**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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



ORIGINAL

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**PLEASE TAKE NOTICE** that on **Monday, March 4, 2013**, we filed with the Office of the Clerk of the Pollution Control Board **Rock River Water Reclamation District's Reply to Respondent's Post Hearing Response Brief,** a copy of which is served upon you.

Respectfully submitted,
ROCK RIVER WATER RECLAMATION DISTRICT

By: Roy M Harsch
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

## REPLY TO RESPONDENT'S POST HEARING RESPONSE BRIEF

Petitioner, Rock River Water Reclamation District, hereby submits its Reply to Respondent's Post Hearing Response Brief.

## I. INTRODUCTION

In its response, the Illinois Environmental Protection Agency ("IEPA" or "Agency") continues to seek to downplay and over-simplify the issues surrounding the permit denial in this appeal, in the hopes that the Board will play along and not address the real basis of the permit denial. The Agency wants the Board to believe that there is nothing more to this case than a Section 12 water pollution violation and a failure to adhere to the construction standards. The Agency has been trying since its opening statement to limit and direct the Board's review of this case. The Board should not be swayed by this and should find that the District has met its burden and overturn the denial of the construction permit for the proposed flow equalization basin.

The real issue behind the IEPA denial, which the District discussed at length in its Post Hearing Brief, and which the Agency has not refuted at all in its response, is that the record

clearly and unequivocally shows that the IEPA applied the expressed interpretation of the Groundwater Section regarding the nondegradation standard found in 35 Il. Adm. Code Part 620.301 ("nondegradation rule"). The District was told at the June 6, 2011 meeting that before it could obtain the issuance of the construction permit for the basin, that it would have to show that the proposed flow equalization basin would not result in an increase above background levels for the groundwater resulting from the use of the unlined basin to hold excess flows during extremely large, infrequent wet weather events that currently result in sanitary sewer overflows (Tr. at 122-123).

The permit record and the testimony at hearing clearly establish that the Groundwater Section articulated this requirement from the time they first reviewed the preliminary engineering report following the initial March 10, 2011 meeting. This was the admitted basis for Mr. Buscher's April 11, 2011 draft memorandum commenting upon the District's preliminary design plan ("Buscher Memo") (Tr. at 222 and R. 168 and 169). At the subsequent May 11, 2011 meeting Mr. Buscher told the District and its consultants what it would have to show in order to obtain the issuance of a construction permit. He passed out the testimony of Mr. Cobb from a previous rule making proceeding in R 08-18 to explain to the District how the Groundwater Section interpreted the nondegradation provisions of 35 Il. Adm. Code Part 620-301 and what the District would have to do (Tr. at 123 and Pet. Ex. 1, Attachment 3). This interpretation that any increase above background is prohibited water pollution is contrary to what the Board determined in R89-14 when it specifically rejected this argument (Tr. at 123)[1]..

[1] "Section 620.201 states the basic nondegradation provision of today's rules. Its essence is a prohibition against impairment of any existing or potential use of groundwaters. A principal area of contention voiced by the participants in this proceeding has been whether nondegradation ought to encompass some more stringent prohibition. Among propositions have been a prohibition against causing or allowing a statistically significant alteration in groundwater chemistry, or even of causing or allowing any change in groundwater chemistry. The Board today declines to generally extend nondegradation beyond the prohibition against loss of use." *In the Matter of Groundwater Quality Standards,* 124 PCB 239, 255.

Nothing in Respondent's brief refutes that this is the real basis for the IEPA decision to deny the permit.

Respondent's Post Hearing Response Brief does not refute that the Permit Section did not make an independent determination or evaluation of the Groundwater Section's determinations based upon its application of the nondegradation standard. Nothing in their brief refutes the points made in the District Brief that the record does not show that the Permit Review Section made any determination in support of the statements in its denial letter other than relying upon those determinations of the Groundwater Section set forth in Mr. Buscher's various memos. During the pre-application time frame, the Permit Section had all but signed off on the proposed project during the March 10, 2011 meeting which followed their review of the previously submitted preliminary design. (Tr. at 120). The Permit Section asked the Groundwater Section to review the preliminary design and comment on it. As discussed in the District's Brief, contrary to what the Agency would have the Board believe, the Record clearly shows that the Groundwater Section focused on the nondegradation issue when it determined that Section 370.930 applied to the proposed unlined basin as stated in Mr. Buscher's draft April memo (R. 168 and 169). Mr. Buscher admitted at hearing his draft April 2011 memo was based upon his determination that any increase in groundwater concentration of pollutants above background was unacceptable (Tr. at 222). He required that the District show that the project would not result in an increase above background concentrations in the groundwater regardless of the use on the groundwater before it could be approved (TR. 227). When the District decided that no matter what information it submitted to the Agency, the Groundwater Section's objections based on its interpretation of the nondegradation standard could not be satisfied, it submitted its permit

application and included with it all of the documentation it had previously provided demonstrating that the proposed flow equalization basin would not cause water pollution.

