

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

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MAR - 7 2005

STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,)

VS.)

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)

VS.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY AND VILLAGE)
OF WAUCONDA, ILLINOIS)

Respondents.)

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

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)

VS.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY AND VILLAGE)
OF WAUCONDA, ILLINOIS)

Respondents.)

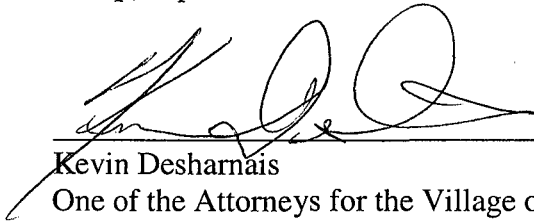
PCB 05-59
(3rd Party NPDES Permit
Appeal)
(Consolidated)

NOTICE OF FILING

TO: See attached Certificate of Service

Please take notice that on March 7, 2005, I will file with the Illinois Pollution Control Board an original and nine copies of this **Notice of Filing and Reply Brief on Behalf of the Village of Lake Barrington and Cuba Township**, copies of which are attached hereto and hereby served upon you.

Dated: March 4, 2005



Kevin Desharnais
One of the Attorneys for the Village of Lake
Barrington and Cuba Township

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Kevin G. Desharnais
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STATE OF ILLINOIS
Pollution Control Board

ORIGINAL
CERTIFICATE OF SERVICE

Kevin Desharnais, an attorney, hereby certifies that on March 4, 2005, a copy of the foregoing **Notice of Filing and Reply Brief on Behalf of the Village of Lake Barrington and Cuba Township** was served on the persons listed below by UPS Next Day Air for delivery on Monday March 7, 2005.

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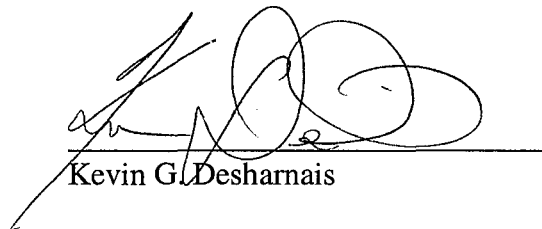
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Brief is its claim that by their activities and pleadings the Village of Lake Barrington and Cuba Township are endangering the health and safety of the Resident Group:

“The Resident Group notes that the Village of Lake Barrington and Cuba Township (“**Municipal Petitioners**”) and others, are captioned as Petitioners in these Consolidated Proceedings but the Resident Group advises this, The Honorable Illinois Pollution Control Board, that the activities and recent pleadings of the Municipal Petitioners are in conflict with the views of the Resident Group, and if implemented will endanger the health and safety of the Resident Group.”

Glenn Brief, p. 8

This claim is an apparent restatement of Mr. Glenn’s prior Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend in which the Resident Group and the Drainage District sought to Realign the Municipal Petitioners as respondents because those petitioners had entered into a Stipulation and Intergovernmental Agreement with the Village of Wauconda to achieve more stringent Wauconda discharge limitations. The Motion to Realign was withdrawn when Lake Barrington and Cuba Township filed their response, challenging the motion and questioning how the Stipulation and IGA failed to address any legitimate concern raised by the Resident Group.

Despite withdrawal of its Motion to Realign, the Resident Group is at it again, angered over the Stipulation and IGA. Not surprisingly, however, there is no basis cited for their unsupported and unsustainable assertion that the Municipal Petitioners’ entry into the Stipulation and IGA is endangering local health and safety.¹ In fact, the Stipulation and

¹ Mr. Glenn’s claim that the Municipal Petitioners do not speak for the Resident Group is interesting in light of his unsupported claim elsewhere that the Resident Group numbers 500. Glenn Br. at 15. Even considering an unincorporated association as a possible valid party under the Board rules, Mr. Glenn has 18 clients listed as petitioners in this case. Most have raised very limited issues and concerns. See Municipal-Environmental Petitioners’ Main Brief, Ex. B, First Column. None of the Resident Group petitioners appeared at the hearing in this matter (all other parties were present) and the only member of the public attending was actually an

(cont’d)

Intergovernmental Agreement require Wauconda to implement more advanced treatment than required by IEPA in its permit or achieved by other treatment plants in the area. Post-Hearing Brief of the Environmental Protection Agency at 27. They cover every legitimate issue raised by any Petitioners in this proceeding, including the antidegradation analysis, by requiring no additional impact, the water quality violations and wetland concerns by requiring nutrient limits and DO monitoring, and pretreatment concerns by requiring a pretreatment program. Groundwater concerns are addressed with a monitoring program. Neither the Resident Group nor the Drainage District have identified any issue not covered.² Mr. Glenn's assertions are plainly wrong and designed for shock rather than any credible argument to the Board. Lest there be any confusion about their position, Lake Barrington and Cuba Township have taken careful steps to retain and rely on environmental professionals and respected environmental organizations to ensure that the Wauconda permit requires one of the most advanced treatment processes in the state for the single purpose of protecting the health and welfare of the community. They have attained that purpose and achieved that protection with the Stipulation and IGA.

