

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 25 2005
STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,)

VS.)

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

Respondents.)

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

SLOCUM LAKE DRAINAGE DISTRICT)
OF LAKE COUNTY, ILLINOIS)

Petitioner)

VS.)

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

Respondents.)

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

AL PHILLIPS, VERN MEYER, GAYLE)
 DEMARCO, GABRIELLE MEYER, LISA)
 O'DELL, JOAN LESLIE, MICHAEL)
 DAVEY, NANCY DOBNER, MIKE)
 POLITO, WILLIAMS PARK)
 IMPROVEMENT ASSOCIATION, MAT)
 SCHLUETER, MYLITH PARK LOT)
 OWNERS ASSOCIATION, DONALD)
 KREBS, DON BERKSHIRE, JUDY)
 BRUMME, TWIN POND FARMS)
 HOMEOWNERS ASSOCIATION, JULIA)
 TUDOR and CHRISTINE DEVINEY,)

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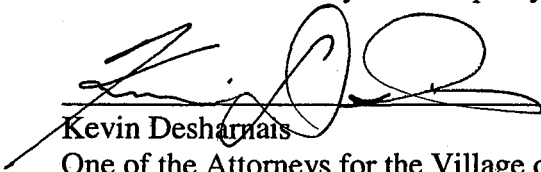
PCB 05-59
 (3rd Party NPDES Permit
 Appeal)
 (Consolidated)

NOTICE OF FILING

TO: See attached Certificate of Service

Please take notice that on February 25, 2005, I filed with the Illinois Pollution Control Board an original and nine copies of this **Notice of Filing and Brief on Behalf of the Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukrud**, copies of which are attached hereto and hereby served upon you.

Dated: February 25, 2005


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

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 Russell R. Eggert
 Kevin G. Desharnais
 Mayer, Brown, Rowe & Maw LLP
 190 South LaSalle Street
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CERTIFICATE OF SERVICE

Kevin Desharnais, an attorney, hereby certifies that on February 25, 2005, a copy of the foregoing **Notice of Filing and Brief on Behalf of the Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukud** was served on the persons listed below by UPS Next Day Air for delivery on Monday February 28, 2005.

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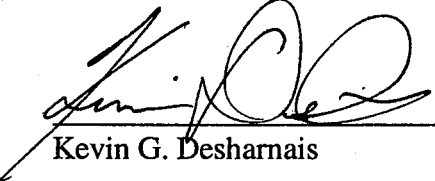
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BRIEF ON BEHALF OF THE
VILLAGE OF LAKE BARRINGTON, CUBA TOWNSHIP,
PRAIRIE RIVERS NETWORK, SIERRA CLUB, BETH WENTZEL and CYNTHIA
SKRUKRUD

This matter involves consolidated third-party permit appeals of a modified NPDES permit issued to the Village of Wauconda on August 23, 2004, to expand its sewage treatment plant in two phases: from 1.4 million gallons per day (“MGD”) to 1.9 MGD and from 1.9 MGD to 2.4 MGD. Three third party permit appeals were filed by objectors to the permit. The first by Lake Barrington, Cuba Township, Sierra Club, Prairie Rivers Network, Cynthia Skrukud and Beth Wentzel (hereinafter the “Municipal-Environmental Petitioners”) was denominated PCB 05-55. The second by Slocum Lake Drainage District (“Drainage District”) was denominated PCB 05-58. And the third, by a group of area residents represented by Attorney Jay Glenn (“Resident Group”), was denominated

PCB 05-59. All three matters were consolidated by the Board by an order dated October 7, 2005.

The permit in question had been the subject of a public notice proceeding by the Illinois Environmental Protection Agency, ("IEPA Proceeding").

I. INTRODUCTION

A. Participation by the Municipal-Environmental Petitioners

The Municipal-Environmental Petitioners were extremely active participants in the IEPA Proceeding. Lake Barrington and Cuba Township retained environmental consultants to advise on the issues and conduct independent testing. All of the Municipal-Environmental Petitioners provided comments and/or testimony in the IEPA Proceeding. In fact, over one hundred pages of the record in this matter was supplied by the Municipal-Environmental Petitioners, which also provided the only technical data furnished by any petitioner regarding the Wauconda discharge and Fiddle Creek. See for Lake Barrington and Cuba Township Tr. 57-76, R.146-47, 231-39, 249-310, 441-44, 470-78, 569-73, 1051, 1954-57, 2102-13; for Sierra Club Tr.97-102; 140-46, 150-54, R.163-64, 173, 1023-25, 1065, and for Prairie Rivers Network R.97-102; 566-68, 1793-95.¹

B. Impact on the Municipal-Environmental Petitioners

Lake Barrington, Cuba Township and the Municipal-Environmental Petitioners were so involved because they are the immediate downstream neighbors of Wauconda. The Wauconda effluent discharges to Fiddle Creek at Anderson Road, approximately 2.4 miles from the Fox River. Fiddle Creek flows through a wetland area, a channelized section called the Slocum Lake Drainage District and then into the Fox River. As described in their

¹ Citations to the transcript of the IEPA proceeding, filed as an Amended Record on December 10, 2004, are designated "Tr." Citations to the IEPA record are designated "R. ___".

testimony and submissions, Lake Barrington, a municipal corporation, borders Fiddle Creek on the south immediately downstream of the Wauconda discharge. Cuba Township is the township including Lake Barrington and immediately downstream of the Wauconda Discharge. R.249-50. Prairie Rivers Network is an Illinois not-for-profit corporation, an affiliate of the National Wildlife Federation, concerned with river conservation and water quality issues and includes members in the Fiddle Creek and Fox River watersheds. R.1793-95. The Sierra Club is a California not-for-profit corporation with members who live and recreate in the Fiddle Creek area. R.163-64. Beth Wentzel is a watershed scientist with Prairie Rivers, R.1793-95, and Cynthia Skrukud is a clean water advocate with the Sierra Club. R.163-64, 1023-25. Members of Sierra Club and Prairie Rivers are adversely affected by conditions in Fiddle Creek and the Fox River.

C. IEPA Response to Public Participation and Further Discussions

As a result of the IEPA Proceeding, a number of positive changes were made in the draft Wauconda NPDES permit, including a requirement for phosphorus control and requirements for dissolved oxygen monitoring, studies of DO and nutrients in Fiddle Creek and yearly updated industrial user surveys. Pursuing discussions begun under the auspices of the IEPA, before and following issuance of the permit and the filing of the permit appeals, Wauconda and the Municipal-Environmental Petitioners continued discussions concerning additional changes to the permit which might resolve the concerns of the permit objectors. These discussions were widely publicized as the parties attempted to involve, consult with and satisfy many local constituencies. Public presentations were made to the Lake Barrington Village Board and televised on local access TV. See Affidavit of Kevin Richardson in Lake Barrington and Cuba Township Response to Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend. Affidavit is attached

as Exhibit C hereto and incorporated herein. Eventually, these discussions led to two written documents which attempted to incorporate a resolution of the issues raised in the IEPA proceedings.

D. Stipulation and Intergovernmental Agreement

The first document addressing a resolution of ongoing issues of concern was an Intergovernmental Agreement (“IGA”) reached among the Villages of Wauconda and Lake Barrington and Cuba Township. IGA’s are specifically authorized and encouraged by the Illinois Constitution. Ill. Const. of 1970; Art. VII, § 10, 5 ILCS 220/1 et seq.

Because the IGA was limited to governmental entities, a mechanism was needed to allow the environmental petitioners, including the Sierra Club and Prairie Rivers Network, to have the benefit of the IGA. Accordingly, a Stipulation was reached and signed by the participating parties in which the IGA parties and the environmental group and individual petitioners in PCB 05-55 achieved the same resolution of issues outlined in the IGA, as well as the right to enforce that resolution. The Stipulation with incorporated IGA is attached as Exhibit A hereto and incorporated by reference herein.

