

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

C & F PACKING COMPANY, INC.,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
COUNTY OF LAKE,)
Respondents.)

RECEIVED
CLERK'S OFFICE

NOV 23 2005

STATE OF ILLINOIS
Pollution Control Board

PCB 2006-053
(Variance Request)

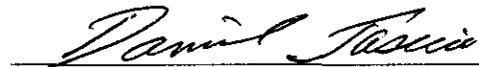
NOTICE OF FILING

Charles Gunnerson
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276

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

Paula Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph Street
Suite 2001
Chicago, IL 60610

PLEASE TAKE NOTICE that I have today November 22, 2005, filed by FedEx Next Day Air with the Office of the Clerk of the Pollution Control Board Appearance of Daniel L. Jasica and Victor Filippini for the County of Lake, and the Respondent County of Lake's Combined Motion to Dismiss and Objection to C & F Packing Company's Request For Variance, copies of which are herewith served upon you.



DANIEL L. JASICA
Assistant State's Attorney

November 21, 2005

Michael J. Waller
State's Attorney of Lake County
Daniel L. Jasica #06237373
Assistant State's Attorney
18 North County Street, 3rd Floor
Waukegan, IL 60085
(847)377-3050

Victor P. Filippini
Holland & Knight
131 S. Dearborn St.
30th Floor
Chicago, IL 60603
(312) 263-3600

PROOF OF SERVICE

I, the undersigned, on oath state that I have served on November 22, 2005, the attached Appearance of Daniel L. Jasica and Victor Filippini for the County of Lake, and the Respondent County of Lake's Combined Motion to Dismiss and Objection to C & F Packing Company's Request For Variance, by U.S. Mail, postage prepaid, upon the following persons:

Elizabeth Corbett

Subscribed and Sworn to before me this
22nd day of November, 2005.

Joyce F. Soapes
NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

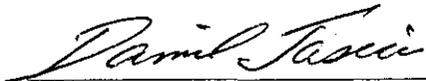
RECEIVED
CLERK'S OFFICE
NOV 23 2005
STATE OF ILLINOIS
Pollution Control Board

C & F PACKING COMPANY, INC.,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
COUNTY OF LAKE,)
)
Respondents.)

PCB 2006-053
(Variance Request)

APPEARANCE

We hereby enter the appearance of the County of Lake as Respondent in the above referenced matter and ourselves as attorneys therein.



DANIEL L. JASICA
Assistant State's Attorney



VICTOR P. FILIPPINI

November 17, 2005

Michael J. Waller
State's Attorney of Lake County
Daniel L. Jasica #06237373
Assistant State's Attorney
18 North County Street, 3rd Floor
Waukegan, IL 60085
(847)377-3050

Victor P. Filippini
Holland & Knight
131 S. Dearborn St.
30th Floor
Chicago, IL 60603
(312) 263-3600

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

C & F PACKING COMPANY, INC.,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
COUNTY OF LAKE,)
)
Respondents.)

PCB 2006-053
(Variance Request)

RECEIVED
CLERK'S OFFICE
NOV 23 2005
STATE OF ILLINOIS
Pollution Control Board

**RESPONDENT COUNTY OF LAKE'S COMBINED MOTION TO DISMISS AND
OBJECTION TO C & F PACKING COMPANY'S REQUEST FOR VARIANCE**

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 combined motion to dismiss and objection to C & F Packing Company, Inc.'s ("C & F Packing") request for variance (the "Petition") and, pursuant to 35 Ill. Admin Code 104.230 and 104.224, would show the Board as follows:

I. INTRODUCTION AND BACKGROUND

C & F Packing, a commercial meat processing operation that has a telling history of violating applicable IEPA statutes and regulations and remains well over four hundred thousand dollars in arrears in connections fees owed to the County, asks the Board to compel the County to serve C & F Packing with expanded sewage transport services through the County's intermediate interceptor. C & F Packing incorrectly suggests that the sole issue that the County, as an intermediate sewer owner, may consider when reviewing a permit application is whether "there is adequate capacity in the Lake County sewer interceptor pipe to receive the flow from the C & F

Packing facility.” Petition, p. 3. However, C & F Packing ignores the plain language of the intermediate sewer owner certification which actually requires the intermediate sewer owner to certify that the “sewers to which this project will be tributary have adequate *reserve* capacity to transport the wastewater *that will be added by the project without causing a violation of the Environmental Protection Act....*” (Emphasis added).

The County, in refusing to execute C & F Packing’s latest permit application, has concluded that, pursuant to its contract with Lake Villa and applicable federal state, and local law, it has no such obligation and that C & F Packing has absolutely no right to utilize the County’s interceptor sewer for expanded sewage flows. C & F Packing contumaciously filed its Petition to avoid paying its connection fees and to compel the County to accept C & F Packing’s increased sewage flow in violation of the County’s existing sewer service contracts. C & F Packing’s attempt to shirk the basic payment obligations that all other sewer customers must abide—and that the County must enforce under federal, state, and local law--warrants further elaboration.

A. The County’s Interceptor and Its Availability to Lake Villa Customers

Under Illinois law, the County has no authority to serve customers in incorporated areas, 55 ILCS 5/5-15006, unless such service is provided by intergovernmental agreement. 55 ILCS 5/5-15010. The County therefore constructed its interceptor for the Northwest Lake Facilities Planning Area (the “Northwest Interceptor”) in the late 1970s pursuant to a series of intergovernmental agreements. See Affidavit of Peter Kolb, ¶¶2-3, which affidavit is attached to this Objection as Exhibit 1 (the “Kolb Aff.”). One such intergovernmental agreement was with the Village of Fox Lake (“the Fox Lake/County Agreement”), attached to this Objection as

Exhibit 2. The County financed the Northwest Interceptor through the issuance of revenue bonds and grant money that was available under the federal Clean Water Act. Kolb Aff., ¶4. Under the terms of the Fox Lake/County Agreement and the County's revenue bond obligations, the County is required to collect a connection fee for all new and expanded connections to the Northwest Interceptor. Kolb Aff., ¶4; Fox Lake/County Agreement, §§2(d)(i), 3.

In 1991, the County and the Village of Lake Villa entered into an intergovernmental agreement, pursuant to which the County made available part of the capacity of the Northwest Interceptor to certain Lake Villa customers.¹ Consistent with its obligations under the Fox Lake/County Agreement and the County's revenue bonds,² Section 6 of the County/Lake Villa Agreement requires payment of connection fees for all new user connections to the Northwest Interceptor. The County/Lake Villa Agreement places limits on the total flows that can be delivered to the Northwest Interceptor through the two Lake Villa connection points (11,700 P.E. and 8,505 P.E., respectively). But physical flow is just one of the elements defining the capacity reserved for Lake Villa customers under the County/Lake Villa Agreement:

Subject to the conditions in Section 3(a), 3(b), 3(c), and 3(d) above, and the other terms conditions and provisions of this Agreement, the County will hold itself available, within the limits of available capacity, to service Village customers with sewers on a first come, first served basis *after the proper connection fees (as set forth herein) have been paid to the County.*

County/Lake Villa Agreement, §3(e)(emphasis added).

