

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 14 2005

STATE OF ILLINOIS
Pollution Control Board

C & F PACKING COMPANY, INC.,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB 2006-053
ILLINOIS ENVIRONMENTAL)	(Variance Request)
PROTECTION AGENCY and)	
COUNTY OF LAKE,)	
Respondents.)	

NOTICE OF FILING

Charles Gunnerson
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Illinois Environmental Protection Agency
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Springfield, IL 62794-9276

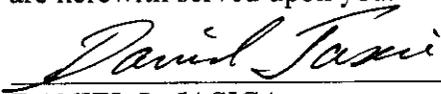
Bradley P. Halloran
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Howard Teegan
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Phillips & Morozin, Ltd.
74 E Grand Avenue
P. O. Box 86
Fox Lake, IL 60020

PLEASE TAKE NOTICE that I have today, December 13, 2005, filed by FedEx Next Day Air with the Office of the Clerk of the Pollution Control Board, ten copies of the Respondent County of Lake's Motion for Joinder of Village of Lake Villa and Village of Fox Lake, copies of which are herewith served upon you.



DANIEL L. JASICA
Assistant State's Attorney

December 13, 2005

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PROOF OF SERVICE

I, the undersigned, on oath state that I have served on December 13, 2005, the attached Respondent County of Lake's Motion for Joinder of Village of Lake Villa and Village of Fox Lake, by U.S. Mail, postage prepaid, upon the following persons:

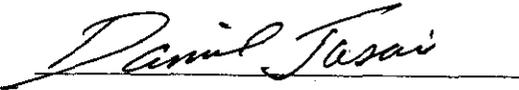
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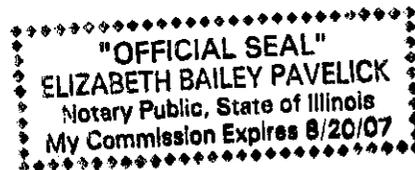
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Subscribed and Sworn to before me this
13th day of December, 2005


NOTARY PUBLIC



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PCB 2006-053
(Variance Request)

**RESPONDENT COUNTY OF LAKE'S MOTION
FOR JOINDER OF VILLAGE OF LAKE VILLA
AND VILLAGE OF FOX LAKE**

Respondent County of Lake (the "County"), by and through its attorneys, Lake County State's Attorney Michael J. Waller and Assistant State's Attorney Daniel L. Jasica and Victor Filippini, Holland & Knight LLP, files this its motion for joinder of parties pursuant to 35 Ill. Admin Code 104.403(a) and moves to add the Village of Lake Villa ("Lake Villa") and the Village of Fox Lake ("Fox Lake") as respondents in this proceeding. In support thereof, the County would show the Board as follows:

I. INTRODUCTION

Petitioner C & F Packing has filed its Petition for Variance (the "Petition"), seeking an exemption from the requirement of obtaining intermediate sewer owner certification as set forth at 35 Ill. Admin Code §309.222(b). Such variance would facilitate C & F Packing's expanded sewage discharges into the County's Northwest Interceptor and, ultimately, the Fox Lake Wastewater Treatment Plant. As the County established in its Combined Motion to Dismiss and Objection to the Petition (the "County's Objection"), C & F Packing's right to use the County's Northwest Interceptor is derived from a series of intergovernmental agreements, specifically: 1) the 1977 Fox Lake/County Agreement, pursuant to which Fox Lake agreed, subject to the terms

and conditions of the Agreement, to accept and treat sewage delivered to it via the County's Northwest Interceptor (*see* Fox Lake/County Agreement attached as Exhibit 2 to the County's Objection), and 2) the County/Lake Villa Agreement which, subject to the conditions and limitation stated therein, makes specific capacity in the County's Northwest Interceptor available to certain Lake Villa customers (*see* County/Lake Villa Agreement attached as Exhibit 3 to the County's Objection).

As set forth in great detail in the County's Objection, one explicit condition and limitation on Lake Villa's (and therefore its customers') rights to connect to and discharge into the Northwest Interceptor is the payment of specified connection fees to pay for the cost of the construction, operation, and replacement of the Northwest Interceptor and the Fox Lake Wastewater Treatment Plant. To date, Lake Villa and C & F Packing remain nearly half a *million* dollars in arrears in the payment of the mandated connection fees relating to C & F Packing's existing operations. *See* County Objection, pp.5-6.

Through its Petition, C & F Packing seeks to skirt the outstanding connections fees issue and to obtain authorization to discharge even greater amounts of sewage into the County's Northwest Interceptor and the Fox Lake Wastewater Treatment Plant in derogation of the governing County/Lake Villa and Fox Lake/County Agreements. Therefore, in the event that the Petition is not dismissed pursuant to the County's and the IEPA's respective pending motions to dismiss pursuant to 35 Ill. Admin. Code §104.230(a), Lake Villa and Fox Lake should properly be joined as respondents to this proceeding in order to provide a complete adjudication of the matters raised by the Petition and the County's Objection.