Following the submittal of the application, the Permit Section does not appear to have taken any steps to actually review the application which contained all of the previously submitted information showing that the Groundwater Section's interpretation of the nondegradation standard was incorrect and that the proposed equalization basin would not cause water pollution. Apart from the various memoranda prepared by Mr. Buscher there are no documents in the Record showing any evaluation or support for any of the grounds for its denial. There are no documents in the permit review record indicating that the Permit Section made any independent consideration of the issues. What documents in the Record show is that the Permit Section accepted the Groundwater Section's conclusions regarding the applicability of the cited construction standards and prohibition on causing an increase in groundwater concentration of pollutants above background without considering any of the information submitted by the District in response to the Groundwater Section's concerns and those raised by Ms. Wilhite. This District response was set forth in the June 28, 2011 letter from Mr. Huff (Tr. at 126-130, R at ___). Indeed, the fact that one basis for denial was the alleged absence of a groundwater monitoring plan when, in fact, the application included such a plan, seems to be a direct indication that the Agency did not really review the application and supporting information.

Since the record of the permit review process does not support the findings set forth in the IEPA's denial letter, the Agency is now making an after-the-fact attempt to justify those findings. The Agency would have the Board gloss over many of the nuances and accept the denial letter at face value. The fact of the matter is that the District has shown that the design standards cited by IEPA in the denial letter do not apply to the proposed flow equalization basin

and this project will not violate any regulations or statutory provisions concerning water pollution. Therefore, the denial of its permit application should be overturned.

## II. BACKGROUND

### A. Proposed Constructed Wetland Excess Flow Basin Design

As the Agency notes on page 2 of Respondent's Post Hearing Response Brief, the District presented a proposal for a constructed wetland flow equalization basin, and this design was well-received by the Permit Section. However, while accusing the District of using red herrings, the Agency has created a distraction of its own by picking and choosing the facts it presents, and ignoring the rest. In several places in its response, the Agency states as if it is a given that the District's proposed flow equalization basin will introduce two million gallons of untreated wastewater into the waters of the state for a forty-eight hour period, at least once a year. This statement is inaccurate and is not supported by the record.

As the District has already detailed on page 5 of its Post Hearing Brief, the record shows that submitted design is based on the worst case scenario, using very conservative criteria based on 38 years of actual precipitation and historical flow data. In addition, the design is based on a 10-year, 24-hour storm event, which are more stringent design criteria than IEPA's required minimum of a 5-year, 24-hour storm. These worst-case conditions assume that the basin was filled and it would take the full 48 hours to empty it, as well as that the basin will fill once per year, and that the treatment plant can handle only 80 million gallons per day ("MGD").

These design assumptions are quite different from the real-world conditions that exist. As the District pointed out in its Post Hearing Brief, the record shows that the District has successfully treated flows of between 130 to 135 MGD, far in excess of the 80 MGD criteria used in the design of the proposed basin, and yet remained compliant with its NPDES permit

limitations. The record also shows that there have been and will continue to be modifications and improvements to the collection system that dramatically reduce the amount of wet weather flow and thus the need to use the basin. These include an ongoing I&I reduction effort, which has significantly reduced flow rate and the volume of wet weather flows.

The Agency continues to point out that the wastewater placed in the basin would be untreated sewage and therefore any leakage would be untreated sewage and equates such a discharge as water pollution. While it is true that the wastewater entering the basin will be untreated per the design of the basin, the wastewater that infiltrates will in fact receive treatment as admitted to by Mr. Buscher (Tr. at 230). The District proposed to construct a wetland bottom in the basin that would be irrigated during dry weather with treatment plant effluent water to reduce nutrients discharged to the Rock River. Twelve inches of top soil would be placed on top of the native soil in the bottom of the basin which would support the roots of the wetland plants. (Tr. at 118). This soil, roots and resulting leaf litter would be the limiting layer for infiltration reducing the infiltration rate to approximately 20 percent of that of the native soils used in the design calculations and would provide substantial reduction in some pollutants due to filtration and uptake. (Tr. at 118, 157 and 158). Although Mr. Buscher admitted on cross examination that there would be treatment (Tr. at 230.) the Agency continues to assert that this would be untreated sewage.