¹Exhibit A to the Petition attached the body of the original County/Lake Villa Agreement, but not all the exhibits thereto. The entire body of the County/Lake Villa Agreement is attached to this Objection as Exhibits 3, with the three exhibits thereto attached as Exhibits 3A, 3B, and 3C.

²The Fox Lake/County Agreement is expressly incorporated into the County/Lake Villa Agreement (see Recitals, pp. 1-2), and the County's Water and Sewer System Revenue Bonds are similarly expressly referenced in Section 7(a) of the County/Lake Villa Agreement.

B. Conditions for Use of the Northwest Interceptor

C & F Packing's facility is located in the Village of Lake Villa, Illinois, which owns the local sewer collection system. Petition, pp. 1-2. Because Illinois law precludes County sewer service to C & F Packing or other Lake Villa customers except pursuant to intergovernmental agreement, 55 ILCS 5/5-15006, 55 ILCS 5/5-15010, neither C & F Packing's facility nor any other Lake Villa customer can deliver sewage directly or indirectly to the Northwest Interceptor, except in accordance with the terms and conditions of the County/Lake Villa Agreement. As noted above, one of the explicit conditions on the County's obligation to serve parcels located within Lake Villa and the Village Service Area (such as the C & F Packing parcel) is the receipt of payment of proper connection fees to the County. County/Lake Villa Agreement, §3(e).

Section 6 of the County/Lake Villa Agreement sets forth the proper connection fees to be paid to the County and Section 7 of the County/Lake Villa Agreement grants the County power to subsequently adjust fees for connecting, directly or indirectly, to the Northwest Interceptor in order to pay for the cost and maintenance of the County's interceptor system and to pay off the principal and interest on the County sewer system revenue bonds. To that end and per properly-authorized County ordinance, since September 1, 1997 the County has charged a connection fee of \$1,800 per residential customer equivalent for all users within the Northwest Service Area, including all users within the Lake Villa Village Service Area. *See* Kolb Aff., ¶ 4.

Of the County's \$1,800 connection fee, \$1,500 of that amount is required to be forwarded by the County to the regional treatment authority, Fox Lake, pursuant to the connection fees provisions set forth in Section 3 the Fox Lake/County Agreement, as adjusted. Kolb Aff., ¶ 4.

C. C & F Packing's Connection Fee Arrearage

Against this backdrop, C & F Packing constructed its facility in Lake Villa and sought its original 2002 permit (2002-EN-0089) which authorized C & F Packing to construct a sewer connection and discharge 48,000 gpd in average daily flow into the County's interceptor and the Fox Lake Treatment Plant. Although under the 1991 County/Lake Villa Agreement, C & F Packing was to have paid \$345,600 in connection fees to the County prior to making connection to the County's interceptor in conjunction with this original permit, in fact only \$37,800 was paid to the County in C & F Packing connection fees. Kolb Aff., ¶ 5.

In 2002, C & F Packing sought and obtained a supplemental permit (2002-EN-0089-1) to construct an upgraded pretreatment system and to increase its average daily flow of sewage into the County interceptor and Fox Lake Treatment Plant to 69,000 gpd. *No* connection fees were paid to the County in conjunction with the supplemental 2002 permit, even though an additional \$151,200 was properly due to the County under the County/Lake Villa Agreement prior to any expanded service via the County interceptor. Kolb Aff., ¶ 6.

In early 2005, C & F Packing submitted its latest supplemental permit application to the County's Public Works Department. In its pending application, C & F Packing seeks to modify its permit "because the present configuration of the pretreatment system does not conform to the specifications provided in the [supplemental 2002] Construction Permit previously issued to C & F Packing." *See* C & F Packing's January 11, 2005, proposed Compliance Commitment Agreement to the IEPA, attached to Exhibit F to the Petition. C & F Packing also seeks through its latest permit application to increase its permitted discharge into the County interceptor from 69,000 gpd to 147,000 gpd in average daily flow. The connection fees associated with this

further expansion total \$561,600 under the County/Lake Villa Agreement. *See* Petition, Exhibit L; Kolb Aff., ¶ 7.

Despite repeated requests for payment or some assurance that payment of the long overdue connection fees would be forthcoming, C & F Packing and Lake Villa have failed and refused to pay or even acknowledge an intent to pay any of the County's overdue connection fees associated with the prior permits or to confirm an intent to pay any of the connection fees associated with the proposed expansion. *See* Exhibits K and R to the Petition; Kolb Aff., ¶ 8. C & F Packing apparently seeks to utilize the County's Northwest Interceptor and Fox Lake Treatment Plant for free, notwithstanding the terms of the Fox Lake/County and the County/Lake Villa Agreements.

Such freeloading violates applicable environmental laws (*see* Section III.D below), and, is contrary to the meaning of "reserve" capacity. Importantly, among the provisions of the County/Lake Villa Agreement is the County's "General Sewer Use Ordinance" (which was referenced and attached as Exhibit B to such agreement; *see* Exhibit 3B). Section IV(4) of the General Sewer Use Ordinance (p.11) provides that "*reserve capacity* to adequately and efficiently handle the additional anticipated waste load" of a prospective user is determined through the issuance of sewer permits by the County's Superintendent of Public Works. (Emphasis added.) Because the determination of "reserve capacity" is dependent on the issuance of sewer permits, and sewer permits are only authorized under the County/Lake Villa Agreement "after the proper connection fees (as set forth herein) have been paid (*see* County/Lake Villa Agreement, §3(e)), there is no "reserve capacity" in the County's Northwest Interceptor for C & F Packing unless and until it pays all connection fees that are due. Accordingly, the County was

both correct and fully within its rights not to sign the intermediate interceptor certification on C & F Packing's 2005 supplemental permit application.

D. C & F Packing's Flouting of the IEPA Regulations

To further highlight the absurdity of C & F Packing's Petition, the Board should consider C & F Packing's history of IEPA violations relating to its Lake Villa facility. First, when the C & F Packing facility was still under construction, C & F Packing was the subject of an enforcement action before the PCB, Case No. 03-153, for numerous IEPA violations, including construction activity not covered by an NPDES permit for storm water, subsequent water quality violations and for connecting sanitary sewers without a permit. A copy of the complaint and associated stipulation and consent decree in that first enforcement action are attached hereto as Exhibits 4 and 5, respectively.

On February 13, 2002, C & F Packing was issued a permit (2002-EN-0089) to construct a pretreatment system and to make connection to the sewer system. However, given the extensive fats and grease discharge from C & F Packing's operations, that original pretreatment system was found to be inadequate to meet the treatment authority's discharge standards. *See* October 5, 2004 memo of Chris Kallis included in the November 1, 2004 IEPA Notice of Violation (Petition, Exhibit E). Ostensibly to remedy that situation, C & F Packing sought and obtained a supplemental permit (2002-EN-0089-1) to upgrade the on-site wastewater pretreatment system by adding a 1,900 gallon sump pump tank with two level control pumps rated at 150 gpm each, and a circular 18,000 gallon equalization tank which was then to be diverted via a 275 gallon pump to a 18,000 gallon dissolved air floatation unit.

On August 15, 2004, a sewer manhole directly across the street from the C & F Packing facility overflowed. The cause of the overflow was determined to be an excess build-up of grease adjacent to C & F Packing's lateral connection to Lake Villa's local sewer line. Follow-up inspection revealed that the overflowed sewage was discharged into a residential subdivision detention pond that itself flowed into a wetland. *See* October 5, 2004 memo of Chris Kallis included in the November 1, 2004 IEPA Notice of Violation (Petition, Exhibit E).