(... cont'd)

attorney for the Drainage District (Ms. Lorraine Ray). In fact, at prehearing conferences Mr. Glenn sought to have the hearing cancelled. It is suggested that the hearing attendance reflects the high degree of community satisfaction with the results obtained in the Stipulation and IGA.

² Calls for a new antidegradation analysis are addressed by Wauconda's agreement to limit its loadings to current levels. Concerns regarding wetlands and water quality are addressed by agreements to treat for phosphorus and, upon funding, for nitrogen and to provide aeration and monitor DO. Pretreatment is required. Groundwater monitoring provisions are instituted. Radium testing is required. Receivership or permit revocation are not legally appropriate in a permit appeal. See their main briefs for the relief request by the Resident Group, pp. 34-35 and the Drainage District, unnumbered pp. 27-28. For the permit and Stipulation measures responsive to the legally cognizable issues, see Municipal Environmental Petitioners' Main Brief, Ex. B and IEPA Decision R.2244-45.

Irrespective of the validity of Mr. Glenn's argument that the current discharge conditions are unacceptable, this proceeding is not a proper forum for revisiting decisions made on the current permit. See Glenn Br. at 9-13. The current permit became final years ago and is not at issue in this case. While the Board may have the power to revoke a permit in an enforcement action, see Glenn Br. at 18, Mr. Glenn first has to bring and prove that enforcement action in order to have a basis to ask for that remedy.

B. The Glenn Brief's Reference to the Tarkowski "Superfund Site" Is Irrelevant and Improper.

In one of its odder digressions, the Glenn Brief, at 13, raises a purported issue regarding what it refers to, incorrectly as it is not listed on the National Priorities List, as the "Tarkowski Superfund Site" ("Superfund 2"). The Glenn Brief is referring to a site owned by Mr. John Tarkowski in Lakeland estates. This property is downstream of the Wauconda discharge and does not discharge to the Wauconda plant. Without explaining how this downstream property has any relevance to the Wauconda permit, the brief asserts that Mayer, Brown & Platt represented Mr. Tarkowski in certain federal court proceedings, that Mayer, Brown, Rowe & Maw LLP represents Lake Barrington and Cuba Township in this proceeding and the Resident Group has additional information about the site "which is confidential and cannot become part of the public record." Glenn Br. at 14.

Mayer, Brown, Rowe & Maw LLP represents the Village of Lake Barrington and Cuba Township in this matter. Mayer, Brown & Platt was previously appointed by the federal court for the Northern District of Illinois to represent John Tarkowski in the matter, United States v. Tarkowski, No. 99 C 7308. After trial, the matter was decided in Mr. Tarkowski's favor. It was appealed to the Seventh Circuit by USEPA, and resolved by the Seventh Circuit in Mr. Tarkowski's favor in a ruling which noted the agency's conclusions as to the lack of any kind of environmental hazard presented by Mr. Tarkowski's property. See 248 F.3d 596, 598 (7th Cir. 2001).

There is no connection between the downstream Tarkowski site or United States v. Tarkowski and the Wauconda discharge other than the Glenn Brief's apparent attempt to discredit the Municipal Petitioners by reference to their law firm's successful pro bono

defense in a matter in which it was appointed by the court. The Glenn Brief provides no explanation and cites no connection. This is irresponsible and illustrates nothing more than the poverty of real issues on which the Resident Group can rely.

C. The Stipulation and IGA Provide An Appropriate Resolution of the Legitimate Issues Raised in This Case, Including the Issues Raised by the Resident Group and Drainage District.

As explained in its main brief, the Municipal Petitioners have participated in these proceedings in a professional and technically supported manner and have achieved a resolution with the Village of Wauconda and the Environmental Petitioners in a Stipulation and IGA which addresses every legitimate issue raised by the petitioners. The Slocum Drainage District in its main brief appropriately describes the issues which concern it, and the Glenn Brief, while more difficult to follow, addresses many of these same issues, e.g. antidegradation, water quality violations and pretreatment.³ Each one of these issues is addressed by the Stipulation and IGA which effectively implement a no impact alternative for the Wauconda plant by limiting additional loadings, achieving the result of an antidegradation analysis.


Attacking the Municipal Petitioners for achieving all that is legally achievable, based on nothing more than possibilities, suggestions and innuendo, see e.g. Glenn Br. at 16 (“Residents mentioned the possibility . . .,” “Residents then raised the possibility . . .”) is irresponsible and legally wrong and should be rejected by the Board. The resolutions

³ The Municipal Petitioners do not address the claims of the Drainage District and the Resident Group that they raised these issues before the Agency, as they were required to do by the Act, 415 ILCS 5/40(e), even though in fact their claims are based on the argument that they can take credit for the fact that others such as the Municipal Petitioners raised these issues. See e.g. Drainage District main brief at unnumbered pp. 3-4. In fact, the participation by the Drainage District and the Resident Group per se (Mr. Glenn did not announce that his comments were made on behalf of anyone but himself) was extremely limited, with no attempt at the time to incorporate the testimony of others or state that the commenters were declining to repeat testimony already given. See Municipal-Environmental Petitioners’ Main Brief, Exhibit B, First Column.

achieved in the Stipulation and IGA represent a legally and technically supported resolution of the issues, based on the record, and the Municipal Petitioners urge their adoption by the Board.

March 4, 2005

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