It is the belief of the parties to the Stipulation that it involves an appropriate resolution of the issues properly raised in the record in this case. To assist the Board in reviewing those issues and reaching its own conclusion concerning the correct resolution, the Municipal-Environmental Petitioners have created a chart of the issues raised by the various petitioners, their principal discussion on the record, including the petitioners who raised them, the IEPA response in the permit as issued and the treatment of those issues in the IGA and Stipulation. See Exhibit B attached hereto and incorporated by reference herein. As discussed below, it is the request of the Municipal-Environmental Petitioners that the Board, upon completing its review, confirm that the resolution reached is appropriate

and may be the basis for the Board's own independent decision in this case. It bears repeating that the Stipulation is directly tied to and driven by the record assembled in the IEPA Proceeding.

The Municipal-Environmental Petitioners recognize that the Drainage District Petitioner in 05-58 and the Resident Group Petitioners in 05-59 have not participated in the Stipulation and have even sought to penalize Lake Barrington and Cuba Township by asking that they be realigned as Respondents for signing the Stipulation and the IGA. (Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend (hereinafter "Joint Motion to Realign") withdrawn after response by Lake Barrington and Cuba Township.) As described more fully below, numerous efforts were made to involve as many as possible in the community in the IGA and Stipulation, including the Drainage District and members of the Resident Group, and to insure that all legitimate environmental concerns received thoughtful consideration and inclusion if appropriate. At the same time, it was recognized that IEPA and the Pollution Control Board only have certain powers under the Environmental Protection Act and it was unreasonable to expect the environmental agencies to address matters which might be beyond their statutory authority, no matter how desirable that might be to some as a matter of community planning and growth.

II. STANDARD OF REVIEW

NPDES permits must contain "those terms and conditions . . . which may be required to accomplish the purposes and provisions" of the Environmental Protection Act (the "Act"), 415 ILCS 5/39(b). The IEPA's decision to issue a permit must be supported by substantial evidence. See Prairie Rivers Network v. IEPA (Aug. 9, 2001), PCB 01-112. The permit cannot be upheld if, as issued, it would violate the Illinois Environmental Protection Act or Board regulations. See id. The Board reviews third-party permit appeals, like other

petitions, exclusively on the basis of the record before the Agency. See id. (citing 415 ILCS 5/40(e)(3)); see also Saline County Landfill, Inc. v. IEPA (May 6, 2004), PCB 04-117 ("It is well settled that the Board's review of permit appeals of this type is limited to information before the Agency during the Agency's statutory review period, and is not based on information developed by the permit applicant, or the Agency, after the Agency's decision."); ESG Watts, Inc. v. IEPA (Apr. 4, 2002), PCB 01-62 (same). While the applicant must demonstrate by substantial evidence that a permit will not violate the Act or regulations, the burden of proof in a permit appeal is on the petitioner. 415 ILCS 5/40(e)(3).

III. DISCUSSION

A. Nature of Public Participation in the IEPA Proceeding, the Permit Appeals and the Stipulation and IGA.

Lake Barrington, Cuba Township and the environmental group petitioners have sought to involve the public at large in their participation in this matter and to furnish the IEPA in its Proceedings with well-founded technical bases for their concerns. In participating in the IEPA Proceeding below Lake Barrington and Cuba Township retained James Huff of the consulting firm Huff and Huff to analyze the Wauconda application and provide expertise. Huff and Huff assembled and analyzed existing data, reviewed IEPA records and conducted additional sampling in Fiddle Creek and the Fox River. The resulting data and analyses were supplied in the IEPA Proceeding. Tr.57-76; R.249-310, 1054-57. In addition, Kot Environmental Consulting was retained to provide an analysis of the possible susceptibility of area wells and the impacts of the proposed permit on the Fiddle Creek wetlands. R.470-78.

The environmental groups and individuals, Sierra Club and Prairie Rivers Network and their scientists Beth Wentzel and Cynthia Skrukrud also provided technical input and

analysis in the IEPA Proceeding. See e.g. R.97-102, 163-64, 566-68, 1023-25, 1065, 1768, 1793-95.

Following a government party discussion process sponsored by IEPA during its public proceedings, see e.g. IEPA Decision and Response to Comments, R.2210 et seq. (hereinafter "IEPA Decision") at 2215, Lake Barrington, Cuba Township and the environmental groups continued their discussions with Wauconda and the community throughout the permit process, both before and after issuance of the permit. Wauconda was receptive to ongoing discussions and the municipal parties and environmental groups sought input from their communities as discussions proceeded. The Drainage District and Resident Group, petitioners in PCB 05-58 and 59, have claimed in a motion filed in this proceeding (Joint Motion to Realign, withdrawn after response by Lake Barrington and Cuba Township) that such discussions were secret. As clearly stated in the affidavit of Lake Barrington Trustee Kevin Richardson, previously supplied to the Board as part of Lake Barrington and Cuba Township's Response and Objection to the Joint Motion to Realign and attached as Exhibit C hereto and incorporated herein, this was simply not the case. Besides the groups and individuals consulted, regular reports of the progress of the discussions were made to the Lake Barrington Village Board meetings and a broad ranging Power Point presentation concerning the discussions was broadcast on local access TV. As a government organization, Petitioner Slocum Lake Drainage District attended the governmental discussion process, R.1081-87, 1091-93, and was invited to the negotiations concerning the IGA. The Drainage District attended at least two of the negotiation meetings before declining to participate further. In addition, Trustee Richardson met personally with Mr. Jay Glenn who described himself as leader of the Resident Group in PCB 05-59. (Mr. Glenn is

the attorney representing the petitioners in PCB 05-59.) Mr. Glenn, however, made it clear that the goal of his group, whose widely publicized motto was "Plug the Pipe," was to deny a permit to Wauconda and require it to cease its discharge to Fiddle Creek entirely until his group's concerns with water, traffic and other Wauconda growth issues were satisfied. See Exhibit C. Those discussions with Mr. Glenn, therefore, did not continue because of concerns that his goals went beyond the statutory authority of the Environmental Protection Act and were not legally achievable. Moreover, as illustrated by the chart of issues raised, Exhibit B, the legitimate and statutorily cognizable concerns of the Drainage District and the Resident Group are addressed by IEPA's permit revisions and, importantly, the Stipulation and IGA.²

There is, of course, no requirement that settlement discussions be public: the contrary is more often the case. The participants in the IGA and the Stipulation sought public input in this process because of a concern that any resulting agreement regarding the NPDES permit deal appropriately with all legitimate environmental issues. The Pollution Control Board and IEPA should encourage the process used as embodying the principles underlying the Environmental Protection Act and good public policy.

B. The Achievement of the IGA and the Stipulation

Third party NPDES permit appeals are a relatively new phenomenon before the Pollution Control Board, with little in the way of settled practice or instruction in the Board rules to provide guidance. And there is even less settled wisdom about how to resolve a third-party permit appeal. Thus, as the parties to the Stipulation proceeded in their

² In large measure the comments and IEPA Proceedings participation by the Drainage District and the Resident Group were very general and were not tied to the statute or the Board's regulations. Without addressing the sufficiency of those comments for the purposes of permit appeal, the Municipal-Environmental Petitioners have sought to illustrate in Exhibit B how the Stipulation addresses the concerns of the Petitioners in PCB 05-58 and 05-59 as well.

discussions and began to find common ground, they approached the problem of memorializing any resolution from several standpoints. As several of the parties were government organizations, they realized they could resolve their issues through an IGA, a mechanism they were familiar with and which is encouraged by the Illinois Constitution. There was concern, however, to include as well the environmental groups and individuals who could not participate directly in an IGA. It was believed that a Stipulation settlement document could be used to extend the benefits of the IGA to these groups and individuals. The Stipulation additionally had two other purposes. Most importantly, it was a mechanism to present to the Board an agreement among the participating parties as to certain facts and issues and the participants' belief as to their proper interpretation and resolution. While confining themselves entirely, as they must, to the permit record, the petitioners identified in the Stipulation the issues raised in the IEPA Proceeding and the desired and appropriate resolution of those issues. The Municipal-Environmental Petitioners ask that the Board consider the issues raised, and the record support provided and urge that the Board determine that it has sufficient basis to exercise its independent judgment to reach the conclusions and resolutions reached by the parties and contained in the Stipulation. See February 3, 2005 Board Order in PCB 05-55, 58 and 59, at 2. Petitioners recognize that the Board is not bound by those resolutions and will consider each issue independently, but believes that the Board will find that the resolutions reached in the Stipulation also represent an appropriate resolution of the issues in this permit appeal.

