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ILLINOIS POLLUTION CONTROL BOARD

WESLEY BRAZAS, JR.,)	
)	
Petitioner,)	
)	
-vs-)	No. 06-131
)	(Third-Party NPDES
MR. JEFF MAGNUSSEN,)	Permit Appeal-Water)
president, VILLAGE OF)	
HAMPSHIRE, and the ILLINOIS)	
ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondents.)	

REPORT OF PROCEEDINGS in the above-captioned
matter before the Bradley P. Halloran, Hearing
Officer for the Illinois Pollution Control Board,
taken before Tamara Manganiello, Registered
Professional Reporter and Notary Public, at the Kane
County Courthouse, Room 250, Geneva, Illinois,
commencing at the hour of 9:06 on the 15th day of
May, A.D., 2005.

1 A P P E A R A N C E S :

2

3 MR. WESLEY BRAZAS, JR.
4 44W331 Big Timber Road
 Hampshire, Illinois 60104
 (847) 596-0983

5

6 ILLINOIS POLLUTION CONTROL BOARD,

 James R. Thompson Center
7 100 West Randolph Street
 Suite 11-500

8 Chicago, Illinois 60601

 (312) 814-3461

9 BY: MR. BRADLEY P. HALLORAN,

10 Appeared on behalf of the Illinois
 Pollution Control Board;

11

12

13 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

 1021 North Grand Avenue East

 P.O. Box 19276

14 Springfield, Illinois 62794-9276

 (217) 782-5544

15 BY: MR. JAMES ALLEN DAY;

16

17 SCHNELL, BAZOS, FREEMAN, KRAMER, SCHUSTER

 and VANEK,

18 1250 Larkin Avenue

 Suite 100

19 Elgin, Illinois 60123

 (847) 742-8800

20 BY: MR. MARK SCHUSTER,

21 Appeared on behalf of the Respondent,
 Mr. Jeff Magnussen, president, Village
22 of Hampshire.

23

24

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm a
3 hearing officer with the Illinois Pollution
4 Control Board and I'm also assigned to this
5 matter entitled Wesley Brazas, Jr.,
6 Petitioner, versus Mr. Jeff Magnussen,
7 president, Village of Hampshire and the
8 Illinois Environmental Protection Agency,
9 PCB 06-131.

10 Today is May 15th, 2006, at
11 approximately 9:06 a.m. I do want to note
12 for the record that there are members of the
13 public here but they've indicated to me off
14 record that they're just here to observe.
15 However, if they choose to comment, we'll
16 cross that bridge when we need to.

17 We're going to run this hearing
18 pursuant to Section 105.214 Subpart B and
19 Section 101 Subpart F of the Board's
20 procedural provisions. This hearing has been
21 properly noticed pursuant to the provisions,
22 as well.

23 Mr. Brazas, would you like to give
24 an opening statement?

1 MR. BRAZAS: Sure. Today, this permit
2 is just one step in the piecemeal process to
3 convert over 15,000 acres of farmland, much
4 of it prime farmland, into rooftops, condos,
5 homes and parking lots to increase
6 Hampshire's population from the current
7 approximate 3800 to over 28,000 by the year
8 2023.

9 We've seen in our neighbors to the
10 east the environmental impacts -- negative
11 environmental impacts this type of conversion
12 of farmland into rooftops has had and I ask
13 that the Board not grant this permit today.
14 Thank you.

15 HEARING OFFICER HALLORAN:
16 Mr. Schuster?

17 MR. SCHUSTER: If I may, I'll allow
18 Mr. Day to make an opening statement first
19 and I think I'll be joining in that.

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Schuster. Mr. Day?

22 MR. DAY: My name is James Day. I'm
23 an attorney with the Illinois EPA in our
24 Springfield office. I would like to make a

1 brief opening statement on behalf of our
2 agency.

3 First, I'd like to emphasize that
4 our agency is committed to providing ample
5 opportunity for citizen participation in our
6 permitting process. And we do sincerely
7 appreciate Mr. Brazas's efforts today to
8 assure that this proposed NPDES permit for
9 the village of Hampshire wastewater treatment
10 plant is consistent with our agency's
11 obligation to protect both human health and
12 the environment.

13 Mr. Brazas has raised numerous
14 issues during the public comment period for
15 this permit. And, again, he's raised these
16 issues in this formal appeal of the permit.
17 Many of those issues such as those relating
18 to air pollution and drainage issues are not
19 appropriate grounds for NPDES permit appeal,
20 therefore, the Board has previously dismissed
21 those types of issues.

