109. Federal antidegradation policy delineates a different standard of protection for each of three different “tiers” of water.

110. Tier 1 maintains and protects existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur.

111. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.

112. CWA prohibits the discharge of any pollutant from a point source into navigable waters unless the discharge is authorized by permit.⁶³

⁶³ 33 U.S.C. § 1342 (2000)

113. “Navigable waters” are defined as “waters of the United States.”⁶⁴

114. In Community Association for Restoration of the Environment v. Henry Bosma Dairy⁶⁵ Ninth Circuit reaffirmed previous decisions holding that irrigation canals are waters of the United States. In United States v. New Portland Meadows⁶⁶ the court held that an unnamed ditch which eventually discharged into the Columbia Slough was a water of the United States.

115. CWA section 404⁶⁷ requires a permit for discharges of fill or dredge spoils to “navigable waters”. In a post Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers⁶⁸ decision, the Fourth Circuit in United States v. Deaton⁶⁹ affirmed the Corps determination that wetlands, which were adjacent to and drained into a roadside ditch and whose waters eventually flowed into a navigable river, were waters of the United States for purposes of section 404. The court emphasized that “[a]ny pollutant or fill material that degrades the water quality in a tributary of navigable waters has the potential to move downstream and degrade the quality of the navigable waters themselves.”⁷⁰ Relying on Deaton, the Sixth Circuit in United States v. Rapanos⁷¹ concluded that wetlands connected by a manmade drain to a creek, and in turn to a navigable river, were waters of the United States, even though the wetlands were located at least eleven miles from the nearest water that was in fact navigable.

⁶⁴ 22 U.S.C. § 1362(7) (2000)

⁶⁵ ABA- Environment, Energy, and Resources Law, The Year in Review - 305 F.3d 943 (9th Cir. 2002)

⁶⁶ Ibid. 2002 U.S. Dist. LEXIS 19153 (D.OR. 2002)

⁶⁷ 33 U.S.C. § 1362(7) (2000)

⁶⁸ 531 U.S. 159 (2001)

⁶⁹ ABA – Environment, Energy, and Resources Law, The Year in Review -332 F.2d 698 (4th Cir. 2003)

⁷⁰ Deaton at 707

⁷¹ 339 F.3d 447 (6th Cir. 2003)

116. The EPA warned Louisiana that it would consider withdrawing the State's authority to implement the NPDES program if Louisiana did not take specific actions to restore the integrity of the program.⁷²

CLEAN WATER ACT

117. CWA water quality standards include an antidegradation policy and implementation method. CWA requires States and Tribes to establish a three-tiered antidegradatin program.

118. CWA Tier 1 is designed to maintain and protect existing uses and water quality conditions necessary to support such uses. An existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur.

119. Where an existing use is established, it must be protected even if it is not listed in the water quality standards as a designated use. Tier 1 requirements are applicable to all surface waters.⁷³

120. In no case may water quality be lowered to a level which would interfere with existing or designated uses.

121. Under 35 Ill. Adm. Code 302.105 the Fiddle Creek antidegradation analysis failed because it failed to address the November 28, 1975 baseline requirement.

122. The CWA requires full satisfaction of the intergovernmental coordination and public participation. The Agency has failed to comply with the public participation mandate

⁷² 24 Inside EPA 9, 14 (2003)

⁷³ CWA § 101(a)(2)

123. The Agency decision, not to change the Fiddle Creek uses because the Agency does not have data on the receiving stream on November 28, 1975⁷⁴;

124. The anticipated benefits to community at large⁷⁵ is not the statutory standard⁷⁶.

125. The CWA standard is **“that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.”**

126. The antidegradation analysis failed to evaluate anticipated benefits to the Residents in the Fiddle Creek Wetlands, if any.

127. The only water quality data evaluated in the 2003 antidegradation assessment was dated September 15, 1993 and was a facility stream survey by the Agency. Survey found “fair conductivity, nitrate plus nitrite, phosphorus, sodium, potassium, boron, strontium, and oil downstream of the WWTP outfall. The Agency did not evaluate any contaminants.

128. Agency has concerns about lack of current basin survey data, Macro-invertebrate data last collected in Fiddle Creek in 1993, remains unclear whether any fishery assessment was ever performed.⁷⁷

129. Cuba Township is area of rapid urbanization and Fiddle Creek is a relatively small watershed, reliance on decade-old data seems unjustified.⁷⁸

⁷⁴ IPCB Doc. No.: #001899

⁷⁵ IPCB Doc. No.: #001899

⁷⁶ 40 CFR 131.12

⁷⁷ IPCB Doc. No.: #002002B

⁷⁸ IPCB Doc. No.: #002002B

130. On 04-08-04 T. Flattery, IDNR's wetland specialist advised the Agency that the amount of additional water volume added to the wetland from the increased discharge would be detrimental⁷⁹. The Agency then sought another opinion from a non-DNR wetland specialist who was skeptical of IDNR's statement.

131. IDNR thought Fiddle Creek Wetlands had threatened and endangered species.⁸⁰

132. Internal critical discussion relating to nutrient loading. Antidegradation analysis says "Because no adverse effects of nutrient loading have been observed since discharging at this point began, none will occur in the future even though nutrient loading will double." Comment advises that this is Unreasonable and illogical⁸¹.

133. Fiddle Creek Wetlands has a high-quality fen wetland and at least two State-listed endangered or threatened plants. Proposed discharge volumes will result in routing inundation of these fen wetlands, resulting in their degradation and loss of listed species.⁸²

134. On 02-25-04 B. Mosher advised that the Wauconda antideg decision was about as "easy" as they come. There aren't going to be any flashy references or revelations. We concluded that the receiving stream would not suffer a diminishment of existing uses because of increased pollutant loading due to the expansion of the plant. If we can't make a case for our decision at Wauconda we can't make it anywhere.⁸³

135. The Office of the Attorney General in letter dated October 30, 2003 states:

⁷⁹ IPCB Doc. No.: #001990

⁸⁰ IPCB Doc. No.: #001990

⁸¹ IPCB Doc. No.: #002002B

⁸² IPCB Doc. No.: #002002B

⁸³ IPCB Doc. No.: #001946

- a. Wauconda has not adequately demonstrated that receiving waters have sufficient hydraulic capacity to accept this increased flow without contributing to flooding of downstream segments during wet weather flows. The Attorney General notes that flood waters may become contaminated with inadequately treated wastewater.
- b. Wauconda should provide appropriate documentation, such as Federal Emergency Management Administration (FEMA) flood maps identifying the flood plain and flood prone areas.
- c. Wauconda should conduct a risk assessment to determine the potential risk to public health under wet-weather conditions.
- d. The Office of the Attorney General observed children's recreation equipment in backyards of homes along Creek. The Attorney General notes there is risk of incidental or accidental contact, and that the Creek no longer meets the exemption requirements of 35 Ill. Adm. Code 302.209(a)(2).
- e. The Office of the Attorney General noted Wauconda's Antidegradation Assessment indicated that "...the treated domestic waste that characterizes this proposed effluent would be similar to other treated effluents of purely domestic origin." Statement is inconsistent with its own user survey which identifies a significant number of non-residential users, including a landfill and industrial facilities.
- f. Wauconda's Anti-degradation Assessment indicated receiving stream has a 7Q10 flow of 0cfs and is classified as a "General Use" water but based on a 1993 stream survey, not advisable or appropriate to rely on data generated ten years ago.⁸⁴

REQUESTED RELIEF

- A. That this, The Honorable Illinois Pollution Control Board determine if the NPDES Permit submitted by the Village of Wauconda is truthful in substance and if fact.