On July 9 and 10, 2004, the Fox Lake Treatment Plant operators noticed a "slug load" of grease that they traced back to the C & F Packing facility. C & F Packing confirmed to Fox Lake that its pre-treatment system had failed and that untreated sewage was flowing off-site for a period of up to three days. A subsequent inspection of the C & F Packing pre-treatment system by IEPA inspectors revealed substantial deviations from the plans C & F Packing had submitted and the IEPA had approved in conjunction with the 2002 supplement permit (2002-EN-0089-1). Specifically, the 1,900 gallon sump pump tank with pumps was never installed and the 18,000 gallon dissolved air flotation unit as installed was found to have an actual capacity of only 1,616 gallons. *See* October 5, 2004 memo of Chris Kallis included in the November 1, 2004 IEPA Notice of Violation (Petition, Exhibit E).

As a result of this sequence of events in 2004, the Illinois Attorney General's Office has initiated a second three-count enforcement action against C & F Packing in Lake County Circuit Court, Case No. 05 CH 1725, which action is currently pending. *See* Petition, Exhibit J.

Suffice it to say, C & F Packing proves a most unworthy and "unclean" variance petitioner. Moreover, C & F Packing neither seeks relief that the Board is empowered to grant nor, on the merits, satisfies the Board's variance criteria.

II. THE PETITION SHOULD BE DISMISSED BECAUSE C & F PACKING
SEEKS RELIEF THAT THE BOARD IS NOT EMPOWERED TO GRANT
–35 Ill. Admin. Code 104.230

The County has no contractual obligation to provide expanded sewage transport services to C & F Packing because of the existing violations of the County/Lake Villa Agreement. In the absence of the County/Lake Villa contract, of course, C & F Packing has no rights whatsoever to utilize the County's Northwest Interceptor. 55 ILCS 5/5-15006. Unwilling to pay the connection fees for the services rendered by the County and Fox Lake in transporting and treating C & F Packing's sewage, C & F Packing turns to the Board for "relief." But it is not, and has never been, this Board's prerogative to determine whether and to what extent a private property owner has the right to utilize a specific public sewer interceptor.

The question presented under these facts is not whether the County's interceptor has *physical* capacity to handle the additional flows C & F Packing seeks to discharge into the County and Fox Lake systems. The question that exists—and the question C & F Packing improperly seeks to have this Board adjudicate through the variance process—is whether the County must legally "reserve capacity" in its interceptor for C & F Packing's expansion. Were it to grant the requested variance, the Board in effect would rule that the County must allow C & F Packing expanded access to the County's Northwest Interceptor—in direct contravention of the governing contract, revenue bonds, and (as discussed in Section III.D *infra*) environmental regulations.

Tellingly, C & F Packing provides nothing by way of authority or precedent to support the Board interjecting itself into this issue and for good reason—there is none. C & F Packing repeatedly cites *Hawthorn Realty Group, Inc v. Illinois Environmental Protection Agency and*

Village of Lincolnshire, 1985 Ill. Env. Lexis 516, PCB 85-85 (Oct. 10, 1985), in support of its variance request. But the only similarity between *Hawthorn Group* and the facts here is that both involve a variance request relating to 35 Ill. Admin Code 309.222(b). The differences, however, are quite glaring.

First, in *Hawthorn Realty*, the Village of Lincolnshire had withdrawn its objection to the variance request. *Id.*, at * 2. Thus, unlike the instant case, the intermediate sewer owner did not oppose the relief sought. Second, there was no issue advanced at the *Hawthorn Realty* hearing as to whether the property owner had the right to utilize the intermediate sewer or whether the intermediate sewer owner had a duty to accept sewage flow from the petitioner. Rather, it was presumed that because Hawthorn had built and paid for the interceptor at issue, it obviously had the legal right to utilize the interceptor. Here, the County's refusal to execute the intermediate sewer owner's certificate is based on the fact that under the County/Lake Villa Agreement C & F Packing has no legal right to deliver additional flows to the County's interceptor. Tellingly, C & F Packing does not even attempt to demonstrate any right to utilize the County's Northwest Interceptor. Rather, C & F Packing baldly asserts that the County (and the Board) may not even consider this threshold issue when reviewing the permit application.

Under C & F Packing's logic, any property owner anywhere in Lake County (or elsewhere) could present the County with an intermediate sewer owner's certificate and, unless the County's Northwest Interceptor lacked physical capacity to accept the proposed flow, the County would be obligated to sign the permit. Such a result flies in the face of the County's limited contractual obligations to serve *municipal* sewer users and is patently erroneous. Moreover, such a result would make a mockery of facilities planning and would sidestep an

important element of environmental regulations under the Clean Water Act and Illinois Environmental Protection Act. *See generally* 70 ILCS 1705/33.5(a)(delegation of facility planning reviews for Lake County to the Northeastern Illinois Planning Commission).

Third, in *Hawthorn Realty*, Hawthorn had paid for and constructed the intermediary sewer in connection with Phase I of its development and then had deeded those sewer improvements to Lincolnshire. *Id.*, at * 2-3. When Hawthorn later sought to develop Phase II of its development in the unincorporated county and needed to utilize the interceptor it had built and paid for, Lincolnshire refused to sign the intermediary sewer certification for “its” sewer unless Hawthorn agreed to annex the Phase II development into Lincolnshire. The Board, in granting a variance, seemed to focus on the patent injustice of allowing Lincolnshire to in effect prevent Hawthorn’s access to an intermediate sewer line that Hawthorne itself had built and paid for. The Board also keyed in on the fact that the specific condition of approval imposed by Lincolnshire—annexation— was unrelated to the capacity of the interceptor, the terms of its use, or any other sanitary sewer considerations. *Id.*, at * 3, 7.

Here, by contrast, C & F Packing obviously did not construct or pay for the construction of the intermediary sewer it now seeks to access. To the contrary C & F Packing expressly *refuses* to pay its rightful share of any of the costs associated with the construction, maintenance or operation of the County’s interceptor. Moreover, the condition of approval that the County has established—payment of outstanding connection fees—is a core sewer-related issue under the relevant sewer agreements and applicable federal, state, and county regulations. It is not some extraneous matter, unrelated to the provision of sanitary sewer service.

Thus, the Board in *Hawthorn Realty* granted the variance because under the unique facts of the case it felt that “Hawthorn [could] reasonably expect the Village to certify line capacity without imposing extraneous conditions.” *Id.*, at *7. By contrast, C & F Packing could not reasonably expect the County to certify that it would provide expanded sewer service to C & F Packing where, as here, the County’s taxpayers constructed and paid for the intermediate interceptor and C & F Packing owes and refuses to pay the County \$459,000 in connection fees that are owed under the County/Lake Villa Agreement. Thus, upon closer examination, *Hawthorn Realty* supports the denial, not the granting, of C & F Packing’s proposed variance.

Simply put, the Board is not empowered to override the County’s determination that C & F Packing is not entitled to expanded use of the County’s interceptor through a variance from 35 Ill. Admin Code 309.222(b). Accordingly, the Board should properly dismiss C & F Packing’s variance request pursuant to 35 Ill. Admin. Code 104.230(a).