22 Other issues raised by Mr. Brazas
23 in his appeal had not been raised during the
24 public comment period and, therefore, by rule

1 are not properly a part of this proceeding
2 and have been dismissed as well.

3 We're now left with just one issue
4 that was a part of Mr. Brazas's amended
5 appeal that is still a part of this pending
6 proceeding and that issue is whether the
7 public notice for the permit contained errors
8 relating to the calculation of concentration
9 and load limits. This issue specifically was
10 set forth in Paragraph 24 of Mr. Brazas's
11 amended petition.

12 Using the five-day biological
13 oxygen demand as an example, the
14 ten-milligram-per-liter concentration limit
15 is set by rule, specifically, 35 Illinois
16 Administrative Code Section 304.120. As
17 noted by Mr. Brazas at Page 488 of the
18 record, when you apply the typical formula,
19 the corresponding mass limit would be
20 125 pounds. However, because the receiving
21 stream is a 303D listed impaired water, the
22 Illinois EPA is not allowing any increase
23 from the prior permit mass limit of
24 63 pounds. This is stated in the public

1 notice at Page 268 of the record.

2 The Agency's decision to hold
3 those mass limits at the lower levels from
4 the prior permit is also documented at Pages
5 271, 447, 528, 532 and 546 of that same
6 record.

7 Based on all of these citations,
8 the record clearly shows that Mr. Brazas is
9 correct, that the concentration in mass
10 limits do not correspond according to the
11 normal formula. However, this deviation from
12 the norm was explained in the public notice
13 and all the other communications I've cited
14 and does not violate any state or federal
15 statute or rule.

16 In fact, the deviation from the
17 standard formula is motivated by our agency's
18 commitment to safeguard human health and the
19 environment, a commitment which we believe is
20 consistent with Mr. Brazas's objectives in
21 this matter. I thank you for the opportunity
22 to provide this opening statement.

23 HEARING OFFICER HALLORAN: Thank you,
24 Mr. Day. And to clear it up for the record

1 where the Board dismissed three of the four
2 issues, that was issued in the May 4th, 2006
3 Board order.

4 Mr. Brazas, you said you're going
5 to testify yourself?

6 MR. BRAZAS: I just have argument.

7 HEARING OFFICER HALLORAN: Okay.

8 Let's swear you in just in case there's any
9 cross. Raise your right hand, please.

10 (Witness sworn.)

11 HEARING OFFICER HALLORAN: Mr. Brazas,
12 you can either step up here or stay there if
13 you feel more comfortable.

14 MR. BRAZAS: I can argue from here,
15 your Honor.

16 HEARING OFFICER HALLORAN: Okay.

17 BY MR. BRAZAS: I have to apologize to
18 this Board for not being a little more
19 proactive in responding to these things.
20 Unlike Mr. Schuster and Mr. Day, I don't have
21 the luxury of rearranging my schedule.
22 Currently, I'm assigned to the relocation of
23 the JAWA 90-inch water main that flows

24

through O'Hare Airport. As part of the

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1 O'Hare modernization program, that water main
2 will be relocated. We were supposed to have
3 a stop work order from NSM JAWA May 1st
4 because that's their summer high demand
5 period, but since we've had a rainy, cool
6 spring they're giving us a week-by-week
7 extension to that and I'm working six days a
8 week on that project. I'm away from it
9 today. It worked out that way.

10 HEARING OFFICER HALLORAN: You can be
11 seated Mr. Brazas, if you feel more
12 comfortable.

13 MR. BRAZAS: If you look at our
14 neighbors to the east, you know, currently
15 the northeast Chicago region is part of the
16 ozone non-attainment area, which includes
17 Hampshire. We have, essentially, all of our
18 streams to the east on the 303D list because
19 of development and we have major concerns of
20 flooding that still aren't being addressed
21 from the development to the east.

22 Now, I like to bring this book,
23 it's called the Firecracker Boys. And back

24

in 1958, to demonstrate the peaceful uses of

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1 atomic power, Edward Teller was going to
2 propose the project to detonate six hydrogen
3 bombs to create a harbor on the north coast
4 of Alaska. You can excavate a lot of earth
5 real fast using a thermonuclear bomb and he
6 thought that was a good idea. A lot of other
7 people thought it was a good idea. But a few
8 biologists decided it was not a good idea and
9 fought that project.

10 And today we have the NEEPA Act
11 that states if we're proposing a big change
12 to the environment, we should make an
13 environmental assessment.

14 Now, the village of Hampshire is
15 proposing the change of over 15,000 acres of
16 farmland into rooftops and increasing its
17 population from 3800 to over 28,000 by 2023,
18 far in excess of the growth projected by
19 NPCI.