⁸⁴ IPCB Doc's. No's.: #001037 thru #001040

B. If the Permit is false, deceptive or evasive, the Resident Group prays that this The Honorable Illinois Pollution Control Board hold hearings pursuant to 35 Ill. Adm. Code 309.182 to Revoke the Village of Wauconda NPDES Permit.

C. That this, the Honorable Illinois Pollution Control Board, Order the Agency to conduct a new anti-degradation assessment, including:

1. New assessment of all alternate discharge locations;
2. Perform an assessment of the Fiddle Creek Wetlands;
3. Hold a new public hearing for comment on any new Village of Wauconda NPDES Permit;

D. Order the Agency to collect and test sediment cuts in the Fiddle Creek Wetlands, one immediately downstream of the WWTO outfall.

E. Order the Agency to prepare a contingency plan to place WWTP into Receivership if problems with this STP continue.

F. Deny this Permit;

G. Order the Agency to test the Fiddle Creek Wetlands for radium.

H. Order the Agency to monitor both the radium wastestream and the radium sludges.

I For such other relief as may be deemed appropriate and reasonable.

Respectfully Submitted,

Jay J. Glenn

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ACRONYMS

Agency	Illinois Environmental Protection Agency
BOD	Biological Oxygen Demand
CFR	Code of Federal Regulations
DMRs	Discharge Monitoring Reports
DO	Dissolved Oxygen
Illinois EPA	Illinois Environmental Protection Agency
Illinois PCB	Illinois Pollution Control Board
LCFPD	Lake County Forest Preserve District
MGD	Million Gallons per Day
mg/L	Milligrams per Liter
mL	Milliliter; one part per million; 100 mL is the normal sample size and equals about one-half cup.
NPDES	National Pollution Discharge Elimination System
ppm	Parts per Million
SMC	Lake County Stormwater Management Commission
STP	Sewage Treatment Plant
TSS	Total Suspended Solids
UV	Ultraviolet
WWTP	Wastewater Treatment Plant
303(d)	Federal Clean Water Act, Section 303(d)
305(b)	Federal Clean Water Act, Section 305(b)

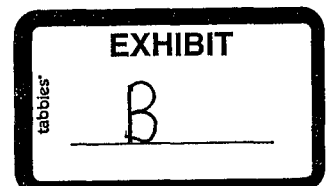


EXHIBIT B
SUPPLEMENTAL ACRONYMS – RESIDENT GROUP

CWA	Clean Water Act
Superfund 1	Wauconda Sand & Gravel Superfund Site
Superfund 2	John Tarkowski Superfund Site
Fiddle Creek Watershed	Geographical Designation for an approximate 360 ¹ acre wetland complex which includes, Fiddle Creek, Fiddle Marsh, Fiddle Lake and the drainage channels of the Slocum Lake Drainage District.
SLDD	Slocum Lake Drainage District
CFR	Code of Federal Regulations
wastestream	Agency terminology ² includes radium wastestream, Superfund 1 leachate wastestream, industrial user wastestream and municipal wastestream includes all discharges from WWTP at the Anderson Road Outfall.
PRP	Potentially Responsible Party
WTG	Wauconda Task Group – A partial list of PRP's, a copy of the WTG group is attached hereto as Exhibit. Note that Lake County has received notification of inclusion as a PRP, attached as Exhibit C.
Director	The Honorable Renee Cipriano

¹ IPCB Doc.: #000474

² IPCB Doc.: #001803



Wauconda Task Group (Respondents of UAO)

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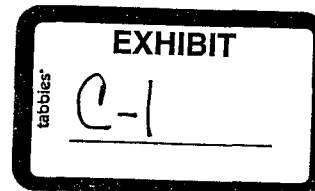
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Wauconda Task Group (Respondents of UAO)

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DESCRIPTION OF CONSOLIDATED PERMIT APPLICATION FORMS

FORM 1 PACKAGE TABLE OF CONTENTS

The Consolidated Permit Application Forms are:

Form 1 - General Information (*included in this part*);

Form 2 - Discharges to Surface Water (*NPDES Permits*):

2A. Publicly Owned Treatment Works (*Reserved - not included in this package*),

2B. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities (*not included in this package*),

2C. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations (*not included in this package*), and

2D. New Manufacturing, Commercial, Mining, and Silvicultural Operations (*Reserved - not included in this package*);

Form 3 - Hazardous Waste Application Form (*RCRA Permits - not included in this package*);

Form 4 - Underground Injection of Fluids (*UIC Permits - Reserved - not included in this package*); and

Form 5 - Air Emissions in Attainment Areas (*PSD Permits - Reserved - not included in this package*).

Section A. General Instructions

Section B. Instructions for Form 1

Section C. Activities Which do Not Require Permits

Section D. Glossary

Form 1 (*two copies*)

SECTION A - GENERAL INSTRUCTIONS

Who Must Apply

With the exceptions described in Section C of these instructions, Federal laws prohibit you from conducting any of the following activities without a permit.

NPDES (*National Pollutant Discharge Elimination System Under the Clean Water Act, 33 U.S.C. 1251*). Discharge of pollutants into the waters of the United States.

RCRA (*Resource Conservation and Recovery Act, 42 U.S.C. 6901*). Treatment, storage, or disposal of hazardous wastes.

UIC (*Underground Injection Control Under the Safe Drinking Water Act, 42 U.S.C. 300f*). Injection of fluids underground by gravity flow or pumping.

PSD (*Prevention of Significant Deterioration Under the Clean Air Act, 72 U.S.C. 7401*). Emission of an air pollutant by a new or modified facility in or near an area which has attained the National Ambient Air Quality Standards for that pollutant.

Each of the above permit programs is operated in any particular State by either the United States Environmental Protection Agency (EPA) or by an approved State agency. You must use this application form to apply for a permit for those programs administered by EPA. For those programs administered by approved States, contact the State environmental agency for the proper forms.

If you have any questions about whether you need a permit under any of the above programs, or if you need information as to whether a particular program is administered by EPA or a State agency, or if you need to obtain application forms, contact your EPA Regional office (*listed in Table 1*).

Upon your request, and based upon information supplied by you, EPA will determine whether you are required to obtain a permit for a particular facility. Be sure to contact EPA if you have a question, because Federal laws provide that **you may be heavily penalized if you do not apply for a permit when a permit is required.**

Form 1 of the EPA consolidated application forms collects general information applying to all programs. You must fill out Form 1 regardless of which permit you are applying for. In addition, you must fill out one of the supplementary forms (*Forms 2 - 5*) for each permit needed under each of the above programs. Item 11 of Form 1 will guide you to the appropriate supplementary forms.

You should note that there are certain exclusions to the permit requirements listed above. The exclusions are described in detail in Section C of these instructions. If your activities are excluded from permit requirements then you do not need to complete and return any forms.

NOTE: Certain activities not listed above also are subject to EPA administered environmental permit requirements. These include permits for ocean dumping, dredged or fill material discharging, and certain types of air emissions. Contact your EPA Regional office for further information.

Table 1. Addresses of EPA Regional Contacts and States Within the Regional Office Jurisdiction.

REGION I

Permit Contact, Environmental and Economic Impact Office, U.S. Environmental Protection Agency, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-4635, FTS 223-4635.
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

REGION II

Permit Contact, Permits Administration Branch, Room 432, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007, (212) 264-9880, FTS 264-9880.
New Jersey, New York, Virgin Islands, and Puerto Rico.

