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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 07 2005

STATE OF ILLINOIS
Pollution Control Board

VILLAGE OF LAKE BARRINGTON, CUBA
TOWNSHIP, PRAIRIE RIVERS NETWORK,
SIERRA CLUB, BETH WENTZEL and
CYNTHIA SKRUKRUD,

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and VILLAGE OF WAUCONDA,

Respondents.

PCB 05-55
(3rd Party NPDES Permit
Appeal)

SLOCUM LAKE DRAINAGE DISTRICT OF LAKE
COUNTY, ILLINOIS,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and VILLAGE OF WAUCONDA,

Respondents.

PCB 05-58
(3rd Party NPDES Permit
Appeal)

THIS FILING PRINTED ON RECYCLED PAPER

AL PHILLIPS, VERN MEYER, GAYLE DEMARCO,)
GABRIELLE MEYER, LISA O'DELL, JOAN LESLIE,)
MICHAEL DAVEY, NANCY DOBNER, MIKE)
POLITO, WILLIAMS PARK IMPROVEMENT)
ASSOCIATION, MAT SCHLUETER, MYLITH PARK)
LOT OWNERS ASSOCIATION, DONALD KREBS,)
DON BERKSHIRE, JUDY BRUMME, TWIN POND)
FARMS HOMEOWNERS ASSOCIATION, JULIA)
TUDOR and CHRISTINE DEVINEY,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-59
(3rd Party NPDES Permit
Appeal)
(Consolidated)

NOTICE OF FILING

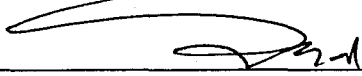
Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

Bradley P. Halloran
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SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and four (4) copies the **RESPONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION AND LITIGATION RECORD** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
Sanjay K. Sofat, Assistant Counsel
Division of Legal Counsel

Dated: January 6, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

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**RESPONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION
AND LITIGATION RECORD**

NOW COMES, Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Sanjay K. Sofat, Assistant Counsel and Special Assistant Attorney General, and pursuant to 35 Ill. Adm. Code 101.500, 101.502, 101.504, 101.614, 101.616, and 101.618, 101.800, 101.802, the Illinois Code of Civil Procedures, the Illinois Supreme Court Rules, and the Hearing Officer's Order dated December 15, 2004, and hereby submits its Response to the Slocum Lake Drainage District of Lake County and the Resident Group's Motion to Compel the Illinois Environmental Protection Agency to Produce the Violation and Litigation Record. In support of its Response, the Illinois EPA states as follows:

1. On September 17, 2004, Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel, and Cynthia Skrukrud filed a third party permit

appeal with the Board pursuant to 415 ILCS 5/40(e)(1) and 35 Ill. Adm. Code 105.204(b).

2. On September 27, 2004, Slocum Lake Drainage District ("Slocum District") of Lake County, Illinois filed a Section 40(e) petition with the Board. Also, on September 27, 2004, Al Phillips, Vern Meyer, Gayle Demarco, Gabrielle Meyer, Lisa O'Dell, Joan Leslie, Michael Davey, Nancy Dobner, Mike Politio, Williams Park Improvement Association, Mat Chlueter, Mylith Park Lot Owners Association, Julia Tudor, and Christine Deviney ("Resident Group") filed a Section 40(e) petition with the Board.
3. The Slocum District and the Resident Group appeal the Agency's decision to grant the Village of Wauconda's request to modify its National Pollutant Discharge Elimination System ("NPDES") permit, IL 0020109.
4. Pursuant to 35 Ill. Adm. Code 105.116, the Agency Record is to be filed with the Board within thirty (30) days after receipt of the petition. The Agency Record was timely filed with the Board and consists of approximately 2262 pages.
5. On December 13, 2004, the Illinois EPA filed a motion for leave to amend its Record to include the transcript of the NPDES permit information hearing as part of the Agency Record.
6. On December 15, 2004, the Hearing Officer granted the Agency's motion to amend its record.
7. On December 22, 2004, the Board received the Slocum District and the Resident Group's combine motion to compel the Illinois Environmental Protection Agency to produce the violation and litigation record for the Village of Wauconda's wastewater treatment plant from 1980 to the present.

8. The Agency's permitting decision in this case only pertains to the Village of Wauconda's request to expand its treatment plant design average flow discharge from 1.4 million gallons per day ("MGD") to 1.9 MGD during Phase I and to 2.4 MGD in Phase II.
9. This modified permit issued on August 23, 2004, will expire on November 30, 2005.
10. The Agency made its decision to issue the modified permit pursuant to Section 39 of the Act.
11. Regarding the prior noncompliance with the Act by the applicant, Section 39(a) of the Act provides that, "[i]n making its determinations on permit applications under this section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment." 415 ILCS 5/39(a) (*emphasis added*).
12. As is clear from the language, Section 39(a) only imposes a discretionary obligation on the Agency to consider the applicant's prior adjudications of noncompliance.
13. After initial investigation, the undersigned attorney found that one prior adjudication of noncompliance in the form of a consent decree was considered during the permitting decision process. No other documents related to noncompliance with the Act by the applicant were considered by the Agency in this case.
14. Today, the undersigned attorney request the Hearing Officer and the Board to allow the Agency to include this consent decree, 99 CH 720, entered by the Nineteenth Circuit Court on December 13, 2000, as par of the previously filed Agency Record.
15. The Slocum District and the Resident Group, however, demand production of all violations and litigation records for the Village of Wauconda from 1980 to present.

16. Their demand is irrelevant to this permit appeal and goes well beyond the requirements of Sections 39 and 40(e)(3) of the Act.
17. The Slocum District and the Resident Group's demand is irrelevant to the permit appeal because neither the Agency is required by the Act to consider all violations and litigation records from 1980 to present nor did it.
18. Further, as the Act specifically requires the Board to hear the petition "exclusively on the basis of the record before the Agency", demanding the introduction of documents that were not considered by the Agency during the permitting decision process would not only be inconsistent with the requirements of the Act but also be a waste of the Board's valuable time.
19. The Agency urges the Hearing Officer and the Board to DENY the Slocum District and the Resident Group's Motion to Compel. The Agency further urges the Hearing Officer and the Board to bar the Slocum District and the Resident Group from seeking information that is clearly outside the scope of the subject matter presented in this permit appeal.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Hearing Officer and the Board to TAKE NOTICE of the consent order and DENY the Slocum District and the Resident Group's Motion to Compel the Illinois EPA to Produce the Violation and Litigation Record.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

DATED: January 6, 2005

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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STATE OF ILLINOIS

COUNTY OF SANGAMON

)
)
)
)
)
SS

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **RESPONSE TO MOTION TO COMPEL THE AGENCY TO PRODUCE THE VIOLATION AND LITIGATION RECORD** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

(OVERNIGHT MAIL)

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and mailing it from Springfield, Illinois on January 6, 2005, with sufficient postage affixed as indicated above.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME

this 6th day of January, 2005.



Brenda Boehner

Notary Public

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