

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

DEC 12 2005

STATE OF ILLINOIS  
Pollution Control Board

C&F PACKING COMPANY, INC. an	)	
Illinois corporation,	)	
	)	
Petitioner,	)	
	)	PCB 06-053
v.	)	(Water-Variance)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY and	)	
LAKE COUNTY,	)	
	)	
Respondents.	)	

NOTICE

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

Brett D. Heinrich, Esq.  
Meckler Bulger & Tilson LLP  
123 North Wacker Drive  
Suite 1800  
Chicago, Illinois 60606

Lake County Department of Public Works  
650 West Winchester Road  
Libertyville, Illinois 60048

Dan Jasica, Assistant State's Attorney  
Civil Division  
Office of the State's Attorney of Lake County  
18 North County Street  
Waukegan, Illinois 60085

Victor Filippini, Esq.  
Holland & Knight LLC  
131 South Dearborn, 30<sup>th</sup> Floor  
Chicago, Illinois 60603

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the MOTION TO FILE INSTANTER/PURSUANT TO MOTION FOR EXTENSION OF TIME and MOTION TO DISMISS of the Illinois Environmental Protection Agency, copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Charles W. Gunnarson  
Assistant Counsel

DATED: December 8, 2005  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
217-782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

C&F PACKING COMPANY, INC. an )  
Illinois corporation, )  
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 ) PCB 06-053  
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**MOTION TO FILE INSTANTER/PURSUANT TO MOTION FOR EXTENSION  
OF TIME THE MOTION TO DISMISS OF RESPONDENT ILLINOIS  
ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by Charles W. Gunnarson, one of its attorneys, and for its Motion to File *Instanter*/Pursuant to Motion For Extension of Time its Motion to Dismiss, states as follows:

1. According to the notice and proof of service filed by the Petitioner C&F PACKING COMPANY, INC. (“C&F”), it filed its variance petition (“Petition”) in the above-captioned matter with the Illinois Pollution Control Board (“Illinois PCB”) on October 28, 2005 and the Petition was served upon the Illinois EPA on October 29, 2005 via messenger service.

2. Pursuant to 35 Ill. Adm. Code 101.506, all motions to dismiss must be filed within 30 days after service of the challenged document. Based on the date of service, the Illinois EPA had until November 29, 2005 to file any such motion pursuant to 35 Ill. Adm. Code 101.506.

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

3. On November 22, 2005 counsel for the Illinois EPA filed its Motion For Extension of Time to File Responsive Pleading with the Illinois PCB. Due to a death in the family of counsel for the Illinois EPA and the unavailability of other Illinois EPA staff necessary for review of any responsive pleading prior to filing due to the Thanksgiving holiday, counsel for the Illinois EPA was unable to adequately prepare and complete its response to the Petition by close of business November 29, 2005, and thus filed the above-noted motion. Counsel for the Petitioner C&F Packing Company, Inc. and Respondent Lake County were contacted by counsel for the Illinois EPA prior to the filing of the above-noted motion and expressed no objection to its filing.

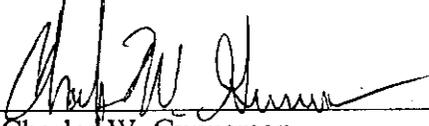
4. The Illinois PCB noted receipt of the Motion For Extension of Time to File Responsive Pleading on November 28, 2005 in the minutes of its regularly-scheduled meeting held on December 1, 2005. However, the Illinois PCB did not rule upon the motion during its December 1, 2005 meeting.

5. The Illinois EPA has filed simultaneously with the Illinois PCB this motion and its Motion to Dismiss the variance petition of Petitioner C&F Packing Company, Inc.