REGION III

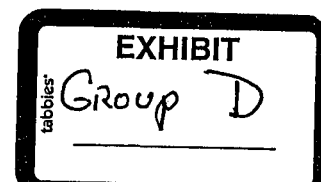
Permit Contact (3 EN 23), U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-8816, FTS 597-8816.
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

REGION IV

Permit Contact, Permits Section, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-2017, FTS 257-2017.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

REGION V

Permit Contact (5EP), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2105, FTS 353-2105.
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.



SECTION A - GENERAL INSTRUCTIONS (continued)

Table 1 (continued)

REGION VI

Permit Contact (6AEP), U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2765, FTS 729-2765.
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

REGION VII

Permit Contact, Permits Branch, U.S. Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, (816) 758-5955, FTS 758-5955.
Iowa, Kansas, Missouri, and Nebraska

REGION VIII

Permit Contact (8E-WE), Suite 103, U.S. Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-4901, FTS327-4901.
Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

REGION IX

Permit Contact, Permit Branch (E-4), U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 80295, (415) 556-3450, FTS 556-3450.
Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Trust Territories.

REGION X

Permit Contact (M/S 521), U.S. Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-7176, FTS 399-7176.
Alaska, Idaho, Oregon, and Washington.

Where to File

The application forms should be mailed to the EPA Regional office whose Region includes the State in which the facility is located (see Table 1).

If the State in which the facility is located administers a Federal permit program under which you need a permit, you should contact the appropriate State agency for the correct forms. Your EPA Regional office (Table 1) can tell you to whom to apply and can provide the appropriate address and phone number.

When to File

Because of statutory requirements, the deadlines for filing applications vary according to the type of facility you operate and the type of permit you need. These deadlines are as follows:¹

Table 2. Filing Dates for Permits

FORM (permit)	WHEN TO FILE
2A(NPDES).....	180 days before your present NPDES permit expires.
2B(NPDES).....	180 days before your present NPDES permit expires ² , or 180 days prior to start-up if you are a new facility.
2C(NPDES).....	180 days before your present NPDES permit expires ² .
2D(NPDES).....	180 days prior to startup.
3(Hazardous Waste).....	Existing facility: Six months following publication of regulations listing hazardous wastes. New facility: 180 days before commencing physical construction.

Table 2 (continued)

4(UIC).....	A reasonable time prior to construction for new wells; as directed by the Director for existing wells.
5(PSD).....	Prior to commencement of construction.

¹Please note that some of these forms are not yet available for use and are listed as "Reserved" at the beginning of these instructions. Contact your EPA Regional office for information on current application requirements and forms.

²If your present permit expires on or before November 30, 1980, the filing date is the date on which your permit expires. If your permit expires during the period December 1, 1980 - May 31, 1981, the filing date is 90 days before your permit expires.

Federal regulations provide that you may not begin to construct a new source in the NPDES program, a new hazardous waste management facility, a new injection well, or a facility covered by the PSD program before the issuance of a permit under the applicable program. Please note that if you are required to obtain a permit before beginning construction, as described above, you may need to submit your permit application well in advance of an applicable deadline listed in Table 2.

Fees

The U.S. EPA does not require a fee for applying for any permit under the consolidated permit programs. (However, some States which administer one or more of these programs require fees for the permits which they issue.)

Availability of Information to Public

Information contained in these application forms will, upon request, be made available to the public for inspection and copying. However, you may request confidential treatment for certain information which you submit on certain supplementary forms. The specific instructions for each supplementary form state what information on the form, if any, may be claimed as confidential and what procedures govern the claim. No information on Forms 1 and 2A through 2D may be claimed as confidential.

Completion of Forms

Unless otherwise specified in instructions to the forms, each item in each form must be answered. To indicate that each item has been considered, enter "NA," for not applicable, if a particular item does not fit the circumstances or characteristics of your facility or activity.

If you have previously submitted information to EPA or to an approved State agency which answers a question, you may either repeat the information in the space provided or attach a copy of the previous submission. Some items in the form require narrative explanation. If more space is necessary to answer a question, attach a separate sheet entitled "Additional Information."

Financial Assistance for Pollution Control

There are a number of direct loans, loan guarantees, and grants available to firms and communities for pollution control expenditures. These are provided by the Small Business Administration, the Economic Development Administration, the Farmers Home Administration, and the Department of Housing and Urban Development. Each EPA Regional office (Table 1) has an economic assistance coordinator who can provide you with additional information.

EPA's construction grants program under Title II of the Clean Water Act is an additional source of assistance to publicly owned treatment works. Contact your EPA Regional office for details.

SECTION B - FORM 1 LINE-BY-LINE INSTRUCTIONS

This form must be completed by all applicants.

Completing This Form

Please type or print in the unshaded areas only. Some items have small graduation marks in the fill-in spaces. These marks indicate the number of characters that may be entered into our data system. The marks are spaced at 1/6" intervals which accommodate elite type (12 characters per inch). If you use another type you may ignore the marks. If you print, place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response.

Item I

Space is provided at the upper right hand corner of Form 1 for insertion of your EPA Identification Number. If you have an existing facility, enter your Identification Number. If you don't know your EPA Identification Number, please contact your EPA Regional office (Table 1), which will provide you with your number. If your facility is new (not yet constructed), leave this item blank.

Item II

Answer each question to determine which supplementary forms you need to fill out. Be sure to check the glossary in Section D of these instructions for the legal definitions of the **bold faced words**. Check Section C of these instructions to determine whether your activity is excluded from permit requirements.

If you answer "no" to every question, then you do not need a permit, and you do not need to complete and return any of these forms.

If you answer "yes" to any question, then you must complete and file the supplementary form by the deadline listed in Table 2 along with this form. (The applicable form number follows each question and is enclosed in parentheses.) You need not submit a supplementary form if you already have a permit under the appropriate Federal program, unless your permit is due to expire and you wish to renew your permit.

Questions (I) and (J) of Item II refer to major new or modified sources subject to Prevention of Significant Deterioration (PSD) requirements under the Clean Air Act. For the purpose of the PSD program, major sources are defined as: (A) Sources listed in Table 3 which have the potential to emit 100 tons or more per year emissions; and (B) All other sources with the potential to emit 250 tons or more per year. See Section C of these instructions for discussion of exclusions of certain modified sources.

Table 3. 28 Industrial Categories Listed in Section 169(1) of the Clean Air Act of 1977

Fossil fuel-fired steam generators of more than 250 million BTU per hour heat input;
Coal cleaning plants (with thermal dryers);
Kraft pulp mills;
Portland cement plants;
Primary zinc smelters;
Iron and steel mill plants;
Primary aluminum ore reduction plants;
Primary copper smelters;
Municipal incinerators capable of charging more than 250 tons of refuse per day;
Hydrofluoric acid plants;
Nitric acid plants;
Sulfuric acid plants;
Petroleum refineries;
Lime plants;
Phosphate rock processing plants;
Coke oven batteries;
Sulfur recovery plants;
Carbon black plants (furnace process);
Primary lead smelters;
Fuel conversion plants;
Sintering plants;
Secondary metal production plants;
Chemical process plants;
Fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input.

Table 3 (continued)

Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
Taconite ore processing plants;
Glass fiber processing plants; and
Charcoal production plants.

Item III

Enter the facility's official or legal name. Do not use a colloquial name.

Item IV

Give the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application and who can be contacted by reviewing offices if necessary.

Item VII

List, in descending order of significance, the four 4-digit standard industrial classification (SIC) codes which best describe your facility in terms of the principal products or services you produce or provide. Also, specify each classification in words. These classifications may differ from the SIC codes describing the operation generating the discharge, air emissions, or hazardous wastes.