III. ON THE MERITS, C & F PACKING’S VARIANCE REQUEST SHOULD PROPERLY BE DENIED—35 Ill. Admin Code 104.224

A. C & F Packing Has Made No Effort to Achieve Compliance

Assuming *arguendo* that the Petition is somehow not subject to dismissal, it should still be denied. In support of its variance request, C & F Packing claims to have gone to extraordinary lengths to achieve compliance by seeking County execution of the Section 309.222(b) certification. Closer scrutiny reveals that all C & F Packing’s efforts are in fact mere window-dressing. C & F Packing submitted its permit application to the County and was immediately advised of the outstanding connection fees that prevented the County from signing the permit application under the County/Lake Villa Agreement. *See* Exhibit K to the Petition. C & F Packing’s response to the County’s stance, as evidenced from the numerous exhibits attached to

the Petition, was to repeatedly “demand” that the County sign the certification and to pursue political intervention from state, federal, and local politicians that C & F Packing thought might be able exert pressure on the County to ignore its own contracts, ordinances and its responsibilities to its bondholders. See Exhibits M, N, O, P and Q to the Petition; Kolb Aff., ¶4. Curiously, C & F Packing not once acknowledged (or offered to pay) the outstanding connection fees nor paid, agreed to pay, offered to pay, or acknowledged an intent to pay all or any of the County connection fees due in connection with C & F Packing’s latest proposed expansion.

By ignoring the issue of connection fees entirely, C & F Packing failed to make even the feeblest effort to satisfy the prerequisites for permit execution by the County. C & F Packing knows what is required to obtain the County’s certification; C & F Packing chooses to ignore its financial responsibilities and now asks this Board to reward its dereliction by granting a variance from the intermediate sewer owner certification requirement.

B. Denial of the Variance Will Not Cause C & F Packing to Suffer Any Hardship That is Not Self-Imposed

In considering a variance request, the Board must balance the hardship that the petitioner will endure if the variance is denied against the injury to the public or environment if the variance is granted. *Marathon Oil Co. v. EPA*, 610 N.E.2d 789, 793, 242 Ill. App. 3d 200 (5th Dist. 1993). However, in making its evaluation, there is a “strong presumption in favor of compliance” with the IEPA regulations and a variance should be granted “only in those extraordinary situations in which the cost of compliance is wholly disproportionate to the benefits; doubts are resolved in favor of denial.” *EPA v. Lindgren Foundry Co.*, 1970 Ill Env. Lexis 12, *9, PCB No. 70-1 (Sept. 25, 1970). It is a “heavy burden” indeed that C & F Packing must bear. *Willowbrook Motel v. PBC*, 481 N.E.2d 1032, 1036, 135 Ill. App. 3d 343 (1st Dist.

1985).

Moreover, in analyzing the “hardship” that a petitioner claims will result from the denial of a variance, it is beyond peradventure that “the Board will not consider self-imposed hardship.” *Ralph Korte Constr. Co. Inc. v. EPA*, 1978 Ill. Env. Lexis 407, * 4, PCB No. 78-103 (July 20, 1978); *City of Salem v. IEPA*, 1998 Ill. Env. Lexis 355, * 9, PCB No. 98-1 (July 8, 1998)(“[a] self-imposed hardship cannot be the unreasonable or arbitrary hardship upon which the grant of a variance can be predicated”); *City of Mt. Olive v. IEPA*, 1984 Ill. Env. Lexis 42, *11, PCB No. 83-9 (Sept. 20, 1984)(“The Board must grant or deny variance by balancing this environmental harm against that hardship that is not self-imposed”).

Here, the only hardship alleged by C & F Packing is that without the variance (and the supplemental permit that can then be obtained) it faces the possibility of continuing fines and penalties for its installation of a pretreatment system that materially deviated from the approved and permitted plans. As a preliminary matter, the fact that the granting of a variance might assist C & F Packing in avoiding further prospective penalties under Count II of the ongoing enforcement action (captioned “Failure to Construct Wastewater Pretreatment System as Permitted”) is not in and of itself an arbitrary or unreasonable hardship sufficient to justify a variance.

The Board must emphasize that under the Act variances are not granted merely because the petitioner has shown that it cannot comply with regulations despite its efforts to achieve compliance. Rather, a shield from an enforcement action is only given to a petitioner who would suffer an arbitrary or unreasonable hardship....Certainly, most persons would view any defense to an enforcement action as a hardship. But it does not automatically follow that such a defense is an arbitrary or unreasonable hardship.

General Business Forms, Inc. v. IEPA, 1996 Ill. Env. Lexis 512, * 25, PCB No. 95-155 (July 18, 1996).

Moreover, any hardship that C & F Packing suffers from not being able to obtain the County's certification is clearly self-imposed. That is, if the pretreatment system had been properly installed in 2002 in accordance with the supplemental permit (2002-EN-0089-1), there would have been no enforcement action with respect to the unauthorized pretreatment system and C & F Packing would not be seeking yet another supplemental permit to conform the permit to the system that it unlawfully installed on-site.

In addition, C & F Packing's "hardship" (assuming the Board recognizes the threat of future penalties as a real hardship in these circumstances) is a direct result of C & F Packing's continued refusal and failure to pay any of the \$459,000 in connection fees properly owed to the County. C & F Packing bemoans the fact that it faces the possibility of a \$10,000 a day fine, arguing that this alone represents an unreasonable hardship. But to avoid these prospective penalties, all C & F Packing must do is pay its fair share of the very real costs of constructing, maintaining and operating the facilities that it has and continues to utilize. C & F Packing continues to seek "something for nothing."

C & F Packing's conduct evokes outrage, not sympathy. Any hardship claimed by C & F Packing is entirely of its own making and is truly self-imposed. The County's refusal to execute the intermediate sewer owner's certification under these circumstances is neither unreasonable nor arbitrary. Consequently, C & F Packing has not suffered any recognizable "hardship" that the Board may properly consider in the context of a variance request.

C & F Packing faces the same financial challenges every sewer user faces; the benefits of sanitary sewer do not come without cost. The Board should not assist C & F Packing's efforts to cheat the County and its other customers out of necessary and vital connection fees.

C. Granting the Variance Will Have Severe Negative Impacts on the Public

No counter-balancing of the impacts of granting the variance is required where, as here, the hardship is entirely self-imposed. Nonetheless, assuming *arguendo* that C & F Packing had made a proper showing of *some* hardship, C & F Packing conveniently ignores the impact that granting the variance will have on the public. In one short paragraph in its Petition, C & F Packing suggests that because the County's Northwest Interceptor has adequate physical capacity to accept additional flows, allowing C & F Packing to by-pass the County certification requirement will have absolutely no deleterious environmental impact. Petition, p. 15.

But under controlling authority, the question is not simply what impact the variance will have on the environment, but rather the impact that the variance will have on the "*public or environment.*" *Marathon Oil Co. v. IEPA*, 610 N.E.2d 789, 793 (5th Dist. 1993); *Citgo Petroleum Corp. v. PDV Midwest Refining, L.L.C.*, 2005 Ill. Env. Lexis 345, * 31, PCB No. 05-85 (April 21, 2005). Here, granting the variance obliterates the County's gatekeeper role, as the intermediate sewer owner, to determine who has the right to access its interceptor and the Fox Lake Wastewater Treatment Plant. Granting a variance overrides the County's contractual limitations on service and usurps the County's determination that under its contract with Lake Villa it need not reserve additional capacity for non-paying sewer users.