WHEREFORE, Respondent Illinois EPA respectfully requests the Illinois PCB to either allow it to file its Motion to Dismiss *Instanter* or pursuant to its earlier Motion For Extension of Time to File Responsive Pleading, or for any just cause found by the Illinois PCB.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Charles W. Gunnarson  
Assistant Counsel

DATED: December 8, 2005

Charles W. Gunnarson  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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STATE OF ILLINOIS  
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C&F PACKING COMPANY, INC. an )  
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PCB 06-053  
(Water-Variance)

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY and )  
LAKE COUNTY, )

Respondents. )

**MOTION TO DISMISS OF RESPONDENT ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

NOW COMES Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by Charles W. Gunnarson, one of its attorneys, and for its Motion to Dismiss the variance petition of Petitioner C&F PACKING COMPANY, INC. ("C&F"), pursuant to 35 Ill. Adm. Code 101.506 and 104.230(a) and (b), states as follows:

1. On October 28, 2005, according to the Notice and Proof of Service sworn to by C&F's attorney, it filed a Petition for Variance ("Petition") with the Illinois Pollution Control Board ("Board") for relief from the requirements of 35 Ill. Adm. Code 309.222(b)(2004). The Petition for Variance was physically received by the Illinois EPA on October 29, 2005, a Saturday and date-stamped November 1, 2005.

2. 35 Ill. Adm. Code 309.222(b) provides that, "Permit applications for sewer construction or modification shall be accompanied by signed statements from the owners of all intermediate receiving sewers and the receiving treatment works certifying that their facilities have adequate capacity to transport and/or treat the wastewater that will be

added through the proposed sewer without violating any provisions of the Act and this Chapter.”

3. In its Petition, C&F alleges that, because it has been unable to obtain the signature of Lake County, Illinois (“the County”) for the supplemental construction permit application (“Application”) for its wastewater pretreatment system (“System”) at its facility at 515 Park Avenue, Lake Villa, Illinois, it cannot resolve a pending enforcement with the State of Illinois regarding, in part, its failure to construct its wastewater pretreatment system per the terms of the initial construction permit granted to it by the Illinois EPA. Throughout its Petition, C&F alleges that the County is “improperly” withholding its signature from the Application because the required sewer connection fees owed to the County and the Northwest Region Water Reclamation Facility (“NRWF”), operated by the Village of Fox Lake, for the connection of its System to the County’s sewer interceptor and ultimately the NRWF have not been paid.

4. C&F alleges that, short of immediately obtaining the signature of the County on its Application, the only way it can obtain compliance is to construct its own self-contained wastewater treatment system and have its own treated effluent discharge to waters of the State.

5. C&F’s allegations fail to address many of the requirements of 35 Ill. Adm. Code 104.204, and the relief it seeks lies outside the Board’s variance regulations, and therefore should be dismissed.

6. One important fact that C&F fails to address in its Petition is that it holds a readily-available way to obtain compliance with 35 Ill. Adm. Code 309.222(b) through obtaining the County’s signature: it can pay the connection fee. While that would require

an expenditure of money, such connection fees are common not only in the Lake County, Illinois area but throughout the State of Illinois. Such fees are used to offset the costs of connection request reviews, sewer system operations, maintenance and repairs. C&F not only fails to recognize this means of compliance is available, but further fails to even acknowledge the cost of this option in its analysis of compliance alternatives. The availability of this option, which would seem to resolve the County's issues with providing its signature to C&F's Application, demonstrates that C&F "holds the key to the jailhouse" in this matter, and has essentially created its own noncompliance issue that can readily be resolved through its own reasonable efforts. Coupled with its failure to provide any cost data on the "self-treatment" option it noted in its Petition, and it is apparent C&F has failed to provide sufficient proof that compliance with 35 Ill. Adm. Code 309.222(b) is an arbitrary and unreasonable hardship.

7. The reliance by C&F on the Hawthorn Realty Group, Inc. v. Illinois Environmental Protection Agency and Village of Lincolnshire ("Hawthorn"); PCB 85-85 (October 10, 1985) case as support for its position is misplaced. In Hawthorn, a developer constructed a multi-building office park that straddled the then-corporate limits of the Village of Lincolnshire ("Village") and then-unincorporated Lake County, and wished to provide sewer service for all its development from a sewer connected to the Village. The Village initially allowed the connection of Phase I of the project, located within its corporate boundaries, but refused to sign off on the construction permit application needed for the connection of the rest of the project to its collection system until the developer annexed that portion of the project to the Village. The Board granted the developer a variance in that case because the only options available to it were to

construct its own treatment system or connect to another system, and it believed the annexation issue, really unrelated to the collection and treatment of wastewater, should not be addressed by the Board.