SIC code numbers are descriptions which may be found in the "Standard Industrial Classification Manual" prepared by the Executive Office of the President, Office of Management and Budget, which is available from the Government Printing Office, Washington, D.C. Use the current edition of the manual. If you have any questions concerning the appropriate SIC code for your facility, Contact your EPA Regional office (see Table 1).

Item VII-A

Give the name, as it is legally referred to, of the person, firm, public organization, or any other entity which operates the facility described in this application. This may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.

Item VII-B

Indicate whether the entity which operates the facility also owns it by marking the appropriate box.

Item VIII-C

Enter the appropriate letter to indicate the legal status of the operator of the facility. Indicate "public" for a facility solely owned by local government(s) such as a city, town, county, parish, etc.

Items VII-D-H

Enter the telephone number and address of the operator identified in Item VIII-A.

SECTION B - FORM 1 LINE-BY-LINE INSTRUCTIONS (continued)

Item IX

Indicate whether the facility is located on Indian Lands.

Item X

Give the number of each presently effective permit issued to the facility for each program or, if you have previously filed an application but have not yet received a permit, give the number of the application, if any. Fill in the unshaded area only. If you have more than one currently effective permit for your facility under a particular permit program, you may list additional permit numbers on a separate sheet of paper. List any relevant environmental Federal (e.g., *permits under the Ocean Dumping Act, Section 404 of the Clean Water Act or the Surface Mining control and Reclamation Act*), State (e.g., *State permits for new air emission sources in nonattainment areas under Part D of the Clean Air Act or State permits under Section 404 of the Clean Water Act*), or local permits or applications under "other."

Item XI

Provide a topographic map or maps of the area extending at least to one mile beyond the property boundaries of the facility which clearly show the following:

- The legal boundaries of the facility;
- The location and serial number of each of your existing and proposed intake and discharge structures;
- All hazardous waste management facilities;
- Each well where you inject fluids underground; and
- All springs and surface water bodies in the area, plus all drinking water wells within 1/4 mile of the facility which are identified in the public record or otherwise known to you.

If an intake or discharge structure, hazardous waste disposal site, or injection well associated with the facility is located more than one mile from the plant, include it on the map, if possible. If not, attach additional sheets describing the location of the structure, disposal site, or well, and identify the U.S. Geological Survey (or other) map corresponding to the location.

On each map, include the map scale, a meridian arrow showing north, and latitude and longitude at the nearest whole second. On all maps of rivers, show the direction of the current, and in tidal waters, show the direction of the ebb and flow tides. Use a 7-1/2 minute series map published by the U.S. Geological Survey, which may be obtained through the U.S. Geological Survey Offices listed below. If a 7-1/2 minute series map has not been published for your facility site, then you may use a 15 minute series map from the U.S. Geological Survey. If neither a 7-1/2 nor 15 minute series map has been published for your facility site, use a plat map or other appropriate map, including all the requested information; in this case, briefly describe land uses in the map area (e.g., *residential, commercial*).

You may trace your map from a geological survey chart, or other map meeting the above specifications. If you do, your map should bear a note showing the number or title of the map or chart it was traced from. Include the names of nearby towns, water bodies, and other prominent points. An example of an acceptable location map is shown in Figure 1-1 of these instructions. **(NOTE: Figure 11 is provided for purposes of illustration only, and does not represent any actual facility.)**

Item X1 (continued)

Mid Continent Mapping Center National Cartographic Information Center U.S.G.S. 1400 Independence Road Rolla, Mo. 65401 Phone No. (314) 341-0851	Ark., Ill., Iowa, Kans., La., Mich., Minn., Miss., Mo., N. Dak., Nebr., Okla., S. Dak., and Wis.
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Rocky Mountain Mapping Center National Cartographic Information Center U.S.G.S. Stop 504, Box 25046 Federal Center Denver, Co. 80225 Phone No. (303) 234-2326	Alaska, Colo., Mont., N. Mex., Tex., Utah, and Wyo.
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Western Mapping Center National Cartographic Information Center U.S.G.S. 345 Middlefield Road Menlo Park, Ca. 94025 Phone No. (415) 323-8111	Ariz., Calif., Hawaii, Idaho, Nev., Oreg., Wash., American Samoa, Guam, and Trust Territories
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Item XII

Briefly describe the nature of your business (e.g., *products produced or services provided*).

Item XIII

Federal statutes provide for severe penalties for submitting false information on this application form.

18 U.S.C. Section 1001 provides that "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

Section 309(c)(2) of the Clean Water Act and Section 113(c)(2) of the Clean Air Act each provide that "Any person knowingly makes any false statement, representation, or certification in any application, . . . shall upon conviction, be punished by a fine of no more than \$10,000 or by imprisonment for not more than six months, or both."

In addition, Section 3008(d)(3) of the Resource Conservation and Recovery Act provides for a fine up to \$25,000 per day or imprisonment up to one year, or both, for a first conviction for making a false statement in any application under the Act, and for double these penalties upon subsequent convictions.

FEDERAL REGULATIONS REQUIRE THIS APPLICATION TO BE SIGNED AS FOLLOWS:

- A. For a corporation, by a principal executive officer of at least the level of vice president. However, if the only activity in Item II which is marked "yes" is Question G, the officer may authorize a person having responsibility for the overall operations of the well or well field to sign the certification. In that case, the authorization must be written and submitted to the permitting authority;
- B. For partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

U.S.G.S. OFFICES	AREA SERVED
Eastern Mapping Center National Cartographic Information Center U.S.G.S. 536 National Center Reston, Va. 22092 Phone No. (703) 860-6336	Ala., Conn., Del., D.C., Fla., Ga., Ind., Ky., Maine, Md., Mass., N.H., N.J., N.Y., N.C., S.C., Ohio, Pa., Puerto Rico, R.I., Tenn., Vt., Va., W. Va., and Virgin Islands.

SECTION C - ACTIVITIES WHICH DO NOT REQUIRE PERMITS

I. National Pollutant Discharge Elimination System Permits Under the Clean Water Act. You are not required to obtain a NPDES permit if your discharge is in one of the following categories, as provided by the Clean Water Act (CWA) and by the NPDES regulations (40 CFR Parts 122-125). However, under Section 510 of CWA a discharge exempt from the federal NPDES requirements may still be regulated by a State authority;; contact your State environmental agency to determine whether you need a State permit.

A. DISCHARGES FROM VESSELS. Discharges of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley-sink wastes, and any other discharge incidental to the normal operation of a vessel do not require NPDES permits. However, discharges of rubbish, trash, garbage, or other such materials discharged overboard require permits, and so do other discharges when the vessel is operating in a capacity other than as a means of transportation, such as when the vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development.

B. DREDGED OR FILL MATERIAL. Discharges of dredged or fill material into waters of the United States do not need NPDES permits if the dredging or filling is authorized by a permit issued by the U.S. Army Corps of Engineers or an EPA approved State under Section 404 of CWA.

C. DISCHARGES INTO PUBLICLY OWNED TREATMENT WORKS (POTW). The introduction of sewage, industrial wastes, or other pollutants into a POTW does not need an NPDES permit. You must comply with all applicable pretreatment standards promulgated under Section 307(b) of CWA, which may be included in the permit issued to the POTW. If you have a plan or an agreement to switch to a POTW in the future, this does not relieve you of the obligation to apply for and receive an NPDES permit until you have stopped discharging pollutants into waters of the United States.

(NOTE: Dischargers into privately owned treatment works do not have to apply for or obtain NPDES permits except as otherwise required by the EPA Regional Administrator. The owner or operator of the treatment works itself, however, must apply for a permit and identify all users in its application. Users so identified will receive public notice of actions taken on the permit for the treatment works.)

