

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

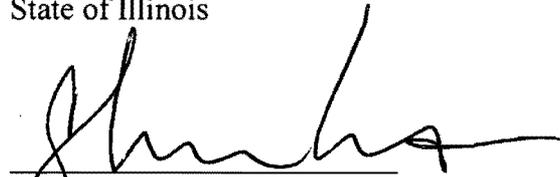
ROCK RIVER WATER RECLAMATION)	
DISTRICT)	
)	
Petitioner,)	
)	
v.)	PCB No. 13-11
)	(Permit Appeal-Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 20th day of November, 2012, Respondent filed its Motion in Limine to Exclude Irrelevant Testimony and Documents not Included in the Record, by electronic filing. A true and accurate copy of the document so filed is attached hereto.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By LISA MADIGAN
Attorney General of the
State of Illinois



Christopher J. Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington Street
Suite 1800
Chicago Illinois, 60602
(312)814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROCK RIVER WATER RECLAMATION)	
DISTRICT)	
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v.)	PCB No. 13-11
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**MOTION IN LIMINE TO EXCLUDE IRRELEVANT TESTIMONY
AND DOCUMENTS NOT CONTAINED IN THE RECORD**

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Hearing Officer exclude all testimony in this matter that does not directly relate to the Illinois EPA’s final decision on the permit at issue in this case. In addition, Respondent requests that the Hearing Officer exclude any and all documents that are not included in the established Permit Record. In support of its request, Respondent states, as follows.

I. INTRODUCTION

The Agency denied Petitioner’s permit application on August 1, 2012, and set forth the reasons for denial in its denial letter (Exhibit A). The first, and most significant basis was that the facility, as proposed, would cause, threaten or allow the discharge of contaminants, causing threatening or allowing water pollution in violation of 415 ILCS 5/12 (2010). As a secondary basis, the Agency noted that Petitioner’s proposed overflow basin did not conform to their Standards for Sewage Works (35 Ill. Adm. Code 370.930(d) (2) (D) and 370.930(b) (4)).

The Record in this case was filed by Illinois EPA on October 15, 2012, and supplemented by the Agency on November 2, 2012. Petitioner has never moved the Board to supplement the Permit Record with any additional documents.

On November 15th, 2012, counsel for Petitioner provided Respondent with copies of the written testimony for James Huff, Gregory Droessler, and Dana Carroll. The proposed testimony and attached exhibits indicate that Petitioner intends to provide testimony on issues completely irrelevant to this case, and also attempt to introduce documents which were not relied upon by the agency, and not part of the Permit Record. Because of the limited scope of Permit Appeals before the Board, introduction of this ancillary evidence would be improper, and only distract from the issues appropriately before the Board.

II. Testimony related to Regulations not Relied upon by Illinois EPA should be Excluded

In this matter, the Petitioner sought Illinois EPA approval of an unlined raw sewage overflow basin adjacent to its treatment plant in Rockford Illinois. The sewage overflow basin would be constructed on permeable soil immediately adjacent to the Rock River. Documents submitted by Petitioner to Illinois EPA admit that a substantial quantity of the untreated sewage would enter groundwater, exceed current groundwater contaminant loading, and subsequently enter the Rock River. Petitioner has refused to install a liner to prevent migration of the sewage into groundwater. As noted, the Agency has now rejected the application based on the water pollution provisions of 415 ILCS 5/12, and the Agency's construction standards.

During earlier negotiations between the parties, the Agency had also raised issues related to the groundwater quality regulation contained in Part 620 of the Board regulations, 35 Ill. Adm. Code Part 620. However, as shown in Exhibit A, these regulations did not constitute a basis for the final decision of the Agency.

The denial letter frames the issue for a permit appeal. *ESG Watts v. Pollution Control Board*, 286 Ill. App. 3d 325, 335 (3d Dist. 1997). The Part 620 regulations played no part in the Agency's final decision, which is the sole relevant subject of this appeal. Just as the Agency could not claim use these regulations (or other standards not listed in the denial letter) as a basis for denial, the Petitioner cannot provide testimony on other 'potential' bases for denial not relied upon by Illinois EPA. Petitioner's proposed testimony related to the Part 620 regulations should be barred.

III. Documents Not Included in the Record should be Excluded

Petitioner's submitted written testimony relies on and includes numerous documents not contained in the Permit Record. For example, the testimony of James Huff includes a transcript of the testimony of Richard Cobb in an unrelated rulemaking (R08-18). The testimony of Dana Carroll quotes from a 2010 Illinois EPA letter to the General Assembly related to storm water (not sewage or wastewater). Neither of these documents was included by Illinois EPA into the Permit Record. And, Petitioner has not moved the Board to supplement the record to include these documents.

