

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WESLEY BRAZAS, JR.,)	PCB No. 06-131
)	
Petitioner,)	
)	Appeal from IEPA decision
vs.)	granting modified NPDES Permit
)	
JEFFREY R. MAGNUSSEN,)	
PRESIDENT, VILLAGE OF)	
HAMPSHIRE, AND THE)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondents.)	

**MOTION TO STRIKE
APPELLANT'S BRIEF AND ARGUMENT ON APPEAL**

NOW COMES the Respondents, Jeffrey R. Magnussen, Village President, and the Village of Hampshire, by and through his and its attorneys, Mark Schuster, Schnell, Bazos, Freeman, Kramer, Schuster & Vanek, and for their Motion to Strike Appellant's Brief and Argument on Appeal, state as follows:

1. The present proceeding is an appeal from the decision of IEPA to issue a modified NPDES permit to the Village of Hampshire for its wastewater treatment facility and its expansion of capacity to 1.5 mgd.
2. Appellant is the only party to have filed a timely appeal from said determination of IEPA by filing first his Petition for Appeal on January 13, 2006, and then his Amended Petition on February 12, 2006 (in accordance with the order of the Pollution Control Board).
3. In his brief and Argument on Appeal, Appellant has made argument far beyond the sole issue properly before the Board at this time.

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4. The only issue raised by Appellant Wesley Brazas, Jr. is whether the public notice for the Village of Hampshire Modified Permit was deficient due to errors relating to the calculation of concentration and load limits for pollutants to be discharged into the receiving stream. See Board Order dated May 4, 2006, and Par. 24 of the Amended Petition.

5. Appellants are strictly limited to raising issues on appeal only when the same issue has been raised by the party in written comment properly filed with the Agency prior to the time of the determination to issue the permit. 415 ILCS 5/40(e)(1).

6. In this case, by order of the Board, the issues to be raised in the Brazas appeal were strictly limited by order of the Board entered on March 22, 2006 and on May 4, 2006.

7. The rule limits the authority of the Board in making a decision.

8. In this case, Appellant has consistently and repeatedly attempted to raise before the Board issues that range well beyond the single issue perfected for appeal.

9. Mr. Brazas summed up his argument to the Board at the time of the public hearing on his appeal, when he concluded, "The [State of Illinois] process must change." The arguments now presented in Appellant's written brief --re the Clean Water Act, the Ground Water Protection Act, and the NPDES Program -- are in further pursuit of this goal, to change the entire system for review and approval of discharge permits in the State. Such argument does not address the sole issue before the Board in this appeal.

10. The Board has no jurisdiction to entertain the brief improperly tendered by the Appellant.

11. In the alternative, the Board must disregard each and every portion of the Brief which makes argument beyond the sole issue on this appeal, to wit: whether the public notice for

the Village of Hampshire Modified Permit was deficient, due to errors relating to the calculation of concentration and load limits for pollutants to be discharged into the receiving stream. See Board Order dated May 4, 2006.

WHEREFORE, Mr. Jeffrey Magnussen and the Village of Hampshire respectfully pray that the Illinois Pollution Control Board enter its order striking the Brief and Argument filed in this cause, and in the alternative, disregarding each and every portion of the Brief which makes argument beyond the sole issue on this appeal,

JEFFREY R. MAGNUSSEN, Village President,
and VILLAGE OF HAMPSHIRE, Respondents,

By: _____

Mark Schuster
Schnell, Bazos, Freeman, Kramer, Schuster
& Vanek

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RESPONSE
TO MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

NOW COMES the Respondents, Jeffrey R. Magnussen, Village President, and the Village of Hampshire, by and through his and its attorneys, Mark Schuster, Schnell, Bazos, Freeman, Kramer, Schuster & Vanek, and for their Response to the Motion for Leave to File Brief *Amicus Curiae*, state as follows:

1. The present proceeding is an appeal from the decision of IEPA to issue a modified NPDES permit to the Village of Hampshire for its wastewater treatment facility and its expansion of capacity to 1.5 mgd.

2. Mr. Wesley Brazas, Jr. is the only party to have filed a timely appeal from said determination of IEPA by filing first his Petition for Appeal on January 13, 2006, and then his Amended Petition on February 12, 2006.