D. DISCHARGES FROM AGRICULTURAL AND SILVICULTURAL ACTIVITIES. Most discharges from agricultural and silvicultural activities to waters of the United States do not require NPDES permits. These include runoff from orchards, cultivated crops, pastures, range lands, and forest lands. However, the discharges listed below do require NPDES permits. Definitions of the terms listed below are contained in the Glossary section of these instructions.

1. Discharges from Concentrated Animal Feeding Operations. (See Glossary for definitions of "animal feeding operations" and "concentrated animal feeding operations." Only the latter require permits.)
2. Discharges from Concentrated Aquatic Animal Production Facilities. (See Glossary for size cutoffs.)
3. Discharges associated with approved Aquaculture Projects.
4. Discharges from Silvicultural Point Sources. (See Glossary for the definition of "silvicultural point source.") Nonpoint source silvicultural activities are excluded from NPDES permit requirements. However, some of these activities, such as stream crossings for roads, may involve point source discharges of dredged or fill material which may require a Section 404 permit. See 33 CFR 209.120.

E. DISCHARGES IN COMPLIANCE WITH AN ON-SCENE COORDINATOR'S INSTRUCTIONS.

II. Hazardous Waste Permits Under the Resource Conservation and Recovery Act. You may be excluded from the requirement to obtain a permit under this program if you fall into one of the following categories:

Generators who accumulate their own hazardous waste on-site for less than 90 days as provided in 40 CFR 262.34;

Farmers who dispose of hazardous waste pesticide from their own use as provided in 40 CFR 262.51;

Certain persons treating, storing, or disposing of small quantities of hazardous waste as provided in 40 CFR 261.4 or 261.5; and

Owners and operators of totally enclosed treatment facilities as defined in 40 CFR 20.10.

Check with your Regional office for details. Please note that even if you are excluded from permit requirements, you may be required by Federal regulations to handle your waste in a particular manner.

III. Underground Injection Control Permits Under the Safe Drinking Water Act. You are not required to obtain a permit under this program if you:

Inject into existing wells used to enhance recovery of oil and gas or to store hydrocarbons (*note, however, that these underground injections are regulated by Federal rules*); or

Inject into or above a stratum which contains, within 1/4 mile of the well bore, an underground source of drinking water (*unless your injection is the type identified in Item II-H, for which you do need a permit*). However, you must notify EPA of your injection and submit certain required information on forms supplied by the Agency, and your operation may be phased out if you are a generator of hazardous wastes or a hazardous waste management facility which uses wells or septic tanks to dispose of hazardous waste.

IV. Prevention of significant Deterioration Permits Under the Clean Air Act. The PSD program applies to newly constructed or modified facilities (*both of which are referred to as "new sources"*) which increase air emissions. The Clean Air Act Amendments of 1977 exclude small new sources of air emissions from the PSD review program. Any new source in an industrial category listed in Table 3 of these instructions whose potential to emit is less than 100 tons per year is not required to get a PSD permit. In addition, any new source in an industrial category not listed in Table 3 whose potential to emit is less than 250 tons per year is exempted from the PSD requirements.

Modified sources which increase their net emissions (*the difference between the total emission increases and total emission decreases at the source*) less than the significant amount set forth in EPA regulations are also exempt from PSD requirements. Contact your EPA Regional office (*Table 1*) for further information.

SECTION D - GLOSSARY

NOTE: This Glossary includes terms used in the instructions and in Forms 1, 2B, 2C, and 3. Additional terms will be included in the future when other forms are developed to reflect the requirements of other parts of the Consolidated Permits Program. If you have any questions concerning the meaning of any of these terms, please contact your EPA Regional office (*Table 1*).

ALiquot means a sample of specified volume used to make up a total composite sample.

ANIMAL FEEDING OPERATION means a lot of facility (*other than an aquatic animal production facility*) where the following conditions are met:

A. Animals (*other than aquatic animals*) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period; and

B. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

ANIMAL UNIT means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0; Plus the number of mature dairy cattle multiplied by 1.4; Plus the number of swine weighing over 25 kilograms (*approximately 55 pounds*) multiplied by 0.4; Plus the number of sheep multiplied by 0.1; Plus the number of horses multiplied by 2.0.

APPLICATION means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. For RCRA, "application" also means "Application, Part B."

APPLICATION, PART A means that part of the Consolidated Permit Applications forms which a RCRA permit applicant must complete to qualify for interim status under Section 3005(e) of RCRA and for consideration for a permit. Part A consists of Form 1 (*General Information*) and Form 3 (*Hazardous Waste Application Form*).

APPLICATION, PART B means that part of the application which a RCRA permit applicant must complete to be issued a permit. (*NOTE: EPA is not developing a specific form for Part B of the permit application, but an instruction booklet explaining what information must be supplied is available from the EPA Regional office.*)

APPROVED PROGRAM or APPROVED STATE means a State program which has been approved or authorized by EPA under 40 CFR Part 123.

AQUACULTURE PROJECT means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. "Designated area" means the portions of waters of the United States within which the applicant plans to confine the cultivated species, using a method of plan or operation (*including, but not limited to, physical confinement*) which, on the basis of reliable scientific evidence, is expected to ensure the specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

AQUIFER means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

AREA OF REVIEW means the area surrounding an injection well which is described according to the criteria set forth in 40 CFR Section 146.06.

AREA PERMIT means a UIC permit applicable to all or certain wells within a geographic area, rather than to a specified well, under 40 CFR Section 122.37.

ATTAINMENT AREA means, for any air pollutant, an area which has been designated under Section 107 of the Clean Air Act as having ambient air quality levels better than any national primary or secondary ambient air quality standard for that pollutant. Standards have been set for sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, ozone, lead, and hydrocarbons. For purposes of the Glossary, "attainment area" also refers to "unclassifiable area," which means for any pollutants, an area designated under Section 107 as unclassifiable with respect to that pollutant due to insufficient information.

BEST MANAGEMENT PRACTICES (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMP's include treatment requirements, operation procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BIOLOGICAL MONITORING TEST means any test which includes the use of aquatic algal, invertebrate, or vertebrate species to measure acute or chronic toxicity, and any biological or chemical measure of bioaccumulation.

BYPASS means the intentional diversion of wastes from any portion of a treatment facility.

CONCENTRATED ANIMAL FEEDING OPERATION means an animal feeding operation which meets the criteria set forth in either (A) or (B) below or which the Director designates as such on a case-by-case basis:

A. More than the numbers of animals specified in any of the following categories are confined:

- 1,000 slaughter or feeder cattle,
- 700 mature dairy cattle (*whether milked or dry cows*),
- 250 swine each weighing over 25 kilograms (*approximately 55 pounds*),
- 500 horses,
- 10,000 sheep or lambs,
- 55,000 turkeys,
- 100,000 laying hens or broilers (*if the facility has a continuous overflow watering*),
- 30,000 laying hens or broilers (*if the facility has a liquid manure handling system*),
- 5,000 ducks, or
- 1,000 animal units; or

B. More than the following numbers and types of animals are confined:

- 300 slaughter or feeder cattle
- 200 mature dairy cattle (*whether milked or dry cows*),
- 750 swine each weighing over 25 kilograms (*approximately 55 pounds*),
- 150 horses,

SECTION D - GLOSSARY (continued)

CONCENTRATED ANIMAL FEEDING OPERATION (continued)

5. 3,000 sheep or lambs,
6. 16,500 turkeys,
7. 30,000 laying hens or broilers (if the facility has continuous overflow watering),
8. 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
9. 1,500 ducks, or
10. 300 animal units; AND

Either one of the following conditions are met: Pollutants are discharged into waters of the United States through a manmade, ditch flushing system or other similar manmade device ("manmade" means constructed by man and used for the purpose of transporting wastes); or Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY means a hatchery, fish farm, or other facility which contains, grows or holds aquatic animals in either of the following categories, or which the Director designates as such on a case-by-case basis:

A. Cold water fish species or other cold water aquatic animals including, but not limited to, the Salmonidae family of fish (e.g., trout and salmon) in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

1. Facility which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

B. Warm water fish species or other warm water aquatic animals including, but not limited to, the Ameiuridae, Cetrachidae, and Cyprinidae families of fish (e.g., respectively, catfish, sunfish, and minnows) in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or
2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

CONTACT COOLING WATER means water used to reduce temperature which comes into contact with a raw material, intermediate product, waste product other than heat, or finished product.

