

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 22 2004

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, ILLINOIS)

Respondents.)

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

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Pollution Control Board

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,)

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Appeal)
(Consolidated)

NOTICE OF FILING

TO: See Attached Certificate of Service

Please take notice that on December 22, 2004, I filed with the Illinois Pollution Control Board an original and four (4) copies of the attached REQUEST TO ADMIT TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, copies of which are attached and hereby served upon you.

Dated: December ___, 2004

Jay J. Glenn
Attorney for the Resident Group

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Attorney No. 06205127

Bonnie L. Macfarlane
Attorney for the Slocum Lake
Drainage District of Lake County,
Illinois

STATE OF ILLINOIS)
) ss.
COUNTY OF MCHENRY)

CERTIFICATE OF SERVICE

Bonnie L. Macfarlane, an attorney, hereby certifies that a copy of the foregoing Notice of Filing, Certificate of Service, and REQUEST TO ADMIT TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, was served on the persons listed below by first Class U.S. Mail, proper postage prepaid, on December __, 2004.

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

**Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Ste. 11-500
Chicago, Illinois 60601**

**Percy L. Angelo
Russell R. Eggert
Kevin G. Desharnais
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**Albert Ettinger
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**William D. Seith
Total Environmental Solutions, P.C.
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Lombard, IL 60148**

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Springfield, IL 62794-9276**

Bonnie L. Macfarlane

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JOINT REQUEST TO ADMIT
TO THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES, the Slocum Lake Drainage District of Lake County, Illinois, an agency of the State of Illinois, through their attorney, Bonnie Macfarlane, P.C., and The Resident Group, by and through their attorney, Jay J. Glenn, and pursuant to 35 Ill. Adm. Code 101.202, propounds the following REQUEST TO ADMIT to the Illinois Environmental Protection Agency, as follows:

1. That on March 24, 2003, the Illinois Environmental Protection Agency (hereinafter referred to as the "IEPA") received a letter of transmittal from the engineering and architectural firm of Bonestroo Devery & Associates.¹
2. That the letter of transmittal was signed by Robert J. Devery, P.E. and William G. Dinchak, P.E., DEE.²

¹IEPA #001608 thru 001609

² IEPA #001609

3. The transmittal letter evidenced delivery of the Final NPDES Permit Application from the Village of Wauconda.³

4. That on April 3, 2003, the IEPA received the Final letter of transmittal from the Village Engineers containing Section B.6 on Page 8 of 21 of the NPDES Permit Application.

5. That on April 7, 2003, the Illinois Environmental Protection Agency (hereinafter referred to as the "IEPA") received the completed Table in Section B.6 from the Village of Wauconda relating to its NPDES Permit Application.⁴

6. That on April 14, 2003, the IEPA completed its anti-degradation Assessment.⁵

7. That the IEPA has actual knowledge that the Fiddle Crrek Wetlands include Fiddle Lake.

8. That the IEPA anti-degradation assessment was based on a facility related stream survey for Wauconda Creek in 1993.⁶

9. That on May 18, 2003, the IEPA forwarded to the Village of Wauconda its draft permit.⁷

10. That the IEPA issued a Draft Modified NPDES Permit knowing that the Permit Application was incorrect or false.

11. That the IEPA did not request the Village of Wauconda to correct, amend or re-file its NPDES Permit Application.

10. That the IEPA anti-degradation assessment failed to note and/or assess the Tarkowski superfund site (hereinafter referred to as "Superfund 2").⁸

11. That the IEPA anti-degradation policy is mandated by 40 CFR 131.12.

³IEPA #001671 thru 001672

⁴References to IEPA#-...are to the IEPA document numbers filed before the Illinois Pollution Control Board as the "Record." IEPA - #001671.

⁵IEPA - #001677 thru #001678

⁶IEPA - #001677

⁷IEPA - #001690

⁸IEPA - #000807; #000828

12. That the IEPA has actual knowledge that the Fiddle Creek, Fiddle Marsh, Fiddle Lake and Slocum Drainage District of Lake County channels (hereinafter referred to as the "Fiddle Creek Wetlands") has a number of subdivisions whose properties are directly connected to the Fiddle Creek Wetlands.

13. That the IEPA has actual knowledge that the Fiddle Creek Wetlands has a Lake County Forest Preserve directly connected to the Fiddle Creek Wetlands.

14. That the IEPA has actual knowledge that the Fiddle Creek Wetlands are primary contact waters.⁹

15. That the IEPA has actual knowledge that on November 28, 1975, no sewer outfall from any Sewer Treatment Plant discharged into the Fiddle Creek Wetlands.

16. That in the 1980's the IEPA issued its first NPDES permit which allowed the Village of Wauconda to re-locate its Wauconda Wastewater Treatment Plant (hereinafter referred to as "WWTP") Outfall to discharge into the Fiddle Creek Wetlands.

