

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 2006

WESLEY BRAZAS, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 06-131
MR. JEFF MAGNUSSEN, president,	)	(Third-Party NPDES Permit Appeal –
VILLAGE OF HAMPSHIRE, and THE	)	Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by N.J. Melas):

On January 13, 2006, Mr. Wesley Brazas, Jr. filed a petition asking the Board to review a December 9, 2005 determination of the Illinois Environmental Protection Agency (Agency). The Agency granted National Pollutant Discharge Elimination System (NPDES) permit No. IL 0020281 to the Village of Hampshire for its wastewater treatment plant in Kane County. Mr. Brazas appeals on the grounds that the permit is “not sufficiently protective of the environment and not in accord with the law.” Pet. at 8. For the reasons set forth below, the Board finds the petition deficient, and requests more information from the petitioner before the Board can consider whether the petition is duplicative or frivolous or accept the matter for hearing.

**THIRD-PARTY APPEAL**

Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (2004)) allows certain third parties to appeal Agency determinations to grant NPDES permits. The third party’s petition to the Board must contain:

a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held; and

a demonstration that the petitioner is so situated as to be affected by the permitted facility. 415 ILCS 5/40(e)(2) (2004); *see also* 35 Ill. Adm. Code 105.210(d).

The petition also must satisfy the requirements of the Board’s procedural rules for service and filing under Part 101.Subpart C as well a the content requirements of Section 105.210. Among other things, the petition must specify the grounds for appeal and include a copy of the issued permit. 35 Ill. Adm. Code 105.210(a), (c). The third party must file the petition within 35 days after the “date of issuance of the Agency’s decision.” 415 ILCS 5/40(e)(1) (2004); *see also* 35

Ill. Adm. Code 105.206(b). If the Board determines that the third party's petition for review is not "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40(e)(3) (2004); *see also* 35 Ill. Adm. Code 105.214(d).

An action before the Board is duplicitous if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.*

Only the Village of Hampshire, the permit applicant, may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, the Village of Hampshire "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2004)]." 415 ILCS 5/40(a)(3) (2004).

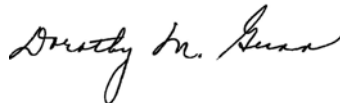
### **THIS PETITION**

Mr. Brazas' petition is clearly deficient because it does not include a copy of the issued permit. 35 Ill. Adm. Code 105.210(a). Accordingly, the Board cannot determine whether the petition was timely filed. Further, the petition does not include a certificate of service pursuant to Section 101.304(d). 35 Ill. Adm. Code 101.304(d). As a result, the Board cannot determine whether both respondents, the Agency and the Village of Hampshire, were properly served. For these reasons, the Board cannot make a duplicative or frivolous determination until it receives the additional information identified above.

The Board orders Mr. Brazas to file and properly serve an amended petition in accordance with the Board's procedural rules including, the issued permit as well as the certificate of service. This amended petition must be postmarked no later than February 17, 2006, or this matter will be subject to dismissal. The Board requires Mr. Brazas to act promptly to cure the deficiencies of the petition because a 120-day deadline applies to the Board's decision should the Board accept the petition for hearing. Assuming Mr. Brazas' original petition was timely filed on January 13, 2006, the Board's decision deadline would be May 13, 2006, the 120th day after January 13, 2006.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board