CONTAINER means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

CONTIGUOUS ZONE means the entire zone established by the United States under article 24 of the convention of the Territorial Sea and the Contiguous Zone.

CWA means the Clean Water Act (formerly referred to the Federal Water Pollution Control Act) pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576, 33 U.S.C. 1251 et seq.

DIKE means any embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

DIRECT DISCHARGE means the discharge of a pollutant as defined below.

DIRECTOR means the EPA Regional Administrator or the State Director as the context requires.

DISCHARGE (OF A POLLUTANT) means:

- A. Any addition of any pollutant or combination of pollutants to waters of the United States from any point source; or
- B. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes discharges into waters of the United States from: Surface runoff which is collected or channeled by man; Discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to POTW's; and Discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

DISPOSAL (in the RCRA program) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

DISPOSAL FACILITY means a facility or part of a facility at which hazardous waste is intentionally placed into or on land or water, and at which hazardous waste will remain after closure.

EFFLUENT LIMITATION means any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean.

EFFLUENT LIMITATION GUIDELINE means a regulation published by the Administrator under Section 304(b) of the Clean Water Act to adopt or revise effluent limitations.

ENVIRONMENTAL PROTECTION AGENCY (EPA) means the United States Environmental Protection Agency.

EPA IDENTIFICATION NUMBER means the number assigned by EPA to each generator, transporter, and facility.

EXEMPTED AQUIFER means an aquifer or its portion that meets the criteria in the definition of USDW, but which has been exempted according to the procedures in 40 CFR Section 122.35(b).

EXISTING HWM FACILITY means a Hazardous Waste Management facility which was in operation, or for which construction had commenced, on or before October 21, 1976. Construction had commenced if (A) the owner or operator had obtained all necessary Federal, State, and local pre-construction approvals or permits, and either (B1) a continuous on-site, physical construction program had begun, or (B2) the owner or operator had entered into contractual obligations, which could not be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(NOTE: This definition reflects the literal language of the statute. However, EPA believes that amendments to RCRA now in conference will shortly be enacted and will change the date for determining when a facility is an "existing facility" to one no earlier than May of 1980; indications are the conferees are considering October 30, 1980. Accordingly, EPA encourages every owner or operator of a facility which was built or under construction as of the promulgated date of the RCRA program regulations to file Part A of its permit application so that it can be quickly processed for interim status when the change in the law takes effect. When those amendments are enacted, EPA will amend this definition.)

EXISTING SOURCE or **EXISTING DISCHARGER (in the NPDES program)** means any source which is not a new source or a new discharger.

SECTION D - GLOSSARY (continued)

EXISTING INJECTION WELL means an injection well other than a new injection well.

FACILITY means any HWM facility, UIC underground injection well, NPDES point source, PSD stationary source, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or PSD programs.

FLUID means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

GENERATOR means any person by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261.

GROUNDWATER means water below the land surface in a zone of saturation.

HAZARDOUS SUBSTANCE means any of the substances designated under 40 CFR Part 116 pursuant to Section 311 of CWA. (NOTE: These substances are listed in Table 2c-4 of the instructions to Form 2C).

HAZARDOUS WASTE means a hazardous waste as defined in 40 CFR Section 261.3 published May 19, 1980.

HAZARDOUS WASTE MANAGEMENT FACILITY (HWM facility) means all contiguous land, structures, appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous wastes. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

IN OPERATION means a facility which is treating, storing, or disposing of hazardous waste.

INCINERATOR (in the RCRA program) means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

INDIRECT DISCHARGER means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

INJECTION WELL means a well into which fluids are being injected.

INTERIM AUTHORIZATION means approval by EPA of a State hazardous waste program which has met the requirements of Section 3006(c) of RCRA and applicable requirements of 40 CFR Part 124, Subparts A, B, and F.

LANDFILL means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

LAND TREATMENT FACILITY (in the RCRA program) means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

LISTED STATE means a State listed by the Administrator under Section 1422 of SDWA as needing a State UIC program.

MGD means millions of gallons per day.

MUNICIPALITY means a city, village, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of CWA. The term includes an approved program.

NEW DISCHARGER means any building, structure, facility, or installation: (A) From which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972, it had never discharged pollutants; (B) Which has never received a finally effective NPDES permit for discharges at the site; and (C) Which is not a "new source." This definition includes an indirect discharger which commences discharging into waters of the United States. It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing vessel, or aggregate plant that begins discharging at a location for which it does not have an existing permit.

NEW HWM FACILITY means a Hazardous Waste Management facility which began operation or for which construction commenced after October 21, 1976.

NEW INJECTION WELL means a well which begins injection after a UIC program for the State in which the well is located is approved.

NEW SOURCE (in the NPDES program) means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

A/ After promulgation of standards of performance under Section 306 of CWA which are applicable to such source; or

B/ After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NON-CONTACT COOLING WATER means water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat), or finished product.

OFF-SITE means any site which is not "on-site."

ON-SITE means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person, but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

OPEN BURNING means the combustion of any material without the following characteristics:

A. Control of combustion air to maintain adequate temperature for efficient combustion;

B/ Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

C/ Control of emission of the gaseous combustion products.

(See also "incinerator" and "thermal treatment")

OPERATOR means the person responsible for the overall operation of a facility.

OUTFALL means a point source.

OWNER means the person who owns a facility or part of a facility.

SECTION D - GLOSSARY (continued)

PERMIT means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR Parts 122, 123, and 124.

PHYSICAL CONSTRUCTION (in the RCRA program) means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.

PILE means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

POLLUTANT means dredge spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewer sludge, munitions, chemical waste, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended [42 U.S.C. Section 2011 et seq.]), heat, wrecked or discarded equipment, rocks, sand, cellar dirt and industrial, municipal, and agriculture waste discharge into water. It does not mean:

A. Sewage from vessels; or

B. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 [1976].)

PREVENTION OF SIGNIFICANT DETERIORATION (PSD) means the national permitting program under 40 CFR 52.21 to prevent emissions of certain pollutants regulated under the Clean Air Act from significantly deteriorating air quality in attainment areas.

PRIMARY INDUSTRY CATEGORY means any industry category listed in the NRDC Settlement Agreement (*Natural Resources Defense Council v. Train*, 8 ERC 2120 [D.D.C. 1976], modified 12 ERC 1833 [D.D.C. 1979]).

PRIVATELY OWNED TREATMENT WORKS means any device or system which is: (A) Used to treat waste from any facility whose operator is not the operator of the treatment works; and (B) Not a POTW.

PROCESS WASTEWATER means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

PUBLICLY OWNED TREATMENT WORKS or POTW means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes any sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

RENT means use of another's property in return for regular payment.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (*Pub. L. 94-580*, as amended by *Pub. L. 95-609*, 42 U.S.C. Section 6901 et seq.).