More dangerously from a public health and welfare standpoint, granting a variance in light of the hundreds of thousands of dollars of connection fees owed, undermines the entire

legislative framework under which sanitary sewers are constructed and operated. As demonstrated in Section D below, sanitary sewer works may only be constructed and sustained through the collection of adequate fees, including connection fees, from its users. To indirectly assist one of the largest and most problematic sewer users in the Northwest Regional Area to circumvent its obligation to pay connection fees threatens the County's and Fox Lake's ability to fund its improvements and properly maintain its systems. The burden of making up these lost fees necessarily either falls upon the other customers (who did pay their connection fees) eventually in the form of higher fees and rates or leads to a decrease in the level of service and maintenance of the systems—both of which represent severe adverse impacts to the public and thus weigh heavily against the granting of a variance under these circumstances.

D. Granting the Variance Will Undermine Both Federal and State Law

C&F Packing's request of this Board to grant it a free pass on the payment of connection fees also ignores applicable federal and state law requirements affecting the Northwest Interceptor. As noted in the Fox Lake/County Agreement [§2(d)(i), 10], the Northwest Interceptor was financed in part by federal and state grants. *See also* Kolb Aff. ¶4. One of the conditions on such grants is that the grantee implements a user charge system designed "to generate sufficient revenue to offset the cost" related to the sewerage system. 35 Ill. Admin. Code §360.602(b)(4); *see id.*, §365.920(b)(4); 40 CFR §§35.925-11(a), 35.929, 35-929-1(a). The purpose of such user system is not simply to generate revenue, but "to assure that each recipient of waste treatment services will pay its proportionate share of the costs." 40 CFR Subpart E, App. B (c).

So important is the implementation of a user charge system under the Clean Water Act

that, as a condition to receiving any federal or state grant, a grantee must ensure that “[t]he user charge system shall take precedence over any terms or conditions of agreements or contracts with] users.” 40 CFR §35.929-2(g); *see also* 35 Ill. Admin. Code §365.920(b)(5)(user charge systems to be incorporated in official enactments of local authority). It is for this reason that the County/Lake Villa Agreement expressly requires the payment of connection fees as a condition of use of the Northwest Interceptor.

C&F Packing is therefore not only asking this Board to ignore the express terms of the County/Lake Villa Agreement, but it asks the Board to thumb its nose at the federal and state law requirements that govern the Northwest Interceptor. The Board cannot become complicit with C&F Packing in such unlawful conduct.

IV. REQUEST FOR HEARING

Pursuant to 415 ILCS 5/37 and 35 Ill. Admin Code 104.234, the County hereby requests a hearing on C & F Packing’s variance request.

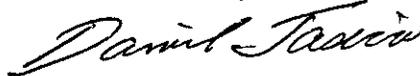
V. CONCLUSION

The issue before the Board is **not** simply whether the County merely has physical capacity to accept additional flows into its interceptor. The question is whether there is “adequate *reserve* capacity to transport the wastewater that will be added *by this project*,” *see* Application for Permit, Part 7.4 (Petition, Exhibit B)(emphasis added). This question is not an abstract inquiry about the physical capacity of a pipe, but a question about the reservation of capacity for a particular project. It is also a question that must be answered in the broader context of sewer planning and the legal conditions affecting sewer service. When put in its proper context, the question before the Board is really the following: whether this private sewer user who constructed an unpermitted and unauthorized pretreatment system and who refuses to

pay hundreds of thousands of dollars in essential sewer-related connection fees, should be rewarded with a variance that eliminates the intermediate sewer owner's contractual right to control the expanded use of its interceptor.

The question, properly framed, is not one that the Board is empowered to answer and should therefore be dismissed. Even if the Board could answer the question, the only justifiable answer on the merits, is that the variance must be denied. C & F Packing should be "sent packing" by the Board.

Respectfully submitted,
RESPONDENT COUNTY OF LAKE
MICHAEL J. WALLER
State's Attorney of Lake County



DANIEL L. JASICA
Assistant State's Attorney

Michael J. Waller
State's Attorney of Lake County
Daniel L. Jasica (#06237373)
Assistant State's Attorney
18 North County Street, 3rd Floor
Waukegan, IL 60085
(847) 377-3050

Of Counsel:
Victor Filippini
Holland & Knight LLC
131 S. Dearborn, 30th Floor
Chicago, IL 60603
U:\WPDATA\CIVIL\L.Sdlj\Public Works\C&FPackingObjection.wpd

Exhibit 1

BEFORE THE 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.)	

AFFIDAVIT OF PETER KOLB

Peter Kolb, being duly sworn on oath, deposes and states:

1. That he is and has been the Superintendent of the County of Lake Department of Public Works since December 2004 and has worked for the County of Lake Department of Public Works since September 1992.

2. In that capacity he is familiar with the contracts and agreements for sewage transport services that the County of Lake has entered into with other municipalities and sanitary districts within the Northwest Lake Facilities Planning Area. Specifically, based upon his personal knowledge and a review of the Department of Public Works records, the County of Lake has entered into an "Agreement for Sewage Disposal" with the Village of Fox Lake as approved on March 8, 1977, a true and correct copy of which is attached to the Respondent County of Lake's Combined Motion to Dismiss and Objection to Petitioner C & F Packing



County-retained \$300 portion of the \$1,800 connection fee has remained the same since the inception of the County/Lake Villa Agreement in 1991. The County is obligated to collect its portion of the connection fee and apply it to the outstanding indebtedness pursuant to the County's Water and Sewer System Revenue Bonds, as referenced in Section 7(a) of the County/Lake Villa Agreement. The County Water and Sewer System revenue Bonds were used, in conjunction with grants authorized under the Clean Water Act, to finance the County's interceptor service in the Northwest Lake Facilities Planning Area.

5. Based upon his personal knowledge and a review of the Department of Public Works and County of Lake records, in 2001 C & F Packing submitted its original permit (2002-EN-0089) to the County for certification as the intermediate sewer owner. The County executed the certification on September 25, 2001. Through its original permit, C & F Packing sought authority to construct a sewer connection and discharge 48,000 gpd in average daily flow into the County's interceptor and the Fox Lake Treatment Plant. Under the terms of the 1991 County/Lake Villa Agreement, which expressly incorporates therein such connection fee rate adjustments as are authorized and approved by County ordinance, the County was due \$345,600 in connection fees based on the 48,000 gpd in average daily flow approved under Permit 2002-EN-0089. However, in fact only \$37,800 was paid to the County in connection with C & F Packing connection fees for Permit 2002-EN-0089

6. Based upon his personal knowledge and a review of the Department of Public Works and County of Lake records, in 2002 C & F Packing sought and obtained a supplemental permit (2002-EN-0089-1) to construct an upgraded pretreatment system and to increase its average daily flow of sewage into the County interceptor and Fox Lake Treatment Plant to

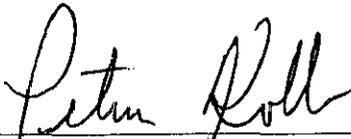
69,000 gpd. The County executed its certification on C & F Packing's supplemental permit as the intermediate sewer owner on September 24, 2002. Under the terms of the 1991 County/Lake Villa Agreement, which expressly incorporates therein such connection fee rate adjustments as are authorized and approved by County ordinance, the County was due an additional \$151,200 in connection fees based on the increase from 48,000 gpd to 69,000 gpd in average daily flow authorized under supplemental Permit 2002-EN-0089-1. However, in fact to date the County has received zero dollars (\$0) in connection fees in connection with supplemental permit 2002-EN-0089-1.

