

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and VILLAGE OF WAUCONDA,

Respondents.

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

SLOCUM LAKE DRAINAGE DISTRICT OF LAKE
COUNTY, ILLINOIS,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and VILLAGE OF WAUCONDA,

Respondents.

PCB 05-58
(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,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

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

NOTICE OF FILING

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

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

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and four (4) copies the **REPLY BRIEF** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Sanjay Sofat by mts
Sanjay K. Sofat, Assistant Counsel
Division of Legal Counsel

Dated: March 7, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

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AGENCY'S REPLY BRIEF

NOW COMES, Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Sanjay K. Sofat, Assistant Counsel and Special Assistant Attorney General, and hereby submits this reply brief. In its post-hearing brief, the Agency has made compelling arguments to conclude that Petitioners, the Resident Group and the Slocum District, have failed to meet the burden mandated by Section 40(e)(3) of the Act. Therefore, in this reply brief, the Agency is only responding to one comment made by the Slocum District in its post-hearing brief.

1. Neither the Resident Group nor the Slocum District have come forward with any evidence to prove that, "the permit as issued would violate the Act or Board regulations." 415 ILCS 5/40(e)(3), also see *Prairie Rivers Network*, PCB 01-112 (August 9, 2001). Therefore, Petitioners have failed to meet the requisite burden under Section 40(e)(3) of the Act.

2. Under Water Quality section of its brief, the Slocum District provides the following quotes from the Lake County Forest Preserve's report to allege that the Village's effluent is causing the dissolved oxygen problems in the receiving stream.
3. The report states that, "[w]e attribute these violations of water quality standards to the Village's wasteloads." The Slocum District's Brief, A. Water Quality (citing to IEPA Record at p.000333 and p.000321). This conclusion is not supported by the facts. The DO measurement of 3.3 mg/L was taken at Roberts Road, which is the furthest sampling location from the discharge. The receiving stream is impacted by both point and non-point sources of pollution. To conclude that "the DO swings to high nutrient wasteloads in the Wauconda effluent" or "effluent is causing downstream oxygen deficits," ignores the fact that the receiving stream is surrounded by various land-uses including urbanization, fertilizing lawns, faulty septic systems, etc. Further, the receiving stream runs through wetlands, and it is a well-known fact that streams that run through wetlands or exhibit physical and habitat characteristics of a wetland environment experience low dissolved oxygen in the morning and supersaturation in the afternoon. Most importantly, the Village is required to meet the dissolved oxygen standard at the end of pipe. Therefore, to conclude that the Village's effluent is causing downstream oxygen deficits is not supported by the facts.
4. For the reasons and arguments provided herein and in the post-hearing brief, the Agency respectfully requests that the Board DENY the Petitioners' requested relief.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Sanjay Sofat by WRS

Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

DATED: March 7, 2005

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STATE OF ILLINOIS
COUNTY OF SANGAMON

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§§
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STATE OF ILLINOIS
Pollution Control Board

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **REPLY BRIEF** upon the person to whom it is directed, by electronic transfer on March 7, 2005 and also by overnight mail on March 7, 2005:

Dorothy Gunn, Clerk
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100 West Randolph Street
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and mailing it from Springfield, Illinois on March 7, 2005, with sufficient postage affixed as indicated above.

SUBSCRIBED AND SWORN TO BEFORE ME

this day of March 7, 2005.

Notary Public

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