3. Ms. Collins, on behalf of her client, Charles St. George, filed written comment on July 9, 2006.

4. Ms. Collins, either for herself as *amicus curiae* or on behalf of her client, Charles

St. George, did not at any relevant time, or within the time allowed by Board rule (35 Ill. Admin. Code 105.206), file any appeal from the decision of IEPA in this matter.

5. Any appeal by Ms. Collins and/or her client, Charles St. George, is now time-barred.

6. In her so-called *Amicus Curiae* brief (presented at this time with her motion for leave to file), Ms. Collins has made argument reaching beyond the sole issue properly before the Board at this time.

7. The only issue raised by Appellant Wesley Brazas, Jr. in this matter is whether the public notice for the Village of Hampshire Modified Permit was deficient, due to errors relating to the calculation of concentration and load limits for pollutants to be discharged into the receiving stream. See Board Order dated May 4, 2006.

8. Appellants are strictly limited to raising issues on appeal only when the same issue has been raised by the party in written comment properly filed with the Agency prior to the time of the determination to issue the permit. 415 ILCS 5/40(e)(1).

9. In this case, by order of the Board, the issues to be raised in the Brazas appeal were strictly limited by order of the Board entered on March 22, 2006, and again on May 4, 2006 (in response to the Motion to Strike filed by the Agency, joined by the Village, and allowed by the Board).

10. The rule is jurisdictional. See People v. Michel Grain Company, PCB No. 96-143, 2003 WL 22334782 (October 2, 2003).

11. Board rules allow the filing of a brief *amicus curiae* by an interested party, but only by permission of the Board, setting forth argument only. No facts not already in evidence in the matter before the Board are to be presented in any *amicus* brief. 35 Ill. Admin. Code

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101.110.

12. Here, without having filed any timely appeal in this cause, Ms. Collins has endeavored to file for herself and/or her client, Charles St. George, a brief for the first time raising issues well beyond the single issue perfected for appeal.

13. The statement of Ms. Collins in her Motion, "I submit this Declaration to provide the Board with a copy of the attached brief I propose to file as *amicus curiae* on behalf of Mr. St. George in support of Petitioner, Wes Brazas," is misleading. The Brief is not in support of the pending appeal, but rather by raising such new and different issues constitutes a separate and new appeal altogether.

14. Moreover, the Brief submitted by Ms. Collins with her Motion for Leave to File suffers from exactly the same defect as did Mr. Brazas' argument at the hearing on his appeal, when he concluded no more than, "The [State of Illinois] process must change." Ms. Collins here seeks a platform for her so-called "plain speaking" client for the conclusion that "citizens who have taken the time to inform themselves appear to be far more cognizant of what constitutes environmental protection than State agencies charged with that duty." Such argument does not address the sole issue before the Board in this appeal.

15. The Board has no jurisdiction to entertain the brief *amicus curiae* improperly tendered by the Movant.

16. The Motion for Leave to File must be denied.

17. In the alternative, if the Motion be granted, then each and every portion of the *AmicusBrief* which addresses any issue beyond the sole issue on appeal (that "the issued permit violates public notice requirements," see Board Order dated May 4, 2006; and in particular, re

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Par. 24 of the Amended Petition) must be stricken, including the arguments that the Modified Permit in this case violates “adequate due process and public participation” requirements; “Board backsliding prohibitions and anti-degradation requirements”; and “the Clean Water Act, the Public Trust Doctrine, and Board rules.”

WHEREFORE, Mr. Jeffrey Magnussen and the Village of Hampshire respectfully pray that the Illinois Pollution Control Board enter its order denying the Motion of Ms. Jane Collins for herself as *Amicus Curiae* and/or her client, Charles St. George, to file an *Amicus Curiae* brief in this matter; and in the alternative, to strike each and every portion of such *Amicus Curiae* brief which addresses any issue beyond the sole issue perfected for the instant appeal.

JEFFREY R. MAGNUSSEN, Village President,
and VILLAGE OF HAMPSHIRE, Respondents,

By: _____

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Schnell, Bazos, Freeman, Kramer, Schuster
& Vanek

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