7. In its pending 2005 application for supplemental permit, C & F Packing seeks to increase its permitted discharge into the County interceptor from 69,000 gpd to 147,000 gpd in average daily flow. Under the terms of the 1991 County/Lake Villa Agreement, which expressly incorporates therein such connection fee rate adjustments as are authorized and approved by County ordinance, the County is due an additional \$561,600 in connection fees based on this requested increase from 69,000 gpd to 147,000 gpd in average daily flow.

8. To date, neither Lake Villa nor C & F Packing acknowledged the obligation to pay, have paid, or offered to pay, the currently outstanding \$459,000 in connection fees due and owing in connection with permits 2002-EN-0089 and 2002-EN-0089-1. Nor has C & F Packing or Lake Villa paid, offered to pay, or acknowledged an intent or obligation to pay, the additional \$561,600 in connection fees associated with the pending supplemental permit application.

9. He has reviewed the Respondent County of Lake's combined Motion to Dismiss and Objection to Petitioner C & F Packing Company, Inc's Request for Variance and based on his personal knowledge and belief, the facts stated therein are true and correct.

Further Affiant Sayeth Not.



PETER KOLB

Subscribed and Sworn to before me
on November 18, 2005.



NOTARY PUBLIC



U:\WPDATA\CIVIL\LSdlj\Public Works\C&FPackingKolbAff.wpd

Exhibit 2

#56

PWD #12
Secretary 9
Auditor
Genl Acctg
Public Works

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

COUNTY BOARD, LAKE COUNTY, ILLINOIS
ADJOURNED ANNUAL SEPTEMBER, A.D., 1976 SESSION
MARCH 8, A.D., 1977

MR. CHAIRMAN AND MEMBERS OF THE COUNTY BOARD:

Your Public Service Committee presents herewith a Resolution, providing authorization to execute a revised Agreement for Sewage Disposal with the Village of Fox Lake as part of the Northwest Regional Sewer Project; and requests its adoption.

Respectfully submitted,

Thomas R. Bell

CHAIRMAN

VICE-CHAIRMAN

VICE-CHAIRMAN

PUBLIC SERVICE COMMITTEE

Certified to be a true copy of
Records of the Lake County
Board Meeting of

MAR 08 1977 APPROVED

Certification not valid unless seal
of Lake County, Illinois is affixed.

Grace Mary Stern
COUNTY CLERK

EXHIBIT
2
Shumberg No. 518

9 #12

RESOLUTION

WHEREAS, the Board of Supervisors of Lake County, had established a Lake County Public Works Department to facilitate and coordinate the overall growth and development of Lake County, particularly to combat pollution within its lakes and streams; and

WHEREAS, the County is authorized under the provisions of the Public Works Act as adopted July 22, 1959, and as amended, to construct and operate sewage treatment facilities; and

WHEREAS, the public health, welfare and safety of the residents of the County requires the development of regional wastewater systems; and

WHEREAS, the overall master plan for the Northwest Regional Area, particularly in Avon, Grant and Lake Villa Townships, has been developed and approved by the North-eastern Illinois and Lake County Planning Commissions; and

WHEREAS, the County of Lake on May 13, 1975, entered into an agreement with the Village of Fox Lake whereby said Village will construct the area-wide treatment facility for the Northwest Region consistent with the overall master plan; and

WHEREAS, the Village of Fox Lake has expressed a desire to renew and revise said agreement for the purpose of selling revenue bonds to pay the local share of the cost of constructing the regional treatment facility for the Northwest Area; and

WHEREAS, the Public Service Committee has reviewed the revised agreement, a copy attached hereto and made a part hereof, and recommends that the County of Lake enter into an Agreement for Sewage Disposal with the Village of Fox Lake.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chairman of the Board and the Clerk of said County, be and they are hereby authorized and directed to execute the attached Agreement for Sewage Disposal between the County of Lake and the Village of Fox Lake whereby said Village will construct

sewage treatment facilities for sewage collected and delivered by the County of Lake
in the Northwest Region.

DATED, at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 8th day of
March, A.D., 1977.

AGREEMENT FOR SEWAGE DISPOSAL

THIS AGREEMENT made and executed this _____ day of _____, 1977, between the COUNTY OF LAKE, STATE OF ILLINOIS, hereinafter referred to as "COUNTY" and the VILLAGE OF FOX LAKE, COUNTIES OF LAKE AND MC HENRY, STATE OF ILLINOIS, hereinafter referred to as the "VILLAGE".

WITNESSETH:

WHEREAS, the public health, welfare and safety of the residents of the Northwest Region of the County of Lake require the development of coordinated and adequate systems for the collection and treatment of sewage and to eliminate pollution of lakes and streams; and

WHEREAS, the County has established a Department of Public Works pursuant to an Act of the General Assembly of the State of Illinois entitled "An Act in Relation to Water Supply, Drainage, Sewage, Pollution and Flood Control in Certain Counties", as amended, for the purpose of performing the function of collection and treatment of sewage and has prepared a comprehensive plan for the disposal of sewage from areas of the County and intends to develop the facilities needed to carry out such plan; and

WHEREAS, the Village presently owns and operates a Treatment Plant located in the Village of Fox Lake; and

WHEREAS, said Fox Lake plant has been designated by the Northeastern Illinois Planning Commission and Lake County Wastewater Planning as the master plant for the Northwest Regional Area; and

WHEREAS, the Village proposes to expand its existing treatment plant to service the Northwest Regional Area in accordance with Northeastern Illinois Planning Commission and Lake County Wastewater Plan and to provide sufficient treatment to meet water quality standards of the Illinois Pollution Control Board and Federal Environmental Protection Agency on the terms and conditions herein provided.

NOW THEREFORE, in consideration of the mutual covenants and benefits of this contract which inure to the County and Village, it is hereby covenanted and agreed as follows:

Section 1. Definitions. As used in this contract, unless the context shows clearly otherwise, the following terms shall mean:

- (a) "County's Collection System" means the facilities for receiving and transporting sanitary and industrial wastes which the County has obligated itself to receive under the terms of its contracts with other persons, firms, corporations, municipalities or districts within the Northwest Regional Area, as outlined in Exhibit "A" attached hereto, together with any additions or extensions to such system consented to by the Village and constructed or otherwise incorporated into County's System.
- (b) "Village Treatment System" means the facilities for treating and disposing of sanitary and industrial wastes which the County system and Village collect, receive and transport to the Village Treatment Plant.
- (c) "B.O.D." (Biochemical Oxygen Demand) is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C., expressed in milligrams per liter.
- (d) "Garbage" means solid wastes from preparation, cooking and dispensing of food and from handling, storage and sale of produce.

