

MAR - 8 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

DES PLAINES RIVER WATERSHED)
ALLIANCE, LIVABLE COMMUNITIES)
ALLIANCE, PRAIRIE RIVERS)
NETWORK, and SIERRA CLUB)
Petitioners)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF NEW LENOX)
Respondents.)

PCB 04-88
(APPEAL FROM IEPA
(DECISION GRANTING
NPDES PERMIT)

NOTICE OF FILING

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

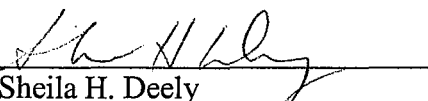
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street - Suite 11-500
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Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on March 8, 2005, we filed the attached **REPLY TO PETITIONERS' RESPONSE TO MOTION FOR STAY OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT and MOTION TO FILE REPLY INSTANTER** with the Clerk of the Pollution Control Board, a copy of which is herewith served upon you.

Respectfully Submitted,


Sheila H. Deely

Roy M. Harsch
Sheila H. Deely
GARDNER CARTON & DOUGLAS LLP
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THIS FILING IS BEING SUBMITTED ON RECYCLED PAPER

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CERTIFICATE OF SERVICE

MAR - 8 2005

The undersigned certifies that a copy of the foregoing **Notice of Filing** and the attached **STATE OF ILLINOIS Pollution Control Board**
REPLY TO PETITIONERS' RESPONSE TO MOTION FOR STAY OF PETITIONERS'
MOTION FOR SUMMARY JUDGMENT and MOTION TO FILE REPLY INSTANTER was
filed by hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the
parties to whom said Notice is directed by electronic delivery and first class mail on March 8, 2005.



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MOTION TO FILE REPLY INSTANTER

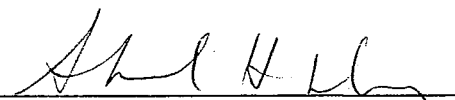
The Village of New Lenox ("the Village") moves to file a reply on its Motion For Stay of Petitioners' Motion For Summary Judgment . In support thereof, the Village states as follows:

1. The Village believes that Petitioners' response to the Village's Motion for Stay is a continued abuse of the rules of procedure and inappropriately argues the merits of the case.
2. In addition, the Village wants to respond to a derogatory and misleading characterization with respect the permit proceedings in the case.
3. The Village's reply is brief and will be limited to response to Petitioners.

WHEREFORE, the Village moves the Board to accept its Reply on the Motion for Stay.

Respectfully submitted,
THE VILLAGE OF NEW LENOX

By:


One of Its Attorneys

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CH02/ 22371940.1

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**REPLY TO PETITIONERS' RESPONSE TO MOTION FOR STAY
OF PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

The Village of New Lenox ("the Village"), by its attorneys Gardner Carton & Douglas LLP, submits this reply to Petitioners' Response to Motion for Stay of Petitioners' Motion for Summary Judgment.

1. The Village believes that Petitioners' reply in this case is a continued abuse of the rules of procedure. It is premised entirely on the Board's acceptance of Petitioners' view of the scope of discovery, which is currently pending before the Board, and Petitioners also inappropriately use their response as an opportunity to argue the merits of this case. In fact, Petitioners' entire response underscores the need for discovery, not disproves it.

2. Petitioners claim first that the Village thinks it has a "legal right to hide" during the public comment process and then later depose members of the public who comment. Petitioners evidence both a derogatory contempt for the Village's rights in this proceeding and an inappreciation that it is the Village's permit at issue here. As for the public comment period, the Village did everything it was required to do and provided Illinois EPA with ample information to be able to hold a meaningful public comment period, as evidenced by Petitioners' extensive

participation and voluminous submittals. What other participation Petitioners have in mind for that proceeding is unclear, as the Village would not have been able to cross-examine any members of the public that commented anyway. It is Petitioners that think they have a legal right to avoid discovery, which is a standard part of any permit challenge before the Board.

3. Having slung the mud on what Petitioners do not even claim to be the “key point” in their response, Petitioners then state that the Village has not identified anything that could “*possibly* be disclosed by discovery” that would affect Petitioners’ demonstration of the basis for their summary judgment motion, as if Petitioners’ unsworn word about its case should be enough for the Board. For example, Petitioners claim that “the offensive conditions standard is currently being violated,” and “the type of pollution coming from the plant was exactly the kind of phosphorus pollution likely to cause the offensive conditions reported by numerous eyewitnesses.” See Pet. Mem. at 12. Petitioners also state that “There is no doubt that the kind of algal growth . . . are generally a result of high levels of nutrients,” and “it is clear in the record that Hickory Creek has high levels of phosphorus and that the New Lenox sewerage treatment plant discharge is a major source of phosphorus.” See Pet. Mem. at 4. These claims are simply not the case, and the Village has the right to inquire into the basis for Petitioners statements. The Village strongly disagrees with these conclusions, and the Illinois EPA disagreed as well.

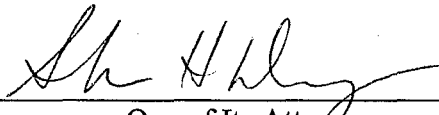
4. Petitioners’ arguments merely call attention to the intertwined nature of the necessity for an understanding from the Board as to whether the status quo, in which discovery is permissible and a hearing is held, will continue to be in place, or whether the rules concerning third party permit appeals are going to be changed in this proceeding. As Petitioners concede, the Village has identified three broad categories of discovery that are necessary in this case.

Board rules state that "All relevant information and information calculated to lead to discovery of relevant information is discoverable."

5. Finally, Petitioners' state that the affidavit filed by New Lenox "obviously" does not comply with Supreme Court Rule 191(b). Notwithstanding its obviousness, the Village disagrees. The areas the Village wants discovery on are plain enough and are explained in the motion, and the fundamental discovery issue currently pending before the Board in the parties position papers and highlighted by Petitioners' Motion for Summary Judgment is plain enough as well.

Respectfully submitted,

The Village of New Lenox

By: 
One of Its Attorneys

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