17. That the IEPA has actual knowledge that the Fiddle Creek Wetlands have suffered degradation since the IEPA issued the Village of Wauconda an NPDES permit allowing discharges into the Fiddle Creek Wetlands.

18. That on July 31, 2003, the IEPA has actual knowledge that the Wauconda Task Group has failed to comply with NPDES permit number 2001-EP-3444, in that its Boron concentrations always significantly exceeded limits.¹⁰

19. That on July 31, 2003, the IEPA has actual knowledge that the Village of Wauconda has failed to comply with its current NPDES permit Ill 0020109 in that the Village of Wauconda's WWTP discharges into a zero flow stream and the effluent probably exceeded the 1 mg/liter limit.

20. That on July 8, 2004, the IEPA had actual knowledge that the arsenic concentration was in excess of the effluent limit and may violate acute water quality standards.¹¹

21. The IEPA has failed to bring enforcement action against the Wauconda Task Group for violations of its NPDES permit.

⁹IEPA - #000580, reference to E-Mail from Ms. Kristen Del Boccio, the IEPA has failed to provide copies of this Exhibit M, and supplemented with testimony and pictures.

¹⁰IEPA - This document was first seen on Friday, December 17, 2004, in an on-site inspection of IEPA documents by the undersigned counsel.

¹¹IEPA - #002171

22. The IEPA has failed to bring enforcement action against the Village of Wauconda for violations of its current NPDES permit.

23. The Village of Lake Barrington has submitted an application to have the Fiddle Creek Wetlands listed as a 303(d) impaired waters.

24. That in June, 2004, the IEPA apparently denied the Fiddle Creek Wetlands application to be listed as a 303(d) impaired waters because of QAPP issues.¹²¹³

25. That there was a discussion among the IEPA staff and others that the criteria used to deny the 303(d) impaired waters classification for the Fiddle Creek Wetlands was not in accordance with prior 303(d) evaluations.

26. That the IEPA was advised of the alternative of running a pipe to the Fox River but the IEPA staff was directed not to consider this option.

27. That from September 9, 2003 until August 23, 2004, the IEPA held numerous secret and closed discussions and meetings with the Village of Wauconda and the Village of Lake Barrington and others.

28. The Resident Group was excluded from all IEPA discussions and meetings.

29. The Slocum Lake Drainage District attended the December, 2003 closed meeting, but has been excluded from all other IEPA discussions and meetings.

30. The IEPA failed to consider the history of prior violations and Court proceedings involving the Village of Wauconda and its current permit.

31. The IEPA has a policy of making the Village of Wauconda "look good."¹⁴

32. The IEPA has actual knowledge that out-of-bank conditions in the Fiddle Creek Wetlands are anticipated.¹⁵

¹²IEPA - #002160 thru 002167

¹³IEPA - These are a series of documents not produced by the IEPA but reviewed by the undersigned counsel on December 17, 2004.

¹⁴IEPA - This document is one of a series of documents not produced by the IEPA but reviewed by the undersigned attorneys on December 17, 2004.

¹⁵IEPA - #002058

33. That the IEPA has actual knowledge that there has been no analysis of the influence from the Fox River Backwater and applied a nominal flow at the Slocum Lake Drain confluence based on the data provided in the FIS.¹⁶

34. That the IEPA has actual knowledge that further detailed studies are required to assess the full effects of the watershed variables.¹⁷

35. The IEPA has actual knowledge that on 09-10-04 the WWTP discharged Bromodichloromethane in excess of reporting limits.

36. The IEPA has actual knowledge that on 09-10-04 the WWTP discharged Chloroform in excess of reporting limits.

37. The IEPA has actual knowledge that on 09-10-04 that WWTP discharged Dichloromethane in excess of the reporting limits.

38. The IEPA has actual knowledge that on 09-10-04, the WWTP discharged Methyl-tert butyl ether (MTBE) in excess of the reporting limits.

39. The IEPA has not conducted detailed independent analytical tests of the effluent discharged into the Fiddle Creek Wetlands.

40. The IEPA has not conducted detailed independent analytical tests of the sediment at the WWTP outfall and downstream.

41. The IEPA is on actual knowledge that the Village of Wauconda uses deep wells for part of its municipal water supply but the IEPA has not conducted independent analytical tests of radium discharges into the Fiddle Creek Wetlands.

42. The IEPA is on actual knowledge that the Wauconda Sand and Gravel Superfund discharges leachate into the WWTP.

43. The IEPA has failed to require WWTP to fully treat this leachate prior to discharge into the Fiddle Creek Wetlands.

¹⁶IEPA - #002058

¹⁷IEPA - #002058

Respectfully Submitted,

Bonnie L. Macfarlane

Jay J. Glenn

Dated: December __, 2004

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