8. In the present case, there is no demand being placed on C&F to obtain the County's signature on the Application that is unrelated to the legitimate needs for the operation of the wastewater collection and treatment system. Connection fees are commonly charged to users of such systems to provide the operators with capital necessary to properly operate and maintain those systems. Governmental entities do not have to compel those outside their corporate limits to annex to them before they may choose to treat wastewater from outside their boundaries. Those governmental entities, however, do need operating capital to properly maintain and operate those systems, so requiring the payment of some user fees is not an unreasonable hardship upon those using the system. As such, C&F has not demonstrated that complying with 35 Ill. Adm. Code 309.222(b) poses an arbitrary and unreasonable hardship for which it should receive relief.

9. Were the Board to ultimately grant C&F a variance as it requests in this matter, it would set a dangerous precedent for future sewer system users to use variances as a means to avoid paying connection fees or to avoid other local requirements. Simply by alleging that the withholding of a signature on a permit application for any means is grounds to avoid the signature requirement, local and county governmental entities involved in sewage collection and treatment would be stripped of their right to control who uses their facilities and how those facilities are used. The requirement in 35 Ill. Adm. Code 309.222(b) is for applicants to obtain local signoff on their applications,

ostensibly by complying with whatever reasonable requirements the local authority might impose, not that local authorities are required to provide such signoff whenever sufficient capacity exists. The General Assembly surely did not intend for the Board or other entities to usurp the authority of local wastewater treatment entities to determine when and how they will accept dischargers to their systems. The fact that C&F already discharges to the County and the NWRP is irrelevant to the issue at hand, as the need for the fees remains constant and to allow such a variance eliminates local control over the amount and nature of dischargers to their wastewater collection and treatment systems.

10. The actual relief requested by C&F in this variance is curious and goes beyond the relief allowed in standard variances under the Board's rules. 35 Ill. Adm. Code 104.200(a)(1) states in pertinent part that, "A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board ... for a period of time not to exceed five years." (emphasis added) C&F requests the relief be granted retroactively from the date it first made a request upon the County for signature until, "up to one year from the time of the Board's decision or until the Illinois EPA has reviewed and approved the Supplemental Permit Application, whichever occurs first." (Var. p. 22) In essence, C&F is proposing it be allowed to avoid complying with 35 Ill. Adm. Code 309.222(b) altogether, since once the construction permit is issued by the Illinois EPA, the need for the County's signature would be rendered moot. The variance process is intended to provide only temporary relief from a regulatory requirement to allow the petitioner time to take steps to come into compliance. Under C&F's proposal, it would never have to comply with 35 Ill. Adm. Code

309.222(b). Such a request is contrary to the Board's own variance regulations as noted above, and as such cannot be granted by the Board.

11. Variances are not retroactive and the Board does not grant retroactive variances unless such relief is specifically justified. City of Carlyle v. Illinois Environmental Protection Agency, PCB 03-11, 7 (Nov. 7, 2002) ("Carlyle"), citing Deere & Co. v. IEPA, PCB 88-22 (Sept. 8, 1988). The Board will generally not apply a variance retroactively if the petitioner's hardship is self-imposed as a result of petitioner's inactivity or faulty decision-making. Carlyle, PCB 03-11, 7 (Nov. 7, 2002), citing Marathon Oil Co. v. IEPA, PCB 95-150 (May 16, 1996).

12. In Carlyle the Board refused to grant retroactive variance coverage to the petitioner when its noncompliance was due to its failure to accurately measure its customer base when determining if it would be forced to comply with a particular treatment standard based on customer size. In, City of Salem v. Illinois Environmental Protection Agency, PCB 02-87 (March 21, 2002) ("Salem") the Board refused to grant retroactive variance coverage to the petitioner when it filed its variance petition days before a compliance deadline was to be reached that had been known to the petitioner for some time. Salem, PCB 02-87, 6 (March 21, 2002).