ROCK CRUSHING AND GRAVEL WASHING FACILITIES are facilities which process crushed and broken stone, gravel, and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines for these facilities).

SDWA means the Safe Drinking Water Act (*Pub. L. 95-523*, as amended by *Pub. L. 95-1900*, 42 U.S.C. Section 300f et seq.).

SECONDARY INDUSTRY CATEGORY means any industry category which is not a primary industry category.

SEWAGE FROM VESSELS means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purpose of this definition, "graywater" means galley, bath, and shower water.

SEWAGE SLUDGE means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a POTW. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

SILVICULTURAL POINT SOURCE means any discernable, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. This term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA Section 404 permit. "Log sorting and log storage facilities" are facilities whose discharges result from the holding of unprocessed wood, e.g., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines for these facilities).

STATE means any of the 50 States, the district of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), and the Commonwealth of the Northern Mariana Islands (except in the case of CWA).

STATIONARY SOURCE (in the PSD program) means any building, structure, facility, or installation which emits or may emit any air pollutant regulated under the Clean Air Act. "Building, structure, facility, or installation" means any grouping of pollutant-emitting activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by person under common control).

STORAGE (in the RCRA program) means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

STORM WATER RUNOFF means water discharged as a result of rain, snow, or other precipitation.

SURFACE IMPOUNDMENT or IMPOUNDMENT means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

TANK (in the RCRA program) means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

SECTION D - GLOSSARY (continued)

THERMAL TREATMENT (*in the RCRA program*) means the treatment of hazardous waste in a device which uses elevated temperature as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning").

TOTALLY ENCLOSED TREATMENT FACILITY (*in the RCRA program*) means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

TOXIC POLLUTANT means any pollutant listed as toxic under Section 307(a)(1) of CWA.

TRANSPORTER (*in the RCRA program*) means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

TREATMENT (*in the RCRA program*) means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

UNDERGROUND INJECTION means well injection.

UNDERGROUND SOURCE OF DRINKING WATER or USDW means an aquifer or its portion which is not an exempted aquifer and:

- A. Which supplies drinking water for human consumption; or
- B. In which the ground water contains fewer than 10,000 mg/l total dissolved solids.

UPSET means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

WATERS OF THE UNITED STATES means:

- A. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- B. All interstate waters, including interstate wetlands;
- C. All other waters such as intrastate lakes, rivers, streams (*including intermittent streams*), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds, the use degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:
 1. Which are or could be used by interstate or foreign travelers for recreational or other purposes,
 2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce,
 3. Which are used or could be used for industrial purposes by industries in interstate commerce;
- D. All impoundments of waters otherwise defined as waters of the United States under this definition;
- E. Tributaries of waters identified in paragraphs (A) - (D) above; The territorial sea; and
- F. Wetlands adjacent to waters (*other than waters that are themselves wetlands*) identified in paragraphs (A) - (F) of this definition.

Waste treatment systems, including treatment ponds or lagoons designated to meet requirement of CWA (*other than cooling ponds as defined in 40 CFR Section 423.11(m) which also meet the criteria of this definition*) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (*such as a disposal area in wetlands*) nor resulted from the impoundments of waters of the United States.

WELL INJECTION or **UNDERGROUND INJECTION** means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

WETLANDS means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

FORM 1 GENERAL		U.S. ENVIRONMENTAL PROTECTION AGENCY GENERAL INFORMATION <i>Consolidated Permits Program</i> <i>(Read the "General Instructions" before starting.)</i>	I. EPA I.D. NUMBER <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align: center;">S</td> <td style="width:15%;"></td> <td style="width:5%; text-align: center;">T/A</td> <td style="width:5%; text-align: center;">C</td> </tr> <tr> <td style="text-align: center;">F</td> <td></td> <td></td> <td style="text-align: center;">D</td> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">2</td> <td style="text-align: center;">13</td> <td style="text-align: center;">14</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: center;">15</td> </tr> </table>	S		T/A	C	F			D	1	2	13	14				15
S		T/A	C																
F			D																
1	2	13	14																
			15																
LABEL ITEMS		PLEASE PLACE LABEL IN THIS SPACE	GENERAL INSTRUCTIONS If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate fill-in area below. Also, if any of the preprinted data is absent (the area to the left of the label space lists the information that should appear), please provide it in the proper fill-in area(s) below. If the label is complete and correct, you need not complete items I, III, V, and VI (except VI-B which must be completed regardless). Complete all items if no label has been provided. Refer to the instructions for detailed item descriptions and for the legal authorization under which this data is collected.																
I. EPA I.D. NUMBER																			
III. FACILITY NAME																			
V. FACILITY MAILING LIST																			
VI. FACILITY LOCATION																			
II. POLLUTANT CHARACTERISTICS																			
INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parenthesis following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of bold-faced terms .																			
SPECIFIC QUESTIONS	MARK "X"		SPECIFIC QUESTIONS																
	YES	NO	FORM ATTACHED																
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.? (FORM 2A)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	16	17	18																
C. Is this facility which currently results in discharges to waters of the U.S. other than those described in A or B above? (FORM 2C)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	22	23	24																
E. Does or will this facility treat, store, or dispose of hazardous wastes ? (FORM 3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	28	29	30																
G. Do you or will you inject at this facility any produced water other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons? (FORM 4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	34	35	36																
I. Is this facility a proposed stationary source which is one of the 28 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	40	41	42																
B. Does or will this facility (either existing or proposed) include a concentrated animal feeding operation or aquatic animal production facility which results in a discharge to waters of the U.S.? (FORM 2B)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	19	20	21																
D. Is this proposal facility (other than those described in A or B above) which will result in a discharge to waters of the U.S.? (FORM 2D)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	25	26	27																
F. Do you or will you inject at this facility industrial or municipal effluent below the lowermost stratum containing, within one quarter mile of the well bore, underground sources of drinking water? (FORM 4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	31	32	33																
H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, solution mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy? (FORM 4)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	37	38	39																
J. Is this facility a proposed stationary source which is NOT one of the 28 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																
	43	44	45																
III. NAME OF FACILITY																			
C	SKIP																		
1																			
15	16-29	30	69																
IV. FACILITY CONTACT																			
A. NAME & TITLE (last, first, & title)		B. PHONE (area code & no.)																	
C																			
2																			
15	16	45	46 48																
			49 51																
			52 55																
V. FACILITY MAILING ADDRESS																			
A. STREET OR P.O. BOX																			
C																			
3																			
15	16	45																	
B. CITY OR TOWN		C. STATE	D. ZIP CODE																
C																			
4																			
15	16	40	41 42																
			47 51																
VI. FACILITY LOCATION																			
A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER																			
C																			
5																			
15	16	45																	
B. COUNTY NAME																			
46	70																		
C. CITY OR TOWN		D. STATE	E. ZIP CODE																
C																			
6																			
15	16	40	41 42																
			47 51																
			52 54																

CONTINUED FROM THE FRONT

VII. SIC CODES (4-digit, in order of priority)

A. FIRST				B. SECOND			
C	(specify)			7	(specify)		
7				7			
15	16	17		15	16	19	
C. THIRD				D. FOURTH			
C	(specify)			7	(specify)		
7				7			
15	16	17		15	16	19	

VIII. OPERATOR INFORMATION

A. NAME					B. Is the name listed in Item VIII-A also the owner?				
C					<input type="checkbox"/> YES <input type="checkbox"/> NO				
8									
18	19				55				