The Agency is picking and choosing which facts to emphasize, and which to ignore. First, the Agency states the exfiltration flow and time duration as if they are, in fact, going to happen, rather than worst-case design calculations. Second, the Agency completely ignores the hydraulic conditions that exist between the Rock River and the groundwater below the proposed basin. As the District has shown in its permit documentation record, hearing

testimony and in its Post Hearing Brief, any leakage from the basin floor will be subject to these hydraulic conditions. These hydraulic conditions that IEPA has chosen not to acknowledge affect the flow of water into and out of the proposed basin. Because the basin would be constructed immediately adjacent to the Rock River, the groundwater is correlated directly to the level in the river. As Mr. Huff explained, the hydraulic head on the basin is not the depth of water in the basin, but rather the adjacent river elevation. This means that during low flow periods, when the basin would be empty, the groundwater flow is toward the Rock River. Conversely, at high river stages that would occur during times of heavy rain, when the basin might be in use (depending upon the flows), the groundwater flow is *away* from the river toward the basin. (See Page 11 of the District's Post Hearing Brief). During periods of high river levels this hydraulic pressure would result in flows into the basin which would not allow flows out of the basin. Even if the river levels were low and flows from the basin entered into the groundwater under the basin, it is likely that a large storm event would result in Rock River level increases which would force this leaked water back into the basin, from where it would be pumped to the treatment plant for complete treatment after the storm subsided and flows to the treatment plant were reduced. (Tr. 126 and R. 226).

### B. Discussions between the District and IEPA Leading Up to the Permit Application

On page 7 of its Response, the Agency refers to the Buscher Memo, which refers to standards for "similar" basins (meaning 35 Ill. Adm. Code § 370.930). There is nothing in the record to demonstrate that IEPA had any meaningful consideration of these statutory provisions and reached a considered conclusion that they are pertinent. From all appearances, Mr. Buscher simply took it upon himself to decide to apply the cited rules whether they are really appropriate or not. As the District pointed out on pages 20 to 21 of its Post Hearing Brief, and as will be

discussed later in this Reply, Section 370.930 does not appropriately apply to the proposed flow equalization basin.

In addition, IEPA states on page 8 of its Response that the permit application submitted by the District on April 6, 2012 did not include the groundwater monitoring system requested by IEPA. It should be a source of embarrassment for the Agency to continue to insist that the District did not include a groundwater monitoring system with its application, when its own employee, Mr. Francis Burba, the IEPA Permit Section Review Engineer, testified that one was included in the application but that he did not review it. Indeed, even before the formal application was submitted, monitoring wells were included in the preliminary design. Mr. Huff further pointed this out in his June 28, 2011 response to IEPA, when he also advised that the District had no objection to groundwater monitoring. What the District did not propose to accept was a monitoring system to show that increases in the groundwater concentration resulting from the basin would not be statistically significant increases because this was impossible to show as explained by Mr. Huff and is based upon an incorrect application of the nondegradation rule

## III. ARGUMENT

### A. The District Has Met its Burden of Proof

The District does not disagree that it has the burden to prove that the proposed flow equalization basin would not cause a violation of Section 12 of the Act or the Board's water quality regulations. The Agency argues that the District has not met this burden of proof because the proposed basin would violate Section 12 because of the lack of a liner (note that it does not raise in this context the absence of groundwater monitoring). In support of this contention, the Agency again puts forth the discharge of two million gallons of untreated wastewater as if this were an established fact, rather than a worst case design criterion. The District believes that,

based upon all of the information and documentation submitted in support of its permit application, it has met this burden, and that the denial of the permit application was improper. The District has shown, and will further elucidate below, that the wastewater that may occasionally be temporarily stored in the proposed flow equalization basin will not cause or threaten to cause water pollution, and that Section 370.903 is not applicable to the proposed basin.