20 Now, this is important because
21 these NPCI projections are used by CAPPs and
22 IEPA to project what kind of air pollution

23 we're going to have in this region. So if
24 you're exceeding those, you're going to --

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1 NPCI and CAPPs is going to underestimate the
2 amount of air pollution that they are
3 certifying to IEPA.

4 Now, with regard to flooding,
5 Hampshire freely admits that this increase in
6 discharge will increase the flooding on
7 Hampshire Creek, albeit maybe a little bit,
8 but this permit request is part of a
9 piecemeal approach which will result in an
10 overall increase in flooding to Hampshire
11 Creek that is significant and large.

12 Regarding the discharge and the
13 limits set for this particular permit, this
14 stream, the Hampshire Creek, is on the 303D
15 list. And the permit process is well known
16 that we're converting farmland into rooftops
17 so there is other pollutants that are going
18 to be discharged into the stream as part of
19 approval of this permit. And IEPA has not
20 addressed the cumulative impacts which are
21 present and reasonably foreseeable due to
22 this action of increasing Hampshire's

23 wastewater treatment plant.

24 Regarding the effluent issues,

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1 while one regulation says you can use a
2 concentration limit of ten milligrams per
3 liter, the concentration limits for
4 discharges into Lake Michigan are half that,
5 much more restrictive. So to say we have a
6 rule that limits us to this high
7 concentration limit is incorrect.

8 And if we have a process where the
9 rule permits pollution, then the process has
10 to change. And that's part of why I'm here
11 today too because if it's the process that's
12 wrong, that can be addressed with the U.S.
13 EPA.

14 As far as water supply, Hampshire
15 has admitted they haven't figured out where
16 the water supply to support the sewage
17 treatment plant expansion is going to come
18 from. They're still studying that. Now, the
19 Bloomington aquifer is located within
20 Hampshire's FPA. And, currently, Hampshire
21 plans to build condos and parking lots over

22 the most sensitive portions of the recharge
23 area. So where in the process does that get
24 reviewed by IEPA to protect that aquifer?

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1 MR. SCHUSTER: Excuse me a moment, Mr.
2 Brazas. Mr. Halloran, if I may just
3 interpose an objection and a standing
4 objection? These arguments largely go to
5 matters that have been stricken in this case
6 and I think we can handle that in argument
7 but I'd like the record to show or note that
8 we do object to argument that repeats matters
9 that have been held to be outside the scope
10 and jurisdiction in this appeal.

11 HEARING OFFICER HALLORAN: My
12 understanding as the Board ruled on May
13 4th is that the issue here is limited to why
14 the load limit calculations required by
15 public notice differ from load limit
16 calculations contained in the issued permit.
17 And all of that, I must admit, are addressed
18 in the record below. It's a strict
19 interpretation and narrow view why we're at
20 this hearing today. We can't bring any other
21 information or any other stuff that was

22 stricken into this hearing today.

23 MR. BRAZAS: Okay.

24 HEARING OFFICER HALLORAN: The

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1 objection is sustained. You may proceed,
2 Mr. Brazas, if you're able to keep it to the
3 issue that the Board has ruled.

4 MR. BRAZAS: Well, I did argue the
5 load limit calculation and the IEPA does
6 require lower load limits and concentration
7 limits for discharges into Lake Michigan, so
8 that is not an excuse for having higher load
9 limits and higher concentration limits for
10 this permit.

11 So, in summary, since the
12 cumulative effects of this permit have not
13 been addressed in approving this, you know,
14 this really is kind of the linchpin of the
15 Village's uncontrollable growth that the IEPA
16 is responsible for. IEPA certifies to U.S.
17 EPA that we are growing in accordance with
18 their certifications.

19 So if IEPA is allowing villages to
20 grow uncontrolled -- if you look at the

21 permit application, they certified their
22 population was I believe 3805, which for a
23 sewage treatment plant expansion to 1.5
24 million gallons a day there's no purpose and

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1 need for that unless the population was going
2 to grow to over 15,000.

3 If you look at the time line for
4 this permit, on July 21st Hampshire was
5 issued a modified permit to increase their
6 discharge to 0.75 million gallons per day
7 design average flow, but on June 17th, a
8 month earlier, they issued a modification --
9 issued a request to modify that permit to 1.5
10 million gallons a day. And somewhere in the
11 process is another request to modify that to
12 over two million gallons a day.

