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STATE OF ILLINOIS
Pollution Control Board

July 19, 2006

TO: Illinois Pollution Control Board
RE: PCB 06-131
Wesley Brazas, Jr. v. Mr. Jeff Magnussen, President of the Village of Hampshire
and the Illinois Environmental Protection Agency

OBJECTION TO THE FINAL ORDER OF JULY 6, 2006

I. Introduction

As counsel for Mr. Charles St. George, 17N635 Big Timber Road, in Hampshire, Illinois, I wish to register an objection to the order in this matter issued by the Board on July 6, 2006. In support of this objection, I offer the following:

II. Errors in the July 6, 2006 Final Order

1. The dismissal of all but one of the petitioner's grounds for appeal was erroneous and materially prejudicial to the public interest as represented in petitioner's appeal.

The Order's "Procedural Background" states that the Board dismissed all but one of Mr. Brazas' grounds for appealing the NPDES permit issued to the Village of Hampshire for an expanded STP, because, it alleged, since Mr. Brazas had not raised the majority of his grounds [for appeal] "during the public comment period," he could not raise them on appeal. We find that this dismissal is grounded on incomplete and misleading information provided to the Board by the Village and the IEPA.

There was no "public comment period" as contemplated in Board rules -- that is, a period following a public hearing on the proposed permit. Rather, there was an invitation to ask the agency further questions following its "informational meeting" at which interested parties were asked to present questions *while the IEPA determined whether it would grant the public hearing.*

There is no provision for such "informational meetings" to be found in Board rules, therefore no standards and requirements that would give interested citizens adequate notice (four days is not reasonable), nor any guidelines about how such a meeting should be conducted.

Further, there was no public record of this "informational meeting" made by a court reporter or by any other means of recording what transpired, although village counsel and agency representatives have presented their versions of what occurred at that "informational meeting" during the course of this proceeding.

At the "informational meeting" Mr. Al Keller of the IEPA insisted that questioners not repeat questions that others had already asked, thereby precluding Mr. Brazas from repeating issues raised by other citizens -- Mr. St. George by counsel, included. When Mr. Brazas tried to raise these same issues on appeal before the Board, he was penalized for conforming with Mr. Keller's request at the ad hoc "informational meeting."

2. The Attorney General's Office defense of the IEPA along with the Board's implementation of its procedures worked to accommodate the Village of Hampshire and the IEPA, which materially prejudiced the public interest as represented in the petitioner's appeal.

Two examples of this: first, the Board's granting of the "Time Certain Waiver of

Decision Deadline" to the Village of Hampshire, filed on May 1, 2006. Board rules appear to give the petitioner the right to request such waivers of deadlines -- not the respondents.

Second, allowing the IEPA to file its Motion to Dismiss for Lack of Jurisdiction after the Board deadline for such filings had elapsed.

We also take note that although the Illinois Attorney General's office's first duty is to defend the public interest -- to the extent of representing the People of Illinois against the IEPA when that agency is not acting in the public interest -- in this proceeding the AG's office took a position defending the agency's decision. We consider this unfair and prejudicial to citizens who are at a distinct disadvantage both financially and legally in these highly technical proceedings. We believe the AG should be on the side of citizens in these disputes.

3. The Board's Final Order is based on an egregious factual error.

In its "Factual Background" the Board's Order repeats an assertion by the IEPA in its cover letter attached to the final NPDES permit issued to the Village of Hampshire:

This modified NPDES permit increases the facility's design average flow and design maximum flow upon completion of the plant expansion but keeps the concentration limits and load limits at their current levels.

R. at 596 [Emphasis added].

All parties in this proceeding agree that Hampshire Creek, the "receiving" water for the STP effluent, is an impaired stream.

And that the Board's antidegradation rules prohibit further degradation of that stream by prohibiting further pollutant loading of its waters.

To assert that the load limits -- pounds per day of pollutants -- will not change is to assert a falsehood.

Mr. Brazas has illustrated this in a number of forums, including the appeal of the issuance of this permit.

At the IEPA'S 2005 "informational meeting," I asked Mr. Al Keller how this limitation would be achieved at higher volumes.

Mr. Keller admitted he did not know.

Mr. Walter Quandt asked the same question, noting that at lower volumes, the limits might be maintained, but how could this be accomplished at higher volumes?

Mr. Keller could not answer.

And yet that is the fiction that has been upheld in this order, in a proceeding where the public has been outmanoeuvred to achieve a predetermined objective: to facilitate the expansion of the STP no matter what the cost to the community residents' health and welfare.

Respectfully submitted,

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cc: Mr. Wesley Brazas, Jr.
Mr. Mark Schuster, Village of Hampshire Attorney
Mr. James Allen Day, Assistant Attorney General/IEPA

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