### B. The Use of the Proposed Flow Equalization Basin will not Cause a Violation of Section 12 of the Act

The District has shown that the use of the proposed flow equalization basin will not cause water pollution, which is prohibited by Section 12(a) of the Act. Water pollution is defined in the Act as follows:

> such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life." 415 ILCS 5/3.545.

The District does not argue that the wastewater does not contain contaminants. However, the language of this definition clearly indicates that, in addition to containing contaminants, the discharge must cause or be likely to cause the harms enumerated in the definition. As the District has shown, the use of the proposed flow equalization basin will not cause any of these harms--to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare. Indeed, given the current status of the groundwater in the area of the proposed basin, it would be an impossibility for any exfiltration from the proposed basin to cause any of the enumerated harms. There is no argument that all of the groundwater standards will be met within 25 feet of the basin even under worst case conditions. Even beyond this there are the

following points as well. First, the location of the basin is within the Southeast Rockford contaminant plume for chlorinated solvents. Second, during and immediately after rain events, the fecal coliform count in the Rock River immediately upstream of the treatment plant exceeds the water quality standards. This would cause an increase in fecal coliform in the groundwater whenever it is recharging from the river. For these two reasons alone, it would be impossible for the use of the proposed basin by the District to pollute this already-contaminated groundwater. Third, because of this contaminant plume, there exists a ban on using groundwater in the area, and the entire area around the proposed project is served by the city water supply. Fourth, the property under which the affected groundwater lies is owned by the District, and will have no use other than its current use--there are no wells in place and none will be in the future. Finally it is unrefuted that because of the hydraulic conditions, during most periods when the basin would be used to temporarily store wastewater, the level of the ground water would be such that it would flow into the basin and that any previous flow out of the basin would be forced back into the basin where it would be stored and returned for treatment after the wet weather event stopped. Therefore, although the wastewater discharge admittedly contains contaminants, there is no actual or potential danger or injury to public health, safety or welfare, or to any of the other uses listed in the definition of water pollution that could be caused by any leakage into the groundwater from the proposed basin, so there is no "water pollution" as defined by the Act and, therefore, no violation of Section 12.

The Agency relies upon *Central Illinois Public Service Company v. Pollution Control Board*, 116 Ill.2d 397 (1987) to show that it need not show that the harm *will* occur, only that it *would* occur if the contaminated water were to be used, stating that the court in *Central Illinois* rejected the proposition that water rendered unusable by prior contaminants could not be further

polluted by subsequent contamination. This interpretation of *Central Illinois* is incorrect, and the case does not support the Agency's argument. In *Central Illinois*, the Central Illinois Public Service Company (CIPS) sought a site-specific standard for the groundwater at its Hutsonville power plant that would allow it to build a second unlined pond for the disposal of fly ash and other wastes. One of the arguments that it made was that actual harm to humans and crops could be avoided if use of the water ceased *subsequent to* the contamination. The Agency suggests that the court rejected this argument because it did not agree that it was impossible to contaminate polluted water. The fact is that the court rejected this argument because it disagreed with CIPS' argument that water rendered unusable would not be considered polluted as long as the water was removed from use *after* contamination, stating that "pollution occurs whenever contamination is likely to render water unusable." 116 Ill. 2d 397 at 409. *Central Illinois* is distinguishable from the facts at hand for several reasons. First, the groundwater under the CIPS property was being used to supply drinking water to the plant's employees and thus was a potable water supply. The groundwater under the District's property is not used and cannot be used; it is not a potable water supply. Second, the contaminated groundwater in *Central Illinois* was never going to meet the groundwater quality standards, whereas the District has shown that its groundwater will meet the standards within 25 feet from the basin. Third, as the use of the shallow groundwater under the District's proposed basin has already ceased, it is not possible to "render it unusable." As the court notes in *Central Illinois,* the purpose of preventing groundwater contamination is to "protect those resources from unnecessary diminishment." Id, at 410. In the District's case, it truly is impossible to diminish the quality of the groundwater, and the groundwater has been removed from use, so it is impossible for the Agency to show that any harm *would* occur to human health or the other uses enumerated in Section 12.

Interestingly, in another example of picking and choosing facts to bring to the attention of the Board, the Agency has not addressed the impact of the proposed basin on the Rock River. The District assumes this means that IEPA concedes that, as demonstrated by the District's permit documentation, groundwater regulations would be always met 25 feet from the basin, which is on the District's property, and poses no threat to the Rock River.