II. JOINDER IS PROPER

Either the Board or a party may move at any time to add parties to a pending proceeding when:

- 1) A complete determination of a controversy cannot be had without the presence of the person who is not already a party to a proceeding;
- 2) The person who is not already a party to the proceeding has an interest that the Board's order may affect; or
- 3) It may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding.

35 Ill. Admin. Code §101.403(a).

As discussed further below, both Lake Villa and Fox Lake must properly be added as parties for a full adjudication of the issues confronting the Board.

A. Joinder of Lake Villa is Proper

Obviously, C & F Packing's entitlement to utilize the County's Northwest Interceptor is entirely derivative of the County/Lake Villa Agreement and Lake Villa's compliance with the terms of that Agreement. *See* County's Objection, pp.3-4. The issue of outstanding connection fees is as much a matter of concern to Lake Villa as it is to C & F Packing because under the County/Lake Villa Agreement, Lake Villa, is responsible for collecting and remitting such fees to the County. *See* County/Lake Villa Agreement, §§3(e), 6, and 7.

Moreover, in the event the connection fees are not paid and the Board allows C & F Packing to obtain a permit without the County's certification as the intermediate sewer owner, Lake Villa faces the prospect that the County will declare the County/Lake Villa Agreement breached and exercise its rights thereunder to the detriment of Lake Villa's interests.

Of course, Lake Villa also serves as the local sewer provider for C & F Packing and, as the local interceptor owner, any increased discharge facilitated by the granting of a variance directly impacts Lake Villa's local collection system.

Perhaps more fundamentally, although no variance is appropriate in this case, if the Board attempts to resolve the current impasse, no variance should be granted unless appropriately

conditioned. Such conditions should expressly provide for payment of required connection fees, and any condition that implicates the payment of connection fees or touches upon the County/Lake Villa Agreement necessarily directly impacts Lake Villa as a party to that contract. In fact, *any* ruling on the merits will presumably have to take the County/Lake Villa Agreement into account and, of course, Lake Villa proves a necessary party to any Board adjudication addressing, interpreting, or analyzing the County/Lake Villa Agreement. *See City of Evanston v. Regional Transportation Authority*, 568 N.E.2d 244, 209 Ill. App. 3d 447, 456 (1st Dist. 1991). Thus, Lake Villa has a direct interest in the outcome of the proceeding. And, in order for any Board ruling to have a controlling or preclusive effect with respect to the core underlying issues, all necessary parties, including Lake Villa, must be joined. Therefore, for any number of legal as well as practical reasons, Lake Villa proves a necessary and appropriate party to be joined in the instant proceeding.

B. Joinder of Fox Lake is Proper

Fox Lake serves as the treatment authority for the additional discharge that C & F Packing seeks through their pending permit. Therefore, Fox Lake certainly has an interest and also stands to lose if, because of any variance granted by the Board, additional flows are sent to the Fox Lake Wastewater Treatment Plant without commensurate connection fees being paid.

Moreover, because the County/Lake Villa Agreement was negotiated in accordance with, and in furtherance of and as contemplated by, the Fox Lake/County Agreement, *see* County's Objection, pp. 2-3, Fox Lake also has an interest in any Board adjudication addressing, interpreting, or analyzing the County/Lake Villa Agreement as well as any connection fees payable thereunder.

In addition, any condition that the Board may wish to impose upon any variance—whether relating to discharge amounts, discharge flow qualities or other characteristics, as well as the

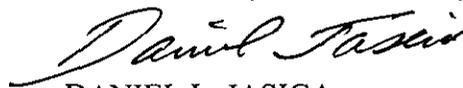
payment of connection fees--will impact Fox Lake both as the treatment authority and also as the recipient of almost 90% of the connection fees paid to the County under the County/Lake Villa Agreement. See Affidavit of Peter Kolb, attached to the County's Objection as Exhibit 1, ¶4.

To provide a complete and proper adjudication of the matters raised in the Petition and the County's Objection, and in order for the Board's ruling to have a preclusive effect over all those effected by its ruling, Fox Lake should also be joined.

III. CONCLUSION

For the foregoing reasons, Respondent County of Lake moves the Board to join the Village of Lake Villa and the Village of Fox Lake as parties in the pending proceeding pursuant to 35 Ill. Admin. Code §101.403.

Respectfully submitted,
RESPONDENT COUNTY OF LAKE
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State's Attorney of Lake County



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