C. STATUS OF OPERATOR (Enter the appropriate letter into the answer box; if "Other," specify.)				D. PHONE (area code & no.)						
F = FEDERAL	M = PUBLIC (other than federal or state)	(specify)		C						
S = STATE	O = OTHER (specify)			A						
P = PRIVATE			56	15	16	18	19	21	22	25

E. STREET OR PO BOX				
26				
55				

F. CITY OR TOWN			G. STATE		H. ZIP CODE		IX. INDIAN LAND		
C							Is the facility located on Indian lands?		
B							<input type="checkbox"/> YES <input type="checkbox"/> NO		
15	16	40	42	42	47	51			

X. EXISTING ENVIRONMENTAL PERMITS

A. NPDES (Discharges to Surface Water)				D. PSD (Air Emissions from Proposed Sources)					
C	T	I		C	T	8			
9	N			9	P				
15	16	17	18	30	15	16	17	18	30
B. UIC (Underground Injection of Fluids)				E. OTHER (specify)				(Specify)	
C	T	I		C	T	8			
9	U			9					
15	16	17	18	30	15	16	17	18	30
C. RCRA (Hazardous Wastes)				E. OTHER (specify)				(Specify)	
C	T	I		C	T	8			
9	R			9					
15	16	17	18	30	15	16	17	18	30

XI. MAP

Attach to this application a topographic map of the area extending to at least one mile beyond property boundaries. The map must show the outline of the facility, the location of each of its existing and proposed intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities, and each well where it injects fluids underground. Include all springs, rivers and other surface water bodies in the map area. See instructions for precise requirements.

XII. NATURE OF BUSINESS (provide a brief description)

XIII. CERTIFICATION (see instructions)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE (type or print)	B. SIGNATURE	C. DATE SIGNED
--	--------------	----------------

COMMENTS FOR OFFICIAL USE ONLY

C		
15	16	55

substantially change in nature, or increase in volume or frequency, must apply for an NPDES Permit either:

- 1) No later than 180 days in advance of the date on which such NPDES Permit will be required; or
 - 2) In sufficient time prior to the anticipated commencement of the discharge to insure compliance with the requirements of Section 306 of the Clean Water Act (CWA) (33 U.S.C. 1251 et seq), or with any other applicable water quality standards and applicable effluent standards and limitations.
- e) Signatures

An application submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively. In the case of a publicly owned facility, the application shall be signed by either the principal executive officer, ranking elected official, or other duly authorized employee.

(Source: Amended at 20 Ill. Reg. 5526, effective April 1, 1996)

Section 309.104 Renewal

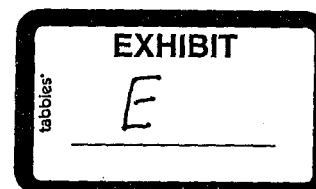
- a) Any permittee who wishes to continue to discharge after the expiration date of his NPDES Permit shall apply for reissuance of the permit not less than 180 days prior to the expiration date of the permit.
- b) The Agency shall circulate public notice and provide opportunity for public hearing, as provided for in this Subpart A, in the same manner as for a new permit application.

(Source: Amended at 4 Ill. Reg. no. 34, page 159, effective August 7, 1980.)

Section 309.105 Authority to Deny NPDES Permits

No NPDES Permit may be issued in any case in which:

- a) The permit would authorize the discharge of a radiological, chemical or biological warfare agent or high-level radioactive waste;



- b) The discharge would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation;
- c) The proposed permit is objected to in writing by the Administrator of the U.S. Environmental Protection Agency pursuant to any right to object given to the Administrator under Section 402(d) of the CWA;
- d) The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the CWA; or
- e) The applicant has not provided proof to the Agency that he will meet any schedule of compliance which may be established, in accordance with the Act and regulations, as a condition of his permit.

Section 309.106 Access to Facilities and Further Information

If the Agency determines that either further information or a site visit is necessary for the Agency to evaluate an NPDES Permit application, it shall notify the applicant and make arrangements to secure the additional information or make the site visit. If adequate information is not received within the period of time specified by the Agency, the permit shall either be issued on the basis of the information currently before the Agency or be denied, and the applicant so notified.

Section 309.107 Distribution of Applications

When the Agency determines that an application for an NPDES Permit is complete, it shall:

- a) Unless otherwise agreed, send a copy of the application to the District Engineer of the appropriate district of the U.S. Corps of Engineers with a letter requesting that the District Engineer provide, within 30 days or as otherwise stated in the Agency's letter, his evaluation of the impact of the discharge on anchorage and navigation. If the District Engineer responds that anchorage and navigation of any of the navigation waters would be substantially impaired by the granting of a permit, the permit will be denied and the Agency shall notify the applicant. If the District Engineer informs the Agency that the imposition of specified conditions upon the NPDES Permit is necessary to avoid any substantial impairment of any of the navigable waters, the Agency shall include in the permit those conditions specified by the District Engineer.
- b) Send two copies of the application to the Regional Administrator of the U.S. Environmental Protection Agency with a letter stating that the application is complete.

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

Richard Coffelt
CIRCUIT CLERK

99 CH 720

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

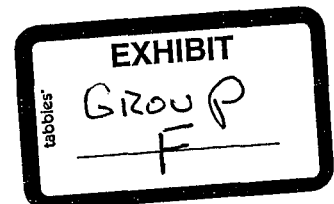
NOW COMES the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, and complains of Defendant, VILLAGE OF WAUCONDA, as follows:

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);

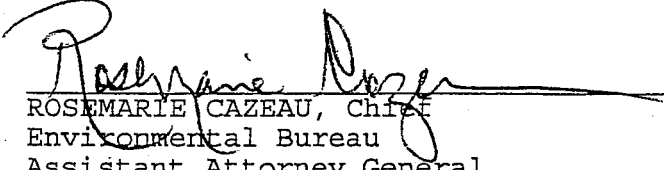
4. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1996), including reasonable attorneys fees, and the reasonable cost of expert witnesses and consultants, against the Defendant; and

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

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

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

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:
ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Flr.
Chicago, IL 60601
(312) 814-3816

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

FILED

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.)

DEC 10 2004

[Signature]
CIRCUIT CLERK

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, Nauconda, 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.

STORET CODE	PARAMETER	Minimum detection limit
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
00836	*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 BPF, 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

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

has violated any payment or compliance deadline within this Consent Order. If the Defendant has violated any payment or compliance deadline, the Plaintiff may elect to file a petition for adjudication of contempt or rule to show cause.

Notwithstanding the above, disputes regarding an imminent and substantial endangerment to the public health, welfare or the environment, or the Illinois EPA's approval, comment on, or denial of any report, plan or remediation objective, or the Illinois EPA's decision regarding appropriate or necessary response activity, are not subject to the dispute resolution provisions of this Consent Order.

2. The dispute resolution procedure shall be invoked upon the giving of written notice by one of the parties to this Consent Order to another describing the nature of the dispute and the noticing party's position with regard to such dispute. The party receiving such notice shall acknowledge receipt of the notice; thereafter the parties shall schedule a meeting to discuss the dispute informally not later than 14 days from the receipt of such notice.

3. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall be for a period of 30 calendar days from the date of the first meeting between representatives of the Plaintiff and 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.

W. 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.

[Code of Federal Regulations]
[Title 40, Volume 13, Parts 87 to 135]
[Revised as of July 1, 1998]
From the U.S. Government Printing Office via GPO Access
[CITE: 40CFR131.12]

[Page 856-857]

TITLE 40--PROTECTION OF ENVIRONMENT

AGENCY (CONTINUED)

PART 131--WATER QUALITY STANDARDS--Table of Contents

Subpart B--Establishment of Water Quality Standards

Sec. 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing

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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.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