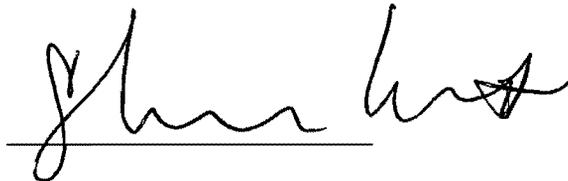
Evidence that was not before the Agency at the time of its decision should not be admitted at hearing, and should not be considered by the Board. *Community Landfill Co. v. Illinois EPA*, PCB 01-48/01-49 (Consolidated) (April 5, 2001, slip op. at 19). The Agency Record consists, inter alia, of "any other information the Agency relied upon in making its final decision". 35 Ill. Adm. Code 105.212(b)(5). There is no evidence that Illinois EPA relied, or even knew about these (and other) documents, now being proposed as evidence. The scope of inquiry in this case is limited to the Agency's basis for denial, and to the documents in the Permit Record. The Hearing Officer should bar any extraneous evidence from hearing.

WHEREFORE, Respondent requests that the Hearing Officer grant this Motion, exclude testimony related to issues not contained in Illinois EPA's denial letter, exclude documents not contained in the record, and direct such other relief as the Hearing Officer deems appropriate.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

by LISA MADIGAN
Attorney General of the State of Illinois

A handwritten signature in black ink, appearing to read "Christopher J. Grant", is written over a horizontal line.

Christopher J. Grant
Assistant Attorney General
Environmental Bureau
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Chicago, Illinois 60602
(312) 814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 20th day of November, 2012, Respondent's Motion in Limine to Exclude Irrelevant Testimony and Documents not Contained in the Record and Notice of Filing upon the persons listed below by electronic mail and by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

A handwritten signature in black ink, appearing to read "Christopher Grant", written over a horizontal line.

CHRISTOPHER GRANT

Mr. John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601
(by electronic filing)

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601
(by hand delivery)

Mr. Roy M. Harsch
Drinker Biddle & Reath LLP
191 North Wacker Drive, Suite 3700
Chicago, IL 60606



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397
PAT QUINN, GOVERNOR JOHN J. KIM, INTERIM DIRECTOR

217/782-0610

AUG 01 2012

Rock River Water Reclamation District
Atten: Steve Graceffa, District Director
3501 Kishwaukee Street
Rockford, IL 61109

Stamp: AUG 01 2012
Rock River Water Reclamation District

Re: ROCK RIVER WRD - STP Excess Flow Basin
Log No(s). 0317-12
Denial

Dear Mr. Graceffa:

This Agency has reviewed your Application for Permit and the supporting documents for the subject project which were received on April 6, 2012. This Agency must deny the permit for this project for the following reasons.

Sections 12 and 39 of the Environmental Protection Act (Act), 415 ILCS 5/12 and 39, prohibit the Agency from issuing a permit for any facility which would threaten, cause or allow the discharge of contaminants which might cause or tend to cause water pollution in Illinois. Section 39 of the Act also requires an applicant to submit proof to the Agency that the proposed facility will not cause a violation of the Act or the regulations adopted pursuant to the Act.

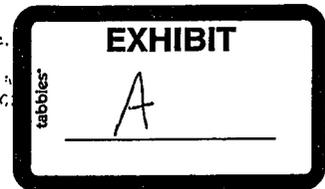
In addition to the above cited Sections of the Act, the permit application does not fulfill the requirements of 35 Ill. Adm. Code 309.241.

The following information, clarification or corrections must be provided for us to complete our technical review and are to be considered specific reasons why the Act and the regulations adopted pursuant to the Act will not be met:

A seal is required in the bottom and embankments of the excess flow storage basin per Section 370.930 d)2)D) of the Illinois Recommended Standards For Sewage Works. The seal shall have a permeability of less than 1x10(-7) cm per second. Provision shall be made in the specifications for demonstrating the permeability of the seal after completion of construction and prior to filling the basin.

4300 N. Apple St., Rockford, IL 61105 (815) 987-7700
545 S. State, Elgin, IL 60120 (815) 647-1200
225 S. First St., Champaign, IL 61820 (217) 242-5800
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9511 Harlow St., Des Plaines, IL 60018 (708) 291-1000
5427 N. University St., Aurora, IL 60506 (708) 291-1000
1509 W. State St., State 115, Joliet, IL 61702 (815) 713-1000
100 W. Randolph, Suite 110, Joliet, IL 61702 (815) 713-1000



Also, an appropriate groundwater monitoring system must be proposed, according to IL Adm. Code 370.930 b)4).

The Agency will be pleased to reevaluate your permit application on receipt of your written request and the necessary information and documentation to correct or clarify the deficiencies noted above. The revised application will be considered filed on the date that the Agency receives your written request. Please reference the above-listed log number in your transmittal letter.

You have the right to appeal this denial to the Illinois Pollution Control Board within a 35 day period following the date shown on this letter.

Should you have any questions or comments regarding the above, please contact Francis Burba at 217/782-0610 or at the above address.

Sincerely,



Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

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cc: EPA-Rockford FOS
Clark Dietz Engineers
Records - Municipal
Binds
GWS