The parties to the Stipulation also asked that the Board accept the Stipulation as a settlement of the permit appeal, in much the same fashion as a stipulation may be accepted as a settlement in an enforcement case, essentially as a binding determination of the issues.

The Board declined to do so in its Order of February 3, 2005, and the Municipal-Environmental Petitioners understand and accept the Board's ruling. They continue to believe, however, that the Board may independently review each issue raised and the record and the resolution indicated by the Stipulation and consider whether that resolution independently represents an appropriate determination in the appeal. In the context of a third party permit appeal, it is respectfully suggested to the Board that this mechanism represents a way of encouraging responsible settlements, one which involves the public as much as possible,³ without compromising the obligation of the Board to review permit appeals according to statutory criteria and its own rules. Additionally, it is significant that Wauconda, without conceding that the permit as issued is not correct, has agreed in the Stipulation to accept a revised permit incorporating the additional limitations identified, insuring their incorporation in a permit document with appropriate public availability. Accordingly, and again as a matter of good public policy and the principles underlying the Environmental Protection Act's commitment to public participation and private and local government involvement, see e.g. 415 ILCS 5/2(a)(iv)(b) and (c); 7(a) and (b); 11(a) and (c), the Board is requested to endorse the approach taken and through its independent review of the resolutions reached adopt the revisions to the NPDES permit agreed to by the participants to the Stipulation.

Finally, it is urged that the Board recognize this process and the resulting permit as positive and significant for responsible environmental policy in Illinois. The permit

³ While IEPA normally participates in a resolution of a direct permit appeal by the permit applicant, this agency participation is more difficult where the IEPA and the applicant are both respondents defending the permit and where the IEPA must be concerned about the programmatic impacts of a resolution which goes beyond usual agency practice, e.g. regarding antidegradation or nutrient limitations, and therefore might have precedential effect.

Exhibit A

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Please take notice that on January 10, 2005, I filed with the Illinois Pollution Control Board an original and nine copies of this Notice of Filing and attached Stipulation, which are hereby served upon you.

Dated: January 10, 2005



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STIPULATION

Petitioners Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukud (sometimes "Settling Petitioners"), and Respondent Village of Wauconda ("Wauconda"), have agreed to the making of this Stipulation and submit it to the Illinois Pollution Control Board ("Board") for consideration in the proceedings reviewing the Wauconda NPDES permit. The parties agree that the statement of facts contained herein represents a fair summary of the record currently under review by the Board and that would be presented by the parties if a hearing were held and that the permit modifications proposed are based on the record in the permit proceeding below and represent an environmentally responsible resolution of the issues raised in that proceeding. Wauconda agrees to be bound by the provisions agreed to in this Stipulation and agrees not to contest their validity in any subsequent proceeding to implement or enforce their terms. Wauconda further agrees to accept an NPDES permit in accordance with the provisions of the Intergovernmental Agreement.

I. JURISDICTION

The Board 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.* (2004).

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 Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On September 17, 2004, a Petition was filed by the Settling Petitioners pursuant to Section 40(e)(1) of the Act, 415 ILCS 5/40(e)(1) (2004), against the Illinois Environmental Protection Agency ("Illinois EPA") and Wauconda to review the August 23, 2004 decision of the Illinois EPA to issue a modified National Pollutant Discharge Elimination System ("NPDES") permit (Permit IL 0020109) to Wauconda (referred to herein as "the Modified Permit").

2. The Village of Lake Barrington ("Lake Barrington") is an Illinois Municipal Corporation and is located in Lake County. It borders Fiddle Creek on the north and is downstream of the Wauconda discharge.

3. Cuba Township is a township existing under the laws of the State of Illinois and is located in Lake County. Fiddle Creek runs through Cuba Township downstream of the Wauconda discharge.

4. Lake Barrington and Cuba Township (the "Governmental Petitioners") were significant participants in the public proceeding on the Wauconda permit and in subsequent comments. The Governmental Petitioners retained a technical expert to assist in their presentation and presented extensive technical documentation.

5. Prairie Rivers Network is an Illinois not-for-profit corporation concerned with river conservation and water quality issues in Illinois. Prairie Rivers Network members live in the Fiddle Creek and Fox River Watersheds.

6. Sierra Club is a California not-for-profit corporation, which has among its purposes to protect and restore the quality of the natural and human environment and submitted comments on the proposed permit.

7. Beth Wentzel is a member of and a watershed scientist with the Prairie Rivers Network and submitted comments on the proposed permit.

8. Cynthia Skrukud is a member of the Sierra Club and a clean water advocate for that organization. She presented testimony for the record in this matter and submitted comments on the proposed permit.

9. Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukud (the "Environmental Group Petitioners") presented significant testimony for the record and in comments thereafter as to the technical issues raised by the Wauconda permit and their significance for environmental policy in Illinois.

10. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

11. The Village of Wauconda is an Illinois Municipal Corporation and is located in Lake County.

B. Site Description and Permitting Process

1. Wauconda owns and operates a Wastewater Treatment Plant ("WWTP") pursuant to NPDES Permit IL 0020109. Wauconda's WWTP discharges to Fiddle Creek, tributary to the Fox River.

2. Pursuant to an application by Wauconda, on August 23, 2004, Illinois EPA modified Wauconda's NPDES Permit to allow upgrades, improvements and expansion of Wauconda's WWTP. Pursuant to the Modified Permit, Wauconda is permitted to increase the capacity of its WWTP in two stages. In Stage 1, the WWTP will be able to increase its throughput from 1.4 million gallons per day ("MGD") to 1.9 MGD. In Stage 2, the WWTP will be able to increase its throughput from 1.9 MGD to 2.4 MGD.

3. A public proceeding was held by the Illinois EPA on Wauconda's permit on September 9, 2003. The Governmental Petitioners and the Environmental Group Petitioners were significant participants in the public proceeding and in subsequent comment process.

C. Governmental and Environmental Group Petitioners Claims

At the public proceeding and in their comments to Illinois EPA, and in their petitions to the Board, the Governmental and Environmental Group Petitioners have raised legal and scientific issues regarding the draft permit including the following:

1. The permit allows discharges of phosphorus and nitrogen that cause, have reasonable potential to cause, or contribute to violations of the water quality standards regarding offensive conditions, 35 Ill. Adm. Code 302.203, in violation of 40 CFR 122.44(d) and 35 Ill. Adm. Code 309.141.
2. The permit allows discharges that may cause, have a reasonable potential to cause, or contribute to violations of state water quality standards regarding dissolved oxygen ("DO"), 35 Ill. Adm. Code 302.206, in violation of 40 CFR 122.44(d) and 35 Ill. Adm. Code 309.141.
3. The permit and the Illinois EPA assessments did not comply with Illinois antidegradation rules protecting the existing uses of the receiving waters. 35 Ill. Adm. Code 302.105(a).
4. The Illinois EPA assessment fails to include the analysis of alternatives required by 302.105(f).
5. Illinois EPA's antidegradation assessment was insufficient under 302.105(f) by failing to consider impacts to biological communities, increased loadings, or alternatives or by providing a showing of benefits which fully justify the project.