13. The circumstances behind C&F's noncompliance in this matter are similar to those in the Carlyle and Salem cases. C&F failed to comply with the terms of the initial construction permit issued it by the Illinois EPA for its wastewater pretreatment facility. When it needed to obtain a supplemental permit to reflect the actual nature of the system, local authorities noted that a connection fee was owed by C&F for its wastewater discharge to their collection and treatment systems, and

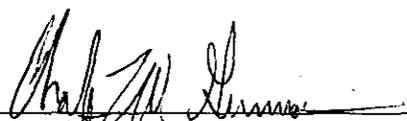
apparently have demanded that fee. C&F has apparently refused or otherwise failed to pay the fee, and thus cannot obtain local sign-off for its supplemental permit application. It has had since at least early November 2004 to rectify the permit issue, but for whatever reason has failed to address the fee issue with the local authorities. (See Exhibit A) Instead of addressing the issue in a direct fashion and resolve the issue it created by its own inaction/lack of action, C&F has chosen to circumvent the local review issue and instead seek a complete waiver of the local signature requirement. As in the Carlyle and Salem cases, C&F's situation for which it is seeking relief is a self-imposed problem, and as such does not warrant retroactive variance relief, much less any variance relief.

14. A more appropriate method to resolve whatever issues C&F has with complying with the County's requirements for sewer connection appears to be through a mandamus action filed in Circuit Court. Through a mandamus action, the Circuit Court would determine the appropriateness of the County's action in withholding signature from C&F's application, and if found to be in contravention of its duties under the law, be compelled to sign the Application and resolve the issue. Thus, an issue essentially of local concern could be addressed by a local tribunal, and the authority of the Circuit Court can more effectively address the true issue at hand here; namely, C&F's apparent unwillingness to pay the County a fee for its sewer connection and any legal justification for that position.

WHEREFORE, Respondent ILLINOIS EPA respectfully requests the Board to dismiss C&F's variance petition for the grounds noted above or for any other just cause found by the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Charles W. Gunnarson  
Assistant Counsel

DATED: December 8, 2005

Charles W. Gunnarson  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

Exhibit A



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR      RENEE CIPRIANO, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7002 3150 0000 1107 7840  
RETURN RECEIPT REQUESTED

November 1, 2004

C & F Packing Company  
515 Park Avenue  
Lake Villa, Illinois 60046  
Attention: Mr. Dennis Olson

**Re: Violation Notice: W-2004-00568**  
**Facility I.D.: ILU000624**

Dear Mr. Olson:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based upon review of available information and investigation by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each, an explanation of the activities that will be implemented and the time schedule for the completion of each activity. Also, if a pollution prevention activity will be implemented, indicate that intention in any written response. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject the proposal within 30 days of receipt.

Page 2  
C & F Packing Company  
VN W-2004-00568

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

Written communications should be directed to BEVERLY BOOKER at the ILLINOIS EPA, BUREAU OF WATER, CAS #19, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276. All communications must include reference to this Violation Notice number, W-2004-00568.

Questions regarding this Violation Notice should be directed to BARB CONNER at 217/782-9720.

Sincerely,



Michael S. Garretson, Acting Manager  
Compliance Assurance Section  
Bureau of Water

Attachment A  
Inspection Report Enclosed

ILU000624

**C & F PACKING COMPANY****VIOLATION NOTICE: W-2004-00568**

Questions regarding the violations identified in this attachment should be directed to Barb Conner at (217) 782-9720.

On July 9 and 10, 2004, the operators at the Village of Fox Lake Water Reclamation Facility noted a slug load, which was traced to C & F Packing. The operators called C & F Packing and were informed that a malfunction in the pretreatment system had resulted in the slug loads at the POTW. On August 15, 2004, the Village of Lake Villa was called out for a sanitary sewer manhole overflow on Park Avenue and Route 83 directly across the street from C & F Packing. The cause was found to be an obstruction of the sewer flows due to accumulated grease in the area of the company's lateral connection to the sewer.