- (e) "Industrial Waste" means the liquid and water-carried wastes from industrial processes, as distinct from Sanitary Sewage.
- (f) "Infiltration Water" means the water which leaks into a sewer.
- (g) "Meter" means any device used to measure flow.
- (h) "pH" means the common logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
- (i) "Properly Shredded Garbage" means garbage that has been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.
- (j) The words "Population Equivalent" shall mean:
 - (1) The calculated population which would normally contribute 100 gallons of sewage per day containing 0.167 pounds of 5 day B.O.D. and 0.22 pounds of suspended solids.
 - (2) For industrial waste, the estimated number of people contributing sewage equal in strength to a unit volume of the industrial waste on the basis of the highest parameter set forth in Section 1, paragraph (j) (1).
- (k) The words "Residential Customer Equivalent" shall mean a single family residence billed by the County for Sewage Charges, based on discharge of 2-1/2 times the population equivalent set forth in Section 1, paragraph (j) (1).
- (l) "Sanitary Sewage" means liquid and water-carried waste discharged from the sanitary conveniences of dwellings and other buildings.
- (m) "Sewage" means Sanitary Sewage and Industrial Waste, together with such Infiltration Water as may be present.
- (n) "Suspended Solids" means solids that either float on the surface or are in suspension in water, sewage or other liquids, which are removable by laboratory filtering, expressed in milligrams per liter.

Section 2. Sewerage Service.

- (a) As soon as the Village Treatment System has been expanded and is capable of treating the County's Sewage, on or before December 31, 1978, but no later than June 30, 1979, the County agrees to deliver to the Village Treatment System all of the sewage collected by it in the Northwest Area of the County as outlined on the attached Exhibit "A".
- (b) Prior to completion of the new regional sewage treatment plant and subject to the necessary approval of State or other required authorities the Village will accept for treatment sewage from the County collection system over and above the Village sewage up to the capacity of the existing plant.
- (c) The Village shall expeditiously proceed with the measures necessary to effect the expansion of the Village's Treatment System to provide a total design capacity of six (6) million gallons per day average daily flow of sewage or population equivalent of 60,000 persons per day subject to the conditions hereinafter set forth. After the Village has notified the County of readiness to accept sewage, the Village shall continually hold itself ready, willing and able to provide such service to the County in accordance with the terms and conditions of

this Agreement. The Village shall not be liable to the County or to its individual customers for any damages occasioned by unavoidable delay in the commencement of its service to the County.

- (d) i. The County represents that it has the authority to serve persons, firms, corporations, municipalities and districts within the Northwest Regional Area. Notwithstanding the provisions of Paragraph 2 (c), there shall be no obligation upon the Village to proceed with the necessary measures or incur the expense to effect the expansion of the Village's Treatment System, unless the County has delivered to the Village certified copies of agreements for service between the County and persons, firms, corporations, municipalities and districts within the Northwest Regional Area; certified copies of ordinances authorizing such contracts and revenue bonds to be issued in sufficient sum, together with federal funding, for the construction of all facilities for the collection and transportation of sewage to the Village Treatment System; bond counsel's approval of such ordinances and revenue bond issues; a letter of intent representing to the Village the County's intention to issue such revenue bonds as an inducement to the Village to issue its revenue bonds and proceed with construction of the Village Treatment System; and provided that the Village has the ability to finance the necessary expansion.
 - ii. The Village shall, within 30 days after the occurrence of the foregoing, provide the County with certified copies of ordinances authorizing revenue bonds to be issued in sufficient sum together with federal funding for the construction of the Village Treatment System as provided in this contract together with bond counsel's approval of such ordinance and revenue bond issue.
 - iii. Revenue bonds shall be offered for sale by the Village and County concurrently. Upon sale of the bonds the Village shall proceed with construction of the Village Treatment System and the County shall proceed with the construction of its facilities for the collection and transportation of sewage to the Village Treatment System so that all users may be served as promptly as possible.
- (e) As the Village Treatment System approaches 80% of its capacity the Village shall take necessary steps to implement additional expansion of the Village Treatment System, subject to the following:
- i. Certification by consulting registered engineers to the County, or other acceptable documentation, establishing that a sufficient number of users will be served by the County system to not only utilize the existing plant capacity but to warrant its expansion to serve a projected number of residential customer equivalents. Such projections and population studies must establish that the plant expansion is economically and financially feasible to support additional revenue bonds, and the parity bond requirements of the Village.
 - ii. If the County system requires additions and improvements to meet projected population growth, the County shall also supply to the Village a letter of intent representing to the Village that the County intends to issue additional revenue bonds as inducement to the Village to issue Village revenue bonds and to proceed with the construction of additions to the Village Treatment System in order to accommodate the additional sewage flow.
- (f) A portion of the interceptor sewer constructed by the County which lies within the Village shall be paid for by the Village and the price to be paid for said portion of the interceptor sewer shall be in the ratio that the Village required capacity bears to the total capacity

of the interceptor sewer. Said interceptor sewer shall be jointly owned by the Village and the County in the ratio described above. Within the Village limits, as such limits are presently constituted and as such limits may hereafter be extended, the Village shall set, collect and keep all rates, connection charges, and fees incident to said interceptor sewer.

Section 3. Payment for Sewage Treatment.

For the treatment and disposal of sewage collected by the County and delivered to the Village Treatment Plant, the County shall pay to the Village on or before the 5th day of each month the amount of the sewer service charges which became due during the preceding month at the rate provided for hereafter.

Simultaneously with such payment the County shall submit a written report to the Village setting forth:

- (a) The list and number of Residential, Commercial, Institutional, and Industrial customers served in the Northwest Region and billed for treatment services based on unit charges as described herein.
- (b) The total number of all residential Customer Equivalents tabulated for each customer served in the Northwest Region and billed by the County as of each billing period.

Charges for sewage treatment shall be as follows:

The County, out of the Operation Account of its Waterworks and Sewerage System, shall pay to the Village a monthly charge of \$ per Residential Customer Equivalent for treatment and disposal of sewage collected by the County and delivered by the County to the Village Treatment System.

Admissible Commercial, Industrial and Institutional wastes will be charged on the basis of Residential Customer Equivalents as defined in Section 1, Paragraph (k), and, in addition, service charges and/or surcharges for non-residential users are to be based upon anticipated strength and volume of sewage flow from each such non-residential user. To determine the service charge and/or surcharge, the Village shall have the right and authority to inspect the plants and buildings and to take samples of the sewage discharges.

An additional charge may be made by the Village for sewage or wastes of unusual quality or composition requiring special treatment or the Village may require pre-treatment of said sewage or wastes. The Village reserves the right to refuse any waste it considers detrimental to the Village Treatment System.

In determining Multi-Unit family housing charges, the following schedule shall be used to determine the Residential Customer Equivalent for each unit.

3 or more bedrooms per unit	100% Residential Customer Equivalent
2 bedrooms per unit	80% Residential Customer Equivalent
1 bedroom per unit	75% Residential Customer Equivalent

These service charges shall apply to residential customers in the afore-said stated amounts; service charges to be paid by industrial, commercial and institutional customers shall be pro-rated on the basis of Residential Customer Equivalents of sewage to be treated, as determined by the County and the Village.