6. Illinois EPA's permit analysis, including its 2003 antidegradation assessment, fails to address the impact of the discharge on the Fox River, an impaired waterway.

7. Fiddle Creek should be considered an impaired waterway for nutrients, phosphorus and total nitrogen, and low DO and should be subject to federal requirements for such waters.

8. In light of the existing problems with Fiddle Creek and its wetlands and the Fox River, the pounds per day of TSS, BOD5, ammonia, and total nitrogen discharged by the WWTP should not be permitted to exceed the levels in the prior Wauconda permit, *i.e.* no net increase.

9. In light of the wetland impacts already experienced, Wauconda should be required to develop, with the concurrence of its wetland neighbors, a wetland management plan to maintain and restore the Fiddle Creek wetlands.

10. Plant and algal growth along Fiddle Creek, stimulated by excessive nutrients, has impeded the capacity of the creek during high flow conditions, causing flooding. Wauconda should be required to limit discharges, both loading and hydraulic, to reduce such impacts and should be required to contribute to the maintenance of such waterway.

11. The IEPA permit fails to require Wauconda to implement a pretreatment program for its industrial dischargers.

D. Wauconda's Position on Settling Petitioners Claims

Wauconda believes NPDES Permit IL 0020109 fully complies with both applicable federal and state law and was properly issued and modified by Illinois EPA. Nevertheless, Wauconda desires to resolve its dispute with respect to the Settling Petitioners' claims.

E. The Settlement Efforts

The Settling Petitioners and Wauconda have undertaken a lengthy settlement process to achieve a possible resolution of their dispute over the Wauconda permit. Technical experts have been consulted. A variety of public views have been solicited, environmental groups in addition to the Environmental Group Petitioners have been involved and a wide spectrum of public input has been obtained. Wauconda and the Settling Petitioners believe their process has led to a successful resolution of difficult community-based environmental problems. This process has resulted in the Intergovernmental Agreement described below.

IV. TERMS OF SETTLEMENT

A. Intergovernmental Agreement

1. On December 17, 2004, Lake Barrington, Cuba Township and Wauconda entered into an Intergovernmental Agreement ("IGA"), a copy of which is attached hereto as Attachment A and incorporated herein by reference thereto. Pursuant to the IGA, Wauconda has agreed, among other things, to increase the treatment efficiency of its WWTP during both the Phase 1 and Phase 2 construction, such that there will be no

net increase in the loads in Fiddle Creek of CBOD₅ and Suspended Solids, and Wauconda has also agreed in the IGA to seek a further modification of its NPDES Permit to implement these revised load limits. Wauconda has also agreed to install four groundwater monitoring wells and to periodically test both the wells and its effluent as specified in the IGA. Pursuant to the IGA, Wauconda has also agreed to design nitrate removal capabilities for the Phase 1 and Phase 2 expansion of its WWTP. Wauconda agrees to fully comply with the Modified Permit as issued by Illinois EPA and the additional requirements of the IGA.

2. Wauconda has also agreed to take certain additional actions, including the implementation of nitrate removal and the enhancement of Fiddle Creek, contingent on grant funding and dismissal of all permit appeals. The parties to the IGA will work together to secure the grant funding to support these efforts.

B. Enforceability of the Intergovernmental Agreement

By virtue of being signatories to this Stipulation, all of the Settling Petitioners shall have the authority to enforce the terms and conditions of IGA, whether or not they are signatories thereto.

C. Dismissal of PCB 05-55 and Action by the Board

1. In consideration of Wauconda's agreement to commitments contained in the IGA, upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation or sooner, when and if so requested by Wauconda, the Settling Petitioners shall dismiss their petition in case number PCB 05-55 with prejudice.

2. Wauconda and the Settling Petitioners believe that this Stipulation and the IGA properly address all of the environmental issues raised by the permit and this Stipulation and the IGA constitute an environmentally responsible resolution of the issues raised in the permit proceedings below.

D. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, shall be submitted as follows:

For Village of Lake Barrington:

Christopher Martin
Village Administrator
Village of Lake Barrington
23860 Old Barrington Rd.
Lake Barrington, IL 60010

Percy Angelo
Mayer, Brown, Rowe & Maw LLP
190 S. LaSalle St.
Chicago, IL 60603

James Bateman
600 Hart Road, Suite 260
Barrington, IL 60010

For Beth Wentzel:
809 S. 5th St.
Champaign, IL 61820

For Cynthia Skrukud:
4209 W. Solon Rd.
Richmond, IL 60071

For Cuba Township:

Priscilla H. Rose
Town Clerk
Town of Cuba
28000 W. Cuba Rd.
Barrington, IL 60010

For Prairie Rivers Network:

Prairie Rivers Network
809 S. 5th St.
Champaign, IL 61820

For Sierra Club:

Sierra Club
200 N. Michigan Ave.
Suite 505
Chicago, IL 60601

For Village of Wauconda:

Daniel Quick
Village Administrator
101 N. Main Street
Wauconda, IL 60084

Rudolph Magna
Magna & Johnson
495 N. Riverside Drive
Suite 201
Gurnee, IL 60031

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

E. Modification of Stipulation

The parties may, by mutual written consent, agree to modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.D. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

F. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced by the Settling Petitioners as such through any and all available means.

2. Wauconda agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by mail and waives any requirement of service of process.

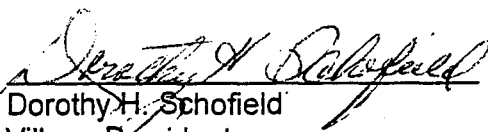
3. The parties agree that, if the Board does not approve and accept this Stipulation, then this Stipulation shall nonetheless remain in full force and effect as a binding Settlement Agreement among the parties hereto.

4. It is the intent of the Settling Petitioners and Wauconda that the provisions of this Stipulation and any Board Order accepting and approving such 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.

5. This Stipulation may be executed in one or more counterparts, which counterparts, when affixed together, shall constitute one and the same document.


WHEREFORE, the foregoing Stipulation represents an environmentally responsible resolution of the issues raised in permit proceeding below and the Settling Petitioners and Wauconda request that the Board adopt and accept the foregoing Stipulation as written.

For Village of Lake Barrington:


Dorothy H. Schofield
Village President

Date: 1-4-05

For Cuba Township:


David Nelson
Supervisor

Date: 1-5-05

For Prairie Rivers Network:



Jean Flemma
Executive Director

Date: Jan 3, '05

Beth Wentzel:



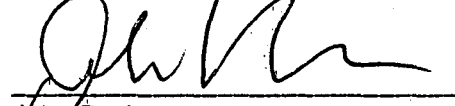
Date: 1/3/05

For Village of Wauconda:

James Eschenbauch
Village President

Date: _____

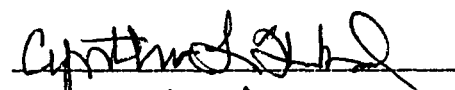
For Sierra Club:



John Darin
Director, Illinois Chapter

Date: 1/4/05

Cynthia Skrukud:



Date: 1/4/05

For Prairie Rivers Network:

Jean Flemma
Executive Director

Date: _____

Beth Wentzel:

Date: _____

For Village of Wauconda:



James Eschenbauch
Village President

Date: 1-4-05

For Sierra Club:

John Darin
Director, Illinois Chapter

Date: _____

Cynthia Skrukud:

Date: _____

Attachment A

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE VILLAGE OF LAKE BARRINGTON, THE VILLAGE OF WAUCONDA
AND THE TOWNSHIP OF CUBA RELATIVE TO FIDDLE CREEK