On September 3, 2004, representatives of the Villages of Fox Lake and Lake Villa and of the Illinois EPA conducted a follow-up site investigation. During this investigation, both the manhole with the C & F Packing connection in the sanitary service line, which had been plugged, and the manhole across the street, which had overflowed, were observed. All overflowed sewage entered a catch basin that discharges into a pond in a residential subdivision. The pond was entrenched with algae. This pond overflows into the storm sewer, which ultimately flows to the wetlands. An inspection was also made of the C & F Packing pretreatment system. During this inspection it was noted that the existing pretreatment system deviated significantly from the plans and specifications that were submitted to the Illinois EPA and permitted by Permit No. 2002-EN-0089-1.

A review of information available to the Illinois EPA indicates the following violations of statutes, regulations or permits. Included with each type of violation is an explanation of the activities the Illinois EPA believes may resolve the violations including an estimated time period for resolution.

**Pass Through/Interference**

C & F Packing has discharged wastewater with a high concentration of grease causing an obstruction of sewer flows and slug loads at the Village of Fox Lake Water Reclamation Facility. This situation is expected to be resolved immediately.

<b><u>Violation Date</u></b>	<b><u>Violation Description</u></b>
07/09/2004, 07/10/2004, and 08/15/2004	No person shall introduce pollutants which interfere with the operation or performance of the POTW.
Rule/Reg.:	Section 12(a) and (h) of the Act, 415 ILCS 5/12(a) and (h) (2004), 35 Ill. Adm. Code 307.1101 (a) (2)

ILU000624

C &amp; F PACKING COMPANY

VIOLATION NOTICE: W-2004-00568

**Systems Reliability**

Review the operations/operational procedures of the pretreatment system and evaluate the equipment in order to correct the deficiencies, which caused the violations. Compliance is expected to be achieved immediately.

<b>Violation Date</b>	<b>Violation Description</b>
0709/2004 and 07/10/2004	All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards.
Rule/Reg.:	Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), 35 Ill. Adm. Code 306.102

**Failure to Construct Wastewater Treatment Facility as Permitted by Illinois EPA**

Take the appropriate actions to assure that the pretreatment system conforms with the plans and specifications that were submitted to the Illinois EPA resulting in the issuance of the construct and/or operating Permit No. 2002-EN-0089-1. Compliance is expected to be achieved within 45 days.

<b>Violation Date</b>	<b>Violation Description</b>
09/03/2004	There shall be no deviations from the approved plans and specifications.
Rule/Reg.:	Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), Standard Condition 3 of Permit No. 2002-EN-0089-1

STATE OF ILLINOIS

COUNTY OF SANGAMON

)  
)  
)  
)  
)

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached **MOTION TO FILE INSTANTER/PURSUANT TO MOTION FOR EXTENSION OF TIME** and **MOTION TO DISMISS**, upon the person to whom it is directed, by placing copies in an envelope addressed to:

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

Brett Heinrich, Esq.  
Meckler Bulger & Tilson LLP  
123 North Wacker Drive  
Suite 1800  
Chicago, Illinois 60606

Lake County Department of Public Works  
650 West Winchester Road  
Libertyville, Illinois 60048

Dan Jasica, Assistant State's Attorney  
Civil Division  
Office of the State's Attorney of Lake County  
18 North County Street, 4<sup>th</sup> Floor  
Waukegan, Illinois 60085

Victor Filippini, Esq.  
Holland & Knight LLC  
131 South Dearborn, 30<sup>th</sup> Floor  
Chicago, Illinois 60603

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

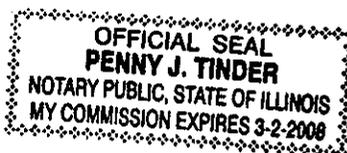
and mailing them from Springfield, Illinois on December 8, 2005 with sufficient postage affixed for first class mail.

*Nancy J. Lampert*

SUBSCRIBED AND SWORN TO BEFORE ME

this eighth day of December, 2005

*Penny J. Tinder*  
Notary Public



**THIS FILING IS SUBMITTED ON RECYCLED PAPER**