

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

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MAR 11 2003

STATE OF ILLINOIS
Pollution Control Board

NORTH SHORE SANITARY
DISTRICT,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 03-146

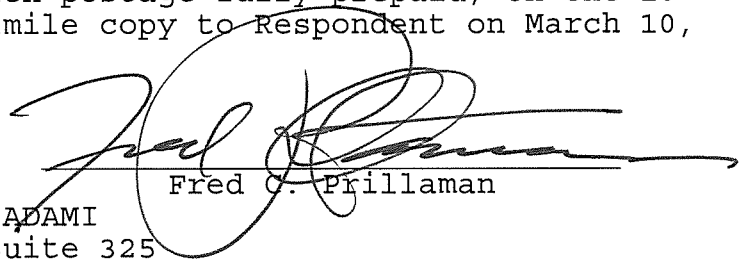
NOTICE OF FILING AND PROOF OF SERVICE

TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601-3218

Julie Armitage
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on March 10, 2003, we sent to the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via Federal Express, of Emergency Motion for Stay for filing in the above-entitled cause, copies of which are attached hereto.

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the Respondent by enclosing same in envelopes addressed to said Respondent, and by depositing said envelopes in a United States Post Office Mail Box at Springfield, Illinois, with postage fully prepaid, on the 10 of March, 2003, and by facsimile copy to Respondent on March 10, 2003.



Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
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THIS FILING SUBMITTED ON RECYCLED PAPER

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EMERGENCY MOTION FOR STAY

NOW COMES Petitioner, NORTH SHORE SANITARY DISTRICT ("NSSD"), by its undersigned attorneys, pursuant to Sections 101.500, 101.504, and 101.512 of the Board's Procedural Rules, 35 IAC 101.500, 101.504, and 101.512, and for its emergency motion to stay the force and effect of Standard Condition No. 1 of the March 11, 2002, permit issued to Petitioner, which such standard condition is the subject of the Application for Revision to Standard Condition No. 1, filed with the Illinois Environmental Protection Agency ("Agency" or "IEPA") on or about February 13, 2003, and which Standard Condition is also the subject of the Petition for Permit Review filed with the Illinois Pollution Control Board ("Board") on March 10, 2003, and specifically requesting the Board to act immediately upon this motion, states as follows:

1. The NSSD is the owner of the sewage treatment plant facility located on Dahringer Road, in Waukegan, Lake County,

Illinois. The I.D. Number 097190ABI has been designated for this facility by the Agency.

2. On or about March 11, 2002, the NSSD was granted a Construction Permit for a sludge dryer/melter to be constructed at the NSSD's Waukegan, Illinois sewage treatment plant facility. A true and correct copy of the subject permit is attached to the Petition for Permit Review as Exhibit A.

3. On or about February 13, 2003, the NSSD filed an Application for Revision to Standard Condition No. 1 appearing in the Agency's March 11, 2002 Construction Permit. A true and correct copy of the subject application is attached to the Petition for Permit Review as Exhibit B.

4. On or about March 3, 2003, the Agency rendered its final determination on the NSSD's request to revise said Standard Condition No. 1. A true and correct copy of the subject Agency decision is attached to the Petition for Permit Review as Exhibit C.

5. On March 10, 2003, the NSSD filed with the Board its Petition for Permit Review in this cause. As alleged by the NSSD in its Petition for Permit Review, the Agency's denial of the NSSD's request to revise the said Standard Condition No. 1 is contrary to the law, contrary to the facts, contrary to the equities, and contrary to Agency precedent.

6. The aforesaid Application for Revision to Standard Condition No. 1 (Exhibit B to the Petition for Permit Review)

contains in it a Request for a Provisional Variance, which sets forth the reasons why the NSSD is entitled to immediate relief from the permit expiration provisions of Standard Condition No. 1, which reasons also serve as a basis for the Board's granting of this Emergency Motion for Stay, to-wit:

- a. The construction permit authorized NSSD to take the treated residuals from its wastewater treatment operations and recycle them as a source of energy and construction products. The beneficial use of such biosolids have long been a goal of federal and state environmental policy, albeit never mandated. Biosolid use remains a voluntary initiative.
- b. The NSSD has expended substantial funds in the planning, development and permitting of the sludge dryer/melter project.
- c. Through no fault of its own, the NSSD has been sued (along with the Agency) in the Circuit Court of Lake (Waukegan v. IEPA & NSSD, Case No. 01-CH-1777). The lawsuit seeks to prohibit construction under the subject permit by alleging that NSSD failed to obtain, and the IEPA failed to require, local siting approval or city zoning approval. The judge ruled in favor of NSSD and the IEPA on the issue of siting, but that judgment is currently on appeal to the Illinois Appellate Court. (Waukegan v. IEPA & NSSD, Appeal No. 2-02-0635) The question of whether zoning is required is also before the Illinois Appellate Court, in the same appeal, and the issue of whether Waukegan improperly denied zoned to the NSSD is currently on administrative review in the same trial court.
- d. The construction permit contains the following condition (Standard Condition No. 1):