13 So, again, you have a process that
14 is being used to damage the environment.
15 There is no good reason that every year
16 Hampshire has to go to double their
17 wastewater treatment plant capacity, that it
18 can't be planned out. These permits are for
19 five years. We're missing the data for the
20 last 18 months of the permit before IEPA

21 issues the expansion for this permit.

22 So if it's a process change, if
23 it's a rule change, that can be addressed
24 before U.S. EPA. Thank you.

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1 HEARING OFFICER HALLORAN: Thank you,
2 Mr. Brazas. Any cross so to speak by Mr. Day
3 or Mr. Schuster?

4 MR. DAY: No.

5 MR. SCHUSTER: I have none.

6 MR. DAY: I'd like the opportunity for
7 a brief closing statement.

8 HEARING OFFICER HALLORAN: So
9 Mr. Brazas, you've rested your case in chief
10 so to speak?

11 MR. BRAZAS: (Nodding.)

12 HEARING OFFICER HALLORAN: Do you have
13 any witnesses Mr. Day or Mr. Schuster?

14 MR. DAY: No.

15 MR. SCHUSTER: No.

16 HEARING OFFICER HALLORAN: And
17 obviously no rebuttal.

18 Mr. Brazas, would you like to give
19 a closing statement or would you like to save

20 that for your post-hearing brief or pretty
21 much what you said today is what you all have
22 to say today?

23 MR. BRAZAS: I rest. Just what I said
24 to you.

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1 HEARING OFFICER HALLORAN: Okay.
2 Before I close the record, any members of the
3 public wish to give comment -- relevant
4 comment that was before the Agency at the
5 time of the issued permit? I see nodded
6 no's. Mr. Day, closing?

7 MR. DAY: Well, I simply restate the
8 argument and analysis I set forth in my
9 opening statement and add a couple of quick
10 points in response to Mr. Brazas's testimony.

11 First, regarding the comments
12 Mr. Brazas made that were relevant to
13 concentration limits in the permit, quite
14 simply, this discharge is not a discharge to
15 Lake Michigan and, therefore, that lower
16 concentration limit for that body of water
17 does not apply. The ten-milligram-per-liter
18 standard that I cited is the applicable
19 standard based on our rules.

20 And, importantly, our agency is a
21 creature of statute and rules. We have the
22 authority granted to us by state statutes,
23 federal statutes and our own administrative
24 rules. And as Mr. Brazas noted, if a change

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1 in that rule setting that concentration limit
2 is sought, it should be sought not in this
3 forum. This isn't the proper forum to pursue
4 the change of an administrative rule of our
5 agency.

6 So while I think he has analyzed
7 that issue properly as far as the proper
8 avenue for seeking a change, that change
9 cannot and should not be awarded through this
10 process. Thank you.

11 HEARING OFFICER HALLORAN: Thank you.
12 And before we go off the record to talk about
13 post-hearing briefing, I do want to note that
14 I'm supposed to make a credibility
15 determination and I find that there are no
16 credibility issues with the witnesses as they
17 testified today.

18 We're going to go off the record

19 briefly and set a post-hearing schedule and
20 then go back on.

21 (Whereupon, a discussion
22 was had off the record.)

23 HEARING OFFICER HALLORAN: Back on the
24 record. We've talked a little bit about the

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1 post-hearing briefing schedule. Since the
2 record closes on June 6th because the waiver
3 is out until July 6th, we're going to have
4 simultaneous briefing for briefs and they're
5 due June 6th. The mailbox rule will not
6 apply and, therefore, the briefs have to be
7 in the office of the Pollution Control Board
8 by June 6th.

9 We determine that the transcript
10 should be ready by May 26th. You can go
11 online and get a copy of it. If you need
12 help, call me or the clerk and they'd be more
13 than happy to help you out. Any other issues
14 or things we need to talk about before we
15 close and call it a day?

16 MR. BRAZAS: No, sir.

17 HEARING OFFICER HALLORAN: I want to
18 thank all counselors and you, too,

19 Mr. Brazas. It was very professional and
20 very civil and have a safe drive home. Thank
21 you very much.

22 (Which were all the proceedings
23 had in the above-entitled cause
24 on this date.)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF WILL)

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6 I, Tamara Manganiello, RPR, do hereby
7 certify that I reported in shorthand the proceedings
8 held in the foregoing cause, and that the foregoing
9 is a true, complete and correct transcript of the
10 proceedings as appears from my stenographic notes so
11 taken and transcribed under my personal direction.

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TAMARA MANGANIELLO, RPR
License No. 084-004560

18

SUBSCRIBED AND SWORN TO
before me this ____ day
of _____, A.D., 2006.

20

21

Notary Public

23

24

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