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement"), made and entered into this 17th day of December, 2004, pursuant to authority of the Illinois Constitution and State Statutes, by and between the Village of Wauconda, an Illinois Municipal Corporation (hereinafter referred to as "Wauconda"), the Village of Lake Barrington, an Illinois Municipal Corporation (hereinafter referred to as "Lake Barrington"), and the Township of Cuba (hereinafter referred to as the "Township"):

WITNESSETH:

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970, provides that units of local government may contract or otherwise associate among themselves to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities and 5 ILCS 220/1 et seq. (1997) further authorizes Intergovernmental Cooperation; and

WHEREAS, the Village of Wauconda was issued on August 23, 2004 a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit (the "Expansion NPDES permit") with the Illinois Environmental Protection Agency (hereinafter "IEPA") for the Wauconda Waste Water Treatment Plant (hereinafter "the Facility" or "the Wauconda WWTP") to discharge effluent into waters of the State of Illinois and to allow an increase in effluent volume to be discharged from the Facility into a heavily channelized drainage-way commonly known as Fiddle Creek (hereinafter "Fiddle Creek"), an intermittent receiving stream which is tributary to the Fox River; and

WHEREAS, Wauconda currently discharges to Fiddle Creek pursuant to NPDES Permit IL0020109, which allows it to discharge into Fiddle Creek at Anderson Road within Lake Barrington; and

WHEREAS, Fiddle Creek passes along the Northern corporate limits of and adjacent to residential areas within Lake Barrington and within the Township and is accessible to the Lakeland Estates and Twin Pond Farm residential subdivisions within Lake Barrington as well as Lake County Forest Preserve District property; and

WHEREAS, Wauconda, Lake Barrington, the Township and its residents are concerned that the discharge from the Facility be carefully treated, monitored and controlled so as to not adversely affect the health, sanitation, and welfare of the residents of Wauconda, Lake Barrington, the Township; and

WHEREAS, while there is disagreement among the parties as to the environmental impact this increase in pollutant loading and flow will have, Wauconda, Lake Barrington, and the Township have common goals of protecting and preserving the environment as well as being good neighbors; and

WHEREAS, Wauconda, Lake Barrington, and the Township also share the common goal that the Facility be improved, operated, and maintained in such a manner that its sewage treatment operations will represent a model for protection of environmentally sensitive areas; and

WHEREAS, the Parties hereto understand and agree that in order to make it feasible to provide certain additional water purification objectives and related improvements, funds for the design and construction thereof must be obtained from sources other than the general or special funds and accounts of the Parties; and

WHEREAS, it has been determined by the respective governing boards and/or corporate authorities of Wauconda, Lake Barrington, and the Township that this Agreement is in the best interests of each of said units of local government; and

WHEREAS, Wauconda, Lake Barrington, and the Township have by appropriate action of their respective governing boards and/or corporate authorities, authorized the execution and delivery of this Agreement.

NOW, THEREFORE, upon the consideration of the mutual promises contained herein and upon the recitals hereinabove set forth, it is hereby agreed among Wauconda, Lake Barrington, and the Township as follows:

1. Recitals. The parties hereto find that the recitals to this Agreement are true and correct and that each of the foregoing recitals is hereby incorporated herein the same as if each had been set forth in its entirety in the body of this Agreement.

2. Reports. From and after the effective date of this Agreement, copies of discharge monitoring reports ("DMRs") and other periodic reports required to be filed by Wauconda with any county, state or federal agency relating to the Facility, its operation, and NPDES permit Number IL0020109 shall be forwarded at the time of submission of such reports to such agencies, to the Village Clerk of Lake Barrington for a period beginning on January 1, 2005, and ending on December 31, 2014. Thereafter, such reports will be forwarded by Wauconda to the Village Clerk of Lake Barrington annually for all subsequent annual periods ending December 31. The initial and amended construction schedules, when available, for the Phase I and Phase II WWTP expansion shall also be provided to Lake Barrington.

3. In consideration for the undertakings by Wauconda as herein set forth and as set forth below, Lake Barrington and the Township agree to cooperate with Wauconda and withdraw their prior objections to and appeals relative to Phase I and Phase II of Wauconda's Expansion NPDES Permit(s), to wit:

- A. Wauconda agrees that as part of its Phase I treatment plant expansion to a design average flow of 1.9 MGD, and provided that the NPDES Permit remains otherwise valid and substantially unmodified by the present proceedings before the Pollution Control Board, to wit: IPCB docket nos. 05-55; 05-58 and 05-59 (hereinafter referred to as the "present IPCB proceedings"), except as agreed to by Wauconda in this Agreement and/or by stipulation approved by Wauconda in said present IPCB proceedings, Wauconda shall install, maintain, and keep in operation such equipment and other Facility improvements as necessary to provide loading limits on Fiddle Creek of 117 lbs/day for CBOD5, and 140 lbs/day for suspended solids based on annual averages, and achieve a 1 mg/L phosphorus level based on a monthly average, and shall request and accept an NPDES permit incorporating such limits for the Phase I operations. The Parties recognize that the August 23, 2004 NPDES permit allows for the discharge of almost double the load of 117 lbs/day for CBOD5, and 140 lbs/day for suspended solids and requires that the effluent achieve a 1 mg/L phosphorus level, all based on monthly averages. Wauconda shall use its best efforts to achieve the lower, designed discharge limits on an annual average. Wauconda agrees that it shall make these design capabilities part of the IEPA construction permit for the Phase I and Phase II treatment plant expansions and Wauconda shall operate these facilities as efficiently as practicable. The standards established under this Paragraph A shall be carried forward to the Phase II design, improvements, and operations. To the extent that unanticipated costs are required to be incurred by Wauconda in order to carry forward the loading limits as stated in this Paragraph A to Phase II, Wauconda and Lake Barrington will cooperate and utilize their respective best efforts in attempting to secure grant funding for such unanticipated costs, but Wauconda's obligations under this Paragraph A shall not be contingent on the success of such efforts.
- B. Wauconda has already designed and it shall install as part of Phase I, effluent disinfection capabilities to meet the NPDES fecal coliform limits, and Wauconda's Facility shall, beginning with the date of operation of the Phase I improvement, meet these fecal coliform limits in accordance with its NPDES permit. Until that time, Wauconda shall remain in conformity with its current NPDES permit limitations on fecal coliform. These effluent disinfection capabilities to meet the NPDES fecal coliform limits shall be carried forward to the Phase II improvements and operations and the related NPDES permit.
- C. Wauconda has developed an industrial discharge and pretreatment monitoring program and Wauconda has secured approval of this program from the appropriate regulatory agencies. Wauconda agrees to maintain the operation of this program and comply with the regulations of the applicable regulatory authorities pertaining thereto.

- D. Wauconda has designed, and has obtained NPDES permit approval for, and shall install, as part of Phase 1, sufficient aeration capabilities to maintain 6 mg/L dissolved oxygen at the point the effluent enters Fiddle Creek. These aeration capabilities shall be carried forward to the Phase II improvements and operations and the related NPDES permit.
- E. Wauconda, Lake Barrington, and Cuba Township agree that, within the next year following the execution of this Agreement, they shall jointly cooperate with each other and take such separate and/or collective action as reasonably necessary to jointly locate, install, operate, and maintain, at Wauconda's expense, four (4) monitoring wells at mutually agreed upon locations, and Wauconda shall, at Wauconda's expense, periodically test both the Wauconda WWTP effluent and the water quality of said monitoring wells as described below:
- (1) Within the initial year following the execution of this Agreement, Wauconda shall quarterly test the effluent from the Wauconda WWTP for Priority Pollutants plus Tentatively Identified Compounds (including but not limited to MTBE), Endocrine Disrupters, Fecal Coliform, E-Coli Bacteria, and Nitrates. The availability of commercial laboratory testing for endocrine disrupters is evolving and will expand from year to year. Initially, at a minimum, testing shall include USEPA Method 525.2 for semi-volatile synthetic organic compounds.
 - (2) After the installation of the above-described monitoring wells, and upon completion of the quarterly effluent testing described in Subparagraph E(1), the monitoring wells shall be tested quarterly for one year by Wauconda for those compounds or substances listed in Subparagraph E(1) above which were determined to be present in the Wauconda WWTP's effluent based on the initial year of quarterly testing of Wauconda's WWTP effluent, and for any chlorinated solvents detected, the known products of degradation.
 - (3) After the first year of operation of the monitoring wells, the effluent from the Wauconda WWTP shall be tested by Wauconda annually for Priority Pollutants plus Tentatively Identified Compounds (including but not limited to MTBE), Endocrine Disrupters, Fecal Coliform, E-Coli Bacteria, and Nitrates, and all such testing shall occur during the Wauconda WWTP's low flow period.
 - (4) The water in each of the monitoring wells, after the initial year of quarterly testing described in Subparagraph E(2) above, shall be tested annually by Wauconda for any Priority Pollutants plus Tentatively Identified Compounds (including but not limited to MTBE), Endocrine Disrupters, Fecal Coliform, E-Coli Bacteria, and Nitrates detected during the effluent testing for that year, and for any chlorinated solvents detected, the known products of degradation.