Unless this permit has been extended or it has been voided by a newly issued permit, this permit will expire one year from the date of issuance, unless a continuous program of construction or development on this project has started by such time.
- e. To avoid the expiration of the permit, the NSSD has sought a provisional variance from the IEPA to

temporarily suspend operation of the above condition and has applied for a revision to the permit to conform the construction permit to the language found in Section 39(k) of the Act (415 ILCS 5/39(k)) The NSSD has sought to pursue all viable economic alternatives to preclude expiration of the permit.

- f. The IEPA has never responded, one way or another, to the aforesaid Request for Provisional Variance.
- g. In the absence of action from the IEPA, the NSSD attempted to commence construction of the sludge dryer/melter and was physically prevented from doing so by a barricade erected by the City of Waukegan and subsequently by a temporary restraining order entered by the Circuit Court of Lake County in the above referenced lawsuit, preventing the NSSD from commencing construction in order to preserve the status quo.
- h. An arbitrary and unreasonable hardship would be suffered by the NSSD if the construction permit is allowed to expire while the Board reviews this permit appeal. If the permit expires, the issues in the permit appeal would likely become moot and the Board's authority to review all permit decisions would become illusory. The need to preserve the status quo was recognized by the Board in Alburn v. IEPA, PCB Nos. 80-189; 80-190; 81-23; 81-24 (February 7, 1982) (reversed on other grounds in IEPA v. PCB, 118 Ill.App.3d 772, 1st Dist. 1983), wherein the Board held that the filing of an application to extend an existing permit stays the expiration of the existing permit pending resolution of the appeal before the Board.
- i. As in Alburn, no harm will come to the environment if the situation continues while the NSSD pursues its right of appeal.

7. For reasons appearing in the Request for Provisional Variance, Petitioner will be materially prejudiced if the subject permit is allowed to expire for reasons beyond its control, and therefore the Board should grant this motion before the expiration of any response, on a temporary basis, to provide time for response and reply.

WHEREFORE, Petitioner, NORTH SHORE SANITARY DISTRICT,
petitions for a ruling as follows:

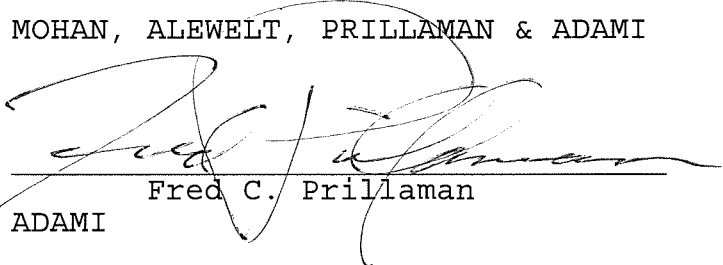
- a. That the construction permit issued on or about March 11, 2002 remains in full force pending a final decision herein; and
- b. That Standard Condition No. 1 to the construction permit issued on or about March 11, 2002 is stayed pending a final decision herein.

Respectfully submitted,

NORTH SHORE SANITARY DISTRICT,
Petitioner

By MOHAN, ALEWELT, PRILLAMAN & ADAMI

By


Fred C. Prillaman

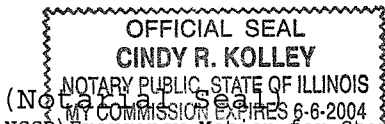
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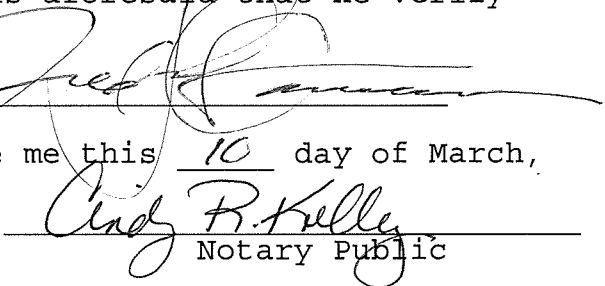
VERIFICATION

The undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By

Subscribed and sworn to before me this 10 day of March, 2003.




Cindy R. Kolley
Notary Public

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