With regard to *City of Joliet v. Illinois Environmental Protection Agency*, PCB 06-023 Slip Op. at 23 (May 7, 2007), the District has already distinguished this case from the present matter. In the *Joliet* case, the Board found that the specific cited basis for the denial (the MOA) was not a proper basis for a permit denial because it was not a regulation or standard. Once the Board made this finding, all that was left in the denial letter was the Section 12 language, with nothing to elucidate the specific reasons required by Section 39(a) as to why the Act and regulations might be violated if the permit were issued.

In *Joliet* the Board heard no testimony from Agency personnel regarding the reasons for citing to Section 12 in the Joliet denial letter, and so the Board was left to sift through the record to guess at those reasons after refusing to not give reason to them. In the present matter, both the permit engineer and his supervisor attended the hearing and were called as witnesses by the District. The Board does not have to guess at the Agency's reasoning since they both testified that the denial letter is a form that they fill in the specific reason for the denial which in this case was admittedly the two citations to the design standards. Despite the after-the-fact attempts to read the denial letter as being based upon some independent determination that water pollution was going to occur as a result of the proposed project, there is nothing in the Record to show that the Permit Section actually made any such determination. What the record clearly shows is the Groundwater Section determined that Section 12 would be violated because of its belief that <u>any</u>

increase above background concentrations was a violation based upon their incorrect interpretation of the nondegradation rule.

C. **Application of Section 370.930 is Improper**

IEPA's denial letter includes references to Sections 370.930(d)(2)(D) requiring a liner and 370.930(b)(4) requiring a groundwater monitoring system. IEPA would have the Board dismiss the references to these standards as irrelevant on the basis that the permit application was properly denied for violation of Section 12 of the Act. Given that the District has clearly shown that if the permit application were granted there would be no violation of Section 12, the District renews its assertions that application of the Section 370.930 standards is improper in this case.

The simpler of the two requirements to dispose of first is the requirement for a groundwater monitoring system as required by Section 370.930(b)(4). Although the District continues to argue that Section 370.930 is not applicable to the type of basin proposed in this project (as set forth in its Post Hearing Brief and below), it should be noted that both the preliminary design and the permit application did, in fact, include a groundwater monitoring system. Therefore, denial of the permit application for lack of a groundwater monitoring system is improper. The denial letter also cites to Section 370.930(d)(2)(D), which requires the use of a seal in the bottom of certain types of basins, namely, waste stabilization ponds and aerated lagoons. The Agency argues that it may apply the Section 370.930 design standards by analogy for lack of a better fit, "even if the excess flow basin did not neatly fit the title of the standards section." (Response, p. 17). In support of this assertion, IEPA cites to 35 Ill. Adm. Code § 370.110 regarding Scope and Applicability, in particular to subsection a) which provides:

> These design criteria apply to conventional design concepts for wastewater collection and treatment systems. Where non-conventional concepts or approaches to collection and treatment, particularly for very small systems, are

being considered, the Agency should be contacted for any design guidance that may be available. (emphasis added as per IEPA Response, P. 17).

With regard to the underlined language cited above, it should be noted that the District did just what is suggested. The District and its consultants submitted the preliminary report and then met with the IEPA Permit Review Section regarding the proposed flow equalization basin with a construction wetland and was told that such a project might be possible. The District was not given any indication that there would be a problem with it. In any event, it is quite a stretch to interpret language instructing potential applicants to seek design guidance as giving the Agency carte blanche to interpret a regulation any way it sees fit and to apply it to structures to which it is not applicable. Nothing in the Respondent's Post Hearing Response Brief refutes that the Agency does not have the statutory authority to revise promulgated rules in this fashion.

Moreover, the issue with using these standards is greater than just the poor fit of the title. The types of ponds covered by Section 370.930 are waste stabilization ponds and aeration lagoons. As is more fully set forth in the District's Post Hearing Brief, these types of ponds are intended to be in use 365 days per year for handling and treating untreated wastewater. Holding water for such extended periods of time could certainly potentially lead to unacceptable levels of exfiltration. In contrast, the District's proposed basin is a flow equalization basin, which is anticipated to contain water at most only two days, no more than once per year. .

Even the Agency's own engineers clearly stated that the flow equalization basin is not a waste stabilization pond or aerated lagoon. (Tr. at 49, 93, 100, 132, 186-187 and 198). Even if the Record supported that an independent determination was made that a liner was required, which it does not, the citation to the subject rule is not proper. Not because of its title, but because of the intended use of the proposed basin, Section 370.930(d)(2)(D) does not apply in this case. Applying this rule by analogy is absurd, as the types of basins are not analogous, a

determination was never made and to extend the rule in this way is beyond the authority of the Agency.