Lake Barrington shall have the right to be present for the collection of all effluent and monitoring well water samples which are collected for the testing contemplated by this Paragraph (E), as well as for the testing of such samples, and for these purposes, Wauconda shall provide Lake Barrington with reasonable notice thereof. Lake Barrington shall also have the right to collect and test its own samples from said monitoring wells at the same time, at its own expense. All information gathered through such effluent and monitoring well testing shall not be considered the proprietary information of any parties, and, upon receipt by Wauconda in written form, such information shall be promptly shared with the other parties to this Agreement and such information shall be considered part of the permanent public records of the Village of Wauconda.

- F. Wauconda shall, at its expense, upon the effective date of this Agreement, design nitrate removal capabilities for the Phase I and Phase II expansion of its treatment plant. The Phase II expansion of the treatment plant to 2.4 MGD design average flow by Wauconda shall include nitrate removal capabilities, provided that Wauconda receives complete grant funding through state or federal sources for the design, equipment and facilities necessary to achieve such nitrate removal, and, in such event, Wauconda shall not delay the operation of the nitrate removal facilities beyond the later of January 1, 2007 or the commencement of the Phase II expansion and shall operate such nitrate removal facilities to assure no net increase over existing nitrate loading. For the purposes of this Paragraph F, "full" or "complete" grant of funding shall not include design costs incurred prior to the approval of a grant agreement, provided, however, such design costs may be applied for within the facilities grant application, or by way of a separate grant application, but the receipt of grant funding for reimbursement of said design costs, from whatever source, shall not be a condition to Wauconda's obligations as provided in this Paragraph F. Wauconda agrees that in the event full funding is obtained for the said nitrate removal facilities, then Wauconda shall make these design capabilities part of the IEPA construction permit for the Phase II treatment plant expansion. In the event full funding is obtained for nitrate removal within a time frame which is reasonably timely in order to make these design capabilities part of the IEPA construction permit for the Phase I treatment plant expansion, then Wauconda shall include such nitrate removal capabilities as part of the Phase I expansion. Wauconda shall also request and accept an NPDES permit modification incorporating such limits for its Phase II operations, and at the same time as said NPDES permit modification, Wauconda shall also request and accept a Special Condition to the modified NPDES permit requiring Wauconda to monitor TKN and Nitrate-N one day per week in both its influent and effluent. In addition, during the initial year after this Agreement becomes effective, Wauconda shall monitor TKN and Nitrate one day per month in both its influent and

effluent to establish base line data for this provision. For the purposes of this Agreement, the term "no net increase" shall mean as measured on an annual average basis, no increase in nitrate loading over the quantity of nitrates currently contained in the effluent from the Wauconda WWTP".

G. Additionally, Wauconda, Lake Barrington, and the Township agree to cooperate to jointly attempt to secure grant funds for the following purposes and to apply such grant funds so obtained according to the following hierarchy of priorities to the greatest extent permitted by applicable authorities:

- (1) to reimburse Wauconda for the cost of design, acquisition and installation of such equipment necessary and other Facility improvements so as to effect nitrate removal from the Facility's effluent, as stated in Paragraph 3(F);
- (2) to provide funds for planning, flow restoration and natural resource management of the Fiddle Creek wetland complex and Slocum Drainage Ditch in consultation with relevant environmental groups, including but not limited to, Citizens for Conservation, Inc.

Similarly, to the extent that grant resources are available from time to time, Lake Barrington, Wauconda and the Township agree to undertake in a cooperative effort with the Slocum Drainage District, or its successor, the efforts described in (2) above.

4. The Parties agree that in the future, as circumstances change and develop, they each will continue to be engaged in matters related to the environmental protection of Fiddle Creek, the Fox River and associated waters, including, but not limited to proceedings before the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Nothing in this Agreement shall be construed as a bar to such activity by either party or as an admission by either party with respect to any matter, except that this Agreement shall constitute a complete resolution and settlement of the present PCB proceedings as between the Parties hereto, and a stipulation reflecting all or a portion of the terms of this Agreement may be entered of record in the present PCB proceedings if requested by Wauconda.

5. Remedies. It is agreed that a breach of this Agreement by one party may cause irreparable injury to the other party and that, in the event of a breach, a party so injured shall be entitled, without limiting its rights, to seek injunctive relief against said breach in the Circuit Court of Lake County. Further, each party hereto shall have all rights and remedies available at law or in equity in any litigation or administrative proceeding in connection with their respective obligations under this Agreement. Nothing herein shall be construed to require one party to pay any costs, charges, and expenses, including attorneys' fees, related to any litigation, administrative proceeding, negotiation, or transaction that results from the unlawful, or negligent or willful act or omission to act of

the other party(ies) or their respective officers, agents or employees in connection with carrying out such obligations of other parties under this Agreement.

6. Notices. All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or at such other address as the parties may designate by Notice in the above manner:

To Wauconda:

Village of Wauconda
101 N. Main Street
Wauconda, IL 60084
Attn: Village President

To Lake Barrington:

Village of Lake Barrington
23860 Old Barrington Road
Lake Barrington, IL 60010
Attn: Village President

To Township of Cuba:

Cuba Township
28000 W. Cuba Road
Barrington, IL 60010
Attn: Township
Supervisor

Notices may also be given by fax, provided the Notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery.

7. Miscellaneous:

- A. Paragraph titles are descriptive only and do not define or in any other way limit the contents of each paragraph. Words of the masculine gender shall be read to include the feminine and neuter genders, and the singular shall include the plural.
- B. If any provision of this Agreement shall be declared invalid for any reason, such invalidation shall not affect any other provisions of this Agreement which can be given effect without the invalid provision and to that extent, the provisions of this Agreement are severable.
- C. This Agreement shall be governed by the applicable laws of the State of Illinois.
- D. This Agreement shall be binding on all parties and may not be modified or amended orally, but only in writing signed by all parties hereto.
- E. The parties agree to reasonably cooperate in a good faith effort to implement this Agreement, including but not limited to, the joint filing of such stipulations and/or other pleadings as appropriate for that purpose.

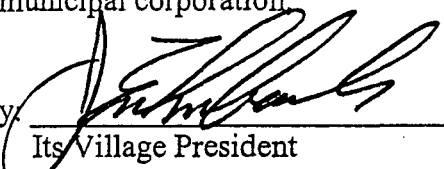
- F. In the event the Wauconda NPDES Permit as currently written is affected by a *force majeure* or is substantially modified (except as agreed to by Wauconda in this Agreement and/or by a stipulation and/or settlement agreement approved by Wauconda) in the present IPCB proceedings (IPCB Docket No. 05-55, 05-58 and 05-59), then the parties hereto will meet and attempt to renegotiate in good faith this Agreement in its entirety in order to endeavor, to the extent that it still may be possible, to effect the goals and purposes of this Agreement.