Connection charges shall be as follows:

- (a) All Residential Customers and Equivalents connecting to County mains shall be required to pay a Treatment Plant Connection fee as scheduled below, which sum shall be paid by the County to Village prior to such connection.

<u>Connection Date</u>	<u>Each Unit of Residential Customer Equivalent</u>
Before December 31, 1977	\$200.00
January 1, 1978 to December 31, 1980	\$250.00
January 1, 1981 and Thereafter	\$300.00

- (b) These connection charges shall apply to single family residential customers in the aforesaid stated amounts. Connection charges to be paid by the industrial, commercial, institutional customers and multi-family buildings will be rated on the basis of total Residential Customer Equivalents of sewage to be treated.
- (c) These connection fees apply to any new connections made to the County Collection System, with the exception of that which is provided in Section 2 (f). Existing customers that are on existing systems when the County extends an interceptor sewer to make connections to their system shall not pay any connection fee if they have service presently.

Rates and charges may be adjusted from time to time as the need arises by the Village after proper written notice is given to the County. The County has the right to object in writing within thirty (30) days of written notice at which time a registered professional engineer and certified public accountant, chosen by the County and Village in mutual agreement, shall make rate studies determining the rate and charges the County should pay to the Village.

Rates, charges and surcharges for treatment of sewage shall be the same for Village Customers as for County Customers. The total revenue from the rates and charges is to be accumulated and used solely for operation, maintenance and replacement costs, and revenue bond debt service including principal; interest and required sinking fund reserves. Revenues shall also be subject to the financial requirements of Village revenue bond ordinances.

Section 4. Records. Permanent books and records shall be kept by the Village of operating, maintenance and replacement costs as well as any other expenditures incurred in the operation of the Village Treatment System. Such records shall be maintained beginning as of the date of the signing of this agreement. The County shall keep records of all of their customers and the amounts of revenue received from them. All books and records shall be subject to inspection by the Village and County.

Section 5. County Responsibility. It is the responsibility of the County to enforce "An Ordinance Regulating the Use of Public and Private Sewer and Drains, Private Sewage Disposal, the Installation and Connection of Building Sewers, and the Discharge of Waters and Wastes into the Public Sewer System(s) of the County of Lake in the State of Illinois" dated May 9, 1967, and any amendments thereto for all sewers connected to the County's Collection System and served by the Village Treatment System.

Section 6. General Requirements. In order to permit the Village to properly treat and dispose of the County's Sewage, to protect the public health and to permit cooperation with other agencies which have requirements for the protection of the physical, chemical and bacteriological quality of public water and water courses, the County shall prohibit discharge into the County System sewage of such quality that is not herein specified as admissable.

Admissable Wastes. Discharges into the County Collection System shall consist only of Sewage, Properly Shredded Garbage and other wastes within the following parameters:

- (a) B.O.D. of Sewage discharged into the County's Collection System as determined by standard methods, shall not exceed 300 milligrams per liter; and
- (b) Suspended Solids discharged into County's Collection System, as determined by standard methods, shall not exceed 400 milligrams per liter; and

- (c) The pH of sewage discharged into County's Collection System shall not be lower than 5.5 nor higher than 10.0. Acid wastes must be neutralized to a pH of 5.5 or more; and
- (d) Un-ionized Hydrogen Sulfide in Sewage at points of discharge into County's Collection System shall not exceed 1.5 p.p.m. as determined by the Titrimetric Method and Colorimetric Method outlined in the most current edition in "Standard Methods for the Examination of Water and Wastewater", published by American Public Health Association, Inc.

The maximum amount of infiltration water which leaks into existing and new sewers constructed within the County Northwest Regional Collection System and any existing or new tributary lateral sewers shall not exceed 200 gallons per day per inch of pipe diameter per mile.

The maximum sewage flow rate delivered to the Village Treatment System by the County Collection System shall not exceed 250 percent of the normal average daily sewage flow of the total residential population equivalents connected to the County Collection System.

Section 7. Points of Discharge. Sewage meeting the requirements of Section 6 may be discharged by County into Village System at the site of the Village Treatment System, or at additional points of discharge which may be established by agreement if such additional points of discharge can reasonably be expected to result in a more economical means of providing service to County.

Section 8. Easements and Permits. The Village will grant to the County any easements required for connection and/or construction and maintenance of lines in dedicated streets, subject to the usual conditions with respect to restoration of the streets, hold harmless agreements and insurance coverage. It shall be the County's responsibility to obtain any required easement in private property.

The Village further agrees that it will assist the County in obtaining the necessary permits for the construction of sanitary sewer extensions as may be requested by signing the applications for permit which must then be forwarded to the State Environmental Protection Agency for approval. Such proceedings of applications for sewer extensions shall be made within fourteen (14) days of the date the Village receives such request.

Section 9. Technical Assistance. The County shall provide technical assistance for plant operation and maintenance as requested by the Village and as may be required by Illinois Environmental Protection Agency.

Section 10. Grants. The Village and County shall act as co-applicants for any State and Federal Grants. This agreement is contingent upon the receipt of State and Federal Grants.

Section 11. Maintenance Responsibility. The County's Collection System shall be maintained and operated by the County at its expense. Operation and maintenance of the Village Treatment System shall be the responsibility of the Village.

Section 12. Regulatory Bodies. This agreement shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, in particular Public Law 92-500, the State of Illinois or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 13. Contracts with Others. The County reserves the right to contract with other persons, natural or corporate, private or public, to perform sewage collection and transportation services subject to the approval of the Village.

Section 14. Assignment. Neither of the parties hereto shall have the right to assign this Agreement or any of its rights and obligations hereunder nor to terminate its obligations hereunder by dissolution or otherwise without first securing the written consent of the other party and this Agreement shall be binding

upon and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 15. The Right of County to Buy the Plant at Some Future Date. The County shall have the first right of refusal to purchase the Village Treatment System.

Section 16. Notice. Whenever in this Agreement notice is required to be given the same shall be given by Certified Mail addressed to the respective parties at the following address:

Village of Fox Lake
Village Hall
301 S. Route 59
Fox Lake, Illinois 60020
Attn: President and Board of
Trustees

County of Lake
Department of Public Works
County Building
Waukegan, Illinois 60085

A different address may be hereafter designated in writing by either of the parties. The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for any payments of and payment for sewage treatment and disposal charges may be made by regular mail.

Section 17. Execution of Documents. This Agreement shall be executed in six counterparts, any of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Agreement.

Section 18. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 19. Arbitration. All claims or disputes other than rates, connection charges or fees of any kind or nature whatsoever, arising out of or related to this Agreement shall be submitted to arbitration. Arbitration shall be conducted substantially in accordance with the rules of the American Arbitration Association (but not by the American Arbitration Association) and in compliance with the Illinois Uniform Arbitration Act, providing that the party found to be at fault shall pay all costs of arbitration.

Either party desiring arbitration shall serve notice on the other. Each party shall thereupon have ten (10) days within which to select their respective arbitrator. Thereafter the arbitrators so selected shall agree upon a third arbitrator. In the event of failure to agree within twenty (20) days after the service of notice, the parties shall apply to the Chief Judge of the Nineteenth Judicial Circuit, Lake County, Illinois, for the selection of the third arbitrator.

Section 20. If any part or portion of this contract is declared to be invalid, such invalidity shall in no way