## IV. CONCLUSION

The District has clearly demonstrated that the proposed flow equalization basin would not cause water pollution in violation of Section 12 of the Act. Although the basin was designed using the worst-case criteria of annual usage for 48 hours, which could yield as much as two million gallons of exfiltration, and based on a capacity of 80 MGD at the treatment plant, in actual use the plant can handle as much as 135 MGD, and the basin would be used less frequently and for shorter periods than the worst case, thereby resulting in less exfiltration. In addition, the proposed constructed wetland liner is the only type of liner that could withstand the hydraulic conditions of the site, and serves the additional purpose of providing treatment through bacterial action and filtration to any wastewater that is temporarily stored in the basin. The hydraulic conditions of the site also favor the basin, as any groundwater that might seep into the ground when the basin is in use would be pushed back into the basin by the groundwater flow from the river during times of high water. All groundwater standards will be met within 25 feet of the basin. Finally, although the wastewater is the type of contaminant contemplated by Section 12, because the groundwater under the site is already banned from use due to its Superfund status, it is impossible that water from the proposed basin will, or would, cause any danger to public health or any of the other harms enumerated in the definition of water pollution.

In addition, the District has also demonstrated that the Section 370.930 standards have been improperly applied in this case. This is about more than the title of the section; it is about the functions of the basins. The Section 370.930 standards apply to waste stabilization ponds and aeration lagoons, which serve a different function and are used for a far longer duration than

the District's proposed flow equalization basin. The types of ponds and lagoons covered by Section 370.930 are not analogous to the District's proposed basin, and so this section cannot be applied to the District's basin by analogy.

Assuming, *arguendo,* that Section 370.930(b)(4) applies in this instance, it authorizes the Agency to require a groundwater monitoring system under certain conditions. Both the preliminary design and the final permit application submitted by the District did, in fact, include a groundwater monitoring system. Therefore, denial of the permit application for failure to satisfy Section 370.930(b)(4) is erroneous.

The District should be allowed to proceed with its proposed project also for public policy reasons and fundamental practicality. This basin is being installed, as the Agency has acknowledged, pursuant to the CCA in order to eliminate the last overflow from sewers. It is not something the District has decided to do on a whim. The Agency is requiring this of the District, yet at the same time is making its accomplishment extraordinarily difficult and prohibitively expensive. The District urges the Board not to be led down the primrose path by the IEPA to a decision that would require the District to build a massive concrete-lined basin such as Mr. Burba described in his testimony (Tr. at 236) – a huge concrete basin that was never used but once by mistake. In a time of shrinking budgets, public entities such as the District cannot afford such follies. Instead, the District requests the Board to overturn the permit denial and allow it to proceed with the proposed basin and the included monitoring system that will alert the District to any problems, and to further allow the District to respond to any problems as necessary. In this way, the District's funds can be put to far better use in continuing to address sewer rehabilitation, while having an aesthetically pleasing and functional improvement that will provide further treatment to its effluent.

As explained by Mr. Huff even using the overly conservative design parameters, the amount of BOD in the waters that might exfiltrate is less than that which is produced by one cow over a years' time. It is also equal to what the IEPA's allowed leakage rate in the design standard for new sewer pipe applied to the Districts sewer system would be expected to leak in one day. The Record is clear. The proposed basin will increase background concentrations of contaminants as will many other types of projects or activities such as land application of treated sewage effluent, land application of sewage sludge and water supply treatment plant sludge. The only difference is that Mr. Buscher has never been asked to review these activities and apply the Groundwater Section interpretation of the nondegradation rule to these routinely permitted activities (Tr. 230-233). For all of the foregoing reasons, in combination with the arguments previously set forth in the District's Post Hearing Brief, the denial of the District's permit application should be reversed.

Respectfully Submitted,

ROCK RIVER WATER RECLAMATION DISTRICT

By One of Its Attorneys

Date: March 4, 2013

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached **Rock River Water Reclamation District's Reply to Respondent's Post Hearing Response Brief**, by electronic mail and first class mail, postage pre-paid on Monday, March 4, 2013.

By: Roy M. Harsch
One of Its Attorneys