- G. This Agreement shall become effective only upon approval and execution hereof by all the parties hereto on or before December 21, 2004 and upon the execution by Wauconda and all the appellants in IPCB Docket No. 05-55 of a stipulation and/or settlement agreement in the present IPCB appeal providing for the withdrawal forthwith of said appeal and the objections contained therein, which stipulation and/or settlement agreement shall include, among other things, the right of all of said appellants in IPCB Docket No. 05-55 to enforce this Agreement. Anything in this Agreement to the contrary notwithstanding, if all administrative and/or trial and appellate court appeals on the subject NPDES permit are not exhausted within ten (10) months of the date of this agreement, then, at the sole option of Wauconda, Paragraph 3(F) and 3(G) of this Agreement shall be considered null and void and of no effect.

- H. This Agreement may be executed in one or more identical counterparts, which counterparts when affixed together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have, pursuant to the authority of the respective Boards and/or Corporate Authorities, caused this Agreement to be executed, attested and delivered by its duly authorized officers as of the date first mentioned above.

VILLAGE OF WAUCONDA,
a municipal corporation

By: 
Its Village President

ATTEST:

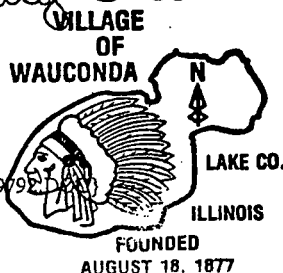
Mary C Taylor
Its Village Clerk
by Joanne K. Brandt
Deputy Clerk

VILLAGE OF LAKE BARRINGTON
a municipal corporation,

By: _____
Its Village President

ATTEST:

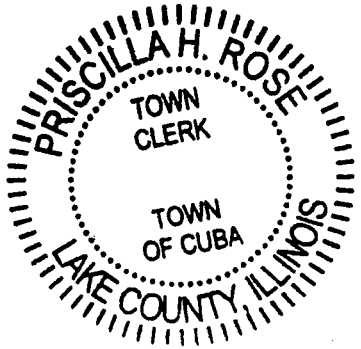
Its Village Clerk



TOWNSHIP OF CUBA

By: *Andrew K. Nelson*
Its Supervisor

ATTEST:
Priscilla H. Rose
Its Clerk



CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing Stipulation were mailed, first class, on January 10, 2005 to each of the following persons:

Dorothy M. Gunn
Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Sanjay Kumar Sofat
James Allen Day
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

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

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

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

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



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

Rudolph Magna
Magna & Johnson
495 N. Riverside Dr., Suite 201
Gurnee, IL 60031
847-623-5277

Exhibit B

**Comparison of Issues Raised, IEPA Permit Response
and Treatment by Stipulation and IGA**

	<p><u>Issue Raised By Petitioners</u> (Lake Barrington and Cuba Township designated as "LB/CT." Sierra Club and Prairie Rivers Network designated as "SC/PR." Slocum Lake Drainage District designated as "District" and Petitioners in 5-59 designated as "Residents")⁴</p>	<p><u>IEPA Permit Response</u></p>	<p><u>Stipulation and IGA</u>⁵</p>
<p>1.</p>	<p>Discharges of phosphorus and nitrogen may contribute to water quality standard violations regarding offensive conditions. 35 Ill. Adm. Code 302.203. LB/CT: Tr.61-73,73-76; R.249-310, 1054-57, 2102-13.⁶ SC/PR: Tr.151-54; R. 566-68, 1023-25, 1793-95. Residents: Tr.180-97; R.479-80, 1069-70.</p>	<p>Phosphorus Removal. Permit. See e.g. Decision⁷ R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>No net increase in BOD5, TSS load. Wauconda will design for Total Nitrogen Removal ("TNR"). Parties will seek funding for TNR. IGA(3)(A)(F).</p>

⁴ For the most part, comments by members of the Residents Group were very general. Mr. Jay Glenn, who is not a petitioner but an attorney for the petitioners, made several comments as an individual. Without addressing whether Mr. Glenn's individual comments may be imputed to the Resident Group, they are nevertheless included as Resident Group comments in this compilation for the sake of completeness.

Note that much of Mr. Glenn's submission, over 170 pages, involved reporting by the Wauconda Sand & Gravel Superfund Site, presumably because it has a discharge to the Wauconda WWTP. The relevance of this information to the permit at hand was never fully explained. The pollutant associated with the Wauconda Sand & Gravel Superfund Site is vinyl chloride. This compound has been tested for in the effluent from the Wauconda WWTP, and has not been detected.

⁵ References to IGA are to the sections of the IGA, which is attached to, and incorporated in, the Stipulation.

⁶ "Tr." designates references to the IEPA Proceeding Transcript. "R" designates references to the Record.

⁷ "Permit" references the permit at issue. The IEPA Decision is found at R.2210 et seq. and is cited "Decision."

	<u>Issue Raised By Petitioners</u>	<u>IEPA Permit Response</u>	<u>Stipulation and IGA</u>
2.	<p>Fiddle Creek shows evidence that it is an Impaired Waterway. Lake Barrington consultant, Huff and Huff, supplied monitoring results showing DO violations and nitrates plus nitrites above IEPA use impairment levels.</p> <p>LB/CT: Tr.57-60, 61-73, 73-76; R.249-310, 441-44, 470-78, 569-73, 1054-57, 2102-13.</p> <p>SC/PR: Tr. 97-101; R.163-64, 566-68, 1023-25, 1793-95.</p> <p>Residents: R.479-80, 578-828, 1069-70.</p>	<p>Phosphorus Removal. Permit. See e.g. Decision R.2211.</p> <p>DO limits added.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>No net increase in BOD5, TSS load.</p> <p>Wauconda will design for Total Nitrogen Removal ("TNR").</p> <p>Parties will seek funding for TNR. IGA(3)(A)(F).</p>
3.	<p>Added nitrogen loading upon Fox River not adequately considered. Fox River DT22 into which Fiddle Creek discharges is impaired for nitrogen, siltation, pathogens and suspended solids.</p> <p>LB/CT: Tr.61-73, 73-76; R.249-310, 470-78, 569-73.</p> <p>SC/PR: R.566-68, 1793-95.</p>	<p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>No net increase in BOD5/ TSS load.</p> <p>Wauconda will design for TNR and Parties will seek funding for TNR. IGA(3)(A)(F).</p>
4.	<p>Water quality standards for dissolved oxygen are being violated below Wauconda outfall. Lake Barrington consultant provided monitoring results showing DO exceedences.</p> <p>LB/CT: Tr. 57-60, 61-73, 73-76; R.249-310, 470-78, 569-73, 1054-57, 2102-13.</p> <p>SC/PR: Tr. 97-101, 150-54; R.566-68, 1023-25, 1793-95.</p> <p>Residents: Tr.102-07.</p>	<p>DO limits added. DO monitoring required.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R at 2211.</p> <p>Permit Special Condition 17.</p>	<p>BOD5 load limit held constant. IGA(3)(A).</p> <p>Aeration of effluent required. IGA(3)(D).</p>

	<u>Issue Raised By Petitioners</u>	<u>IEPA Permit Response</u>	<u>Stipulation and IGA</u>
5.	<p>Further degradation of Fiddle Creek and wetlands due to excessive nitrogen in violation of anti-degradation requirements.</p> <p>LB/CT: Tr. 57-60, 61-73, 73-76; R.249-310, 441-44, 470-78, 569-73, 1054-57, 2102-13.</p> <p>SC/PR: Tr. 97-101, 151-54; R.163-64, 566-68, 1023-25, 1793-95.</p>	<p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(F)(G).</p>
6.	<p>Impact on wildlife and plant species and known threatened fish species in Fiddle Creek.</p> <p>LB/CT: Tr. 61-73, 73-76; R.470-78, 1054-57, 2102-13.</p> <p>SC/PR: R.163-64.</p> <p>Residents: R.479-82, 1029, 1069-70.</p>	<p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> <p>DO limits added.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p>
7.	<p>Antidegradation assessment inadequate in that it was based on September 15, 1993 stream survey which identified elevated levels of contaminants which were not evaluated in assessment. Conditions not evaluated as of November 28, 1975 and impacts on pollutant sensitive and endangered species and possible alternatives not considered. Phosphorus and nitrogen analysis deferred.</p> <p>LB/CT: Tr. 57-60, 61-73, 73-76; R.249-310, 441-44, 470-78, 569-73, 1054-57, 2102-13.</p> <p>SC/PR: Tr. 97-101, 151-54; R.163-64, 566-68, 1023-25, 1793-95.</p>	<p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> <p>DO limits added.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p>

	<u>Issue Raised By Petitioners</u>	<u>IEPA Permit Response</u>	<u>Stipulation and IGA</u>
8.	<p>Permit does not require Wauconda to implement industrial pretreatment program. Presence of Superfund Sites.</p> <p>LB/CT: R.569-73, 1054-57.</p> <p>SC/PR: R.163-64.</p> <p>Residents: Tr.48-53, 53-56, 61-73, 180-97; R.169, 351-87, 388-421, 479-80, 487-88, 578-828, 1045, 1048-49, 1069-70, 1742, 1744-46.</p>	<p>Updated annual industrial user survey required so that need for pretreatment program can be reevaluated. See e.g. Decision R.2211. Permit Special Condition 8.</p>	<p>Wauconda will adopt pretreatment ordinance and implement program. IGA(3)(C).</p> <p>Wauconda will test effluent for full priority pollutants, pathogens and endocrine disruptor chemicals followed by monitoring well testing for detected compounds. IGA(3)(E).</p>
9.	<p>Potential impacts on private wells.</p> <p>LB/CT: Tr, 57-60, 61-73; R.146-47, 231-39, 441-44, 470-78, 569-73, 1054-57.</p> <p>Residents: Tr. 48-53, 180-97; R.92-93, 142-44, 148-49, 169, 479-80, 578-828, 1029, 1069-70, 1742.</p>	<p>Updated annual industrial user survey required so that need for pretreatment program can be reevaluated. See e.g. Decision R.2211. Permit Special Condition 8.</p>	<p>Wauconda will test effluent for full priority pollutants, pathogens and endocrine disruptor chemicals followed by monitoring well testing for detected compounds. IGA(3)(E). Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(F)(G).</p>

	<u>Issue Raised By Petitioners</u>	<u>IEPA Permit Response</u>	<u>Stipulation and IGA</u>
10.	<p>Alleged effluent, bypass and odor violations by Wauconda and distrust of Wauconda monitoring.</p> <p>LB/CT: R.569-73.</p> <p>Residents: Tr. 53-56, 180-97; R.351-87, 388-421, 479-80, 486-88, 499, 556-60, 578-828, 1045-46, 1048-49, 1069-70, 1742, 1744-46.</p>	<p>Permit is for upgrade of Wauconda wwtp.</p> <p>Updated annual industrial user survey required so that need for pretreatment program can be reevaluated. Special Condition 8.</p>	<p>Wauconda has adopted a pretreatment ordinance and implemented program. IGA(3)(C).</p> <p>Wauconda will test effluent for full priority pollutants, pathogens and endocrine disruptor chemicals followed by monitoring well testing for detected compounds. Test results will be shared and participants may conduct own testing. IGA(3)(E).</p>
11.	<p>Generalized concerns regarding wetlands.</p> <p>LB/CT: Tr. 57-60; R.231-39, 441-44, 470-78.</p> <p>Residents: Tr.48-52, 180-97; R.20, 52, 351-87, 388-421, 578-828, 1069-70.</p>	<p>Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p>	<p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p>
12.	<p>Stormwater/flooding impacts due to excessive nutrients.</p> <p>LB/CT: Tr.73-76; R.441-44, 470-78, 569-73, 1054-57.</p> <p>District: Tr.110-15.</p> <p>Residents: R.142-44, 148-49, 479-80, 1069-70.</p>	<p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p>	<p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p>

	<u>Issue Raised By Petitioners</u>	<u>IEPA Permit Response</u>	<u>Stipulation and IGA</u>
13.	Maintenance of Slocum Lake Drainage Ditch. LB/CT: Tr.73-76; R.569-73. District: Tr.110-15; R.437.	Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. Special Condition 17.	No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA3(A)(F)(G).
14.	Wauconda should be required to disinfect effluent. SC/PR: Tr.151-54, 213; R.163-64. District: Tr. 110-15; R.247. Residents: Tr. 48-53, 180-97; R.20, 52, 92-93, 131, 142-44, 148-49, 231-39, 169, 486-88, 497, 578-828, 1744-46.	IEPA and Wauconda announced that Wauconda sought and accepted permit amendment to disinfect effluent. R.1076-77, 2215.	Effluent disinfection is being provided. IGA3(B).
15.	Wauconda discharges to a sensitive area of residences, wetlands, forest preserve property, and river access. LB/CT: Tr. 57-60, 441-44, 470-78, 569-73, 1054-57. SC/PR: R.163-64. Residents: Tr. 180-97; R.92-93, 142-44, 148-49, 169, 351-88, 388-421, 578-828, 1742.	Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.	No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G). Effluent disinfection will be provided. IGA3(B).

	<u>Issue Raised By Petitioners</u>	<u>IEPA Permit Response</u>	<u>Stipulation and IGA</u>
16.	<p>Procedural due process and bias. Cross-examination should be provided in IEPA Proceeding. Insufficient time to testify.</p> <p>Residents: Tr. 180-97; R.169, 351-87, 578-828, 1742.</p>	<p>Wauconda given the option of answering questions. [Questions asked were in fact answered, and Mr. Glenn was allowed to testify beyond any time limits. See e.g. Tr. 26-27, 37, 48-52, 87-96, 102-____, 117-18, 148-50, 150-54, 159-61, 162-64, 166-70, 184-85, 190-91.] IEPA followed hearing with questions to Wauconda which were answered.</p>	
17.	<p>Consider end to present discharge. "Plug the Pipe." Require merger with a neighboring utility.</p> <p>LB/CT: R.569-73. District: R.247. Residents: Tr. 180-97; R.169, 556-60, 578-828, 1069-70, 1742, 1744-46.</p>	<p>Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2210. Permit Special Condition 17.</p>	<p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G). Effect is to limit impact of permit revision. Questions regarding legality of request to end the discharge.</p>
18.	<p>Fear of bypass to Bangs Lake drain to Slocum Lake.</p> <p>Residents: Tr. 180-97; R.487-88, 498, 556-60, 578-828, 1042-43, 1048-49.</p>	<p>Bypass to Bangs Lake not possible. Decision R.2220.</p>	
19.	<p>Unpermitted development in Wauconda area. IEPA must require Wauconda to stop approving developments. Reckless expansion in area. Residents R.578-828, 1042-42, 1048-49.</p>	<p>Beyond statutory authority. Decision R.2234-35, 2238, 2239.</p>	

Exhibit C

State of Illinois)
) SS.
County of DuPage)

AFFIDAVIT

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

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

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

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

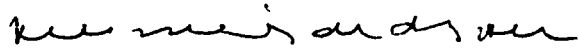
the community over local cable access TV. While only governmental bodies or corporations may be parties to an intergovernmental agreement, citizens, environmental groups and other governmental entities (not a party to the IGA) were regularly consulted on the IGA and their views introduced into settlement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

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

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

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

Further affiant sayeth not.



Kevin C. Richardson

Subscribed and sworn to

before me this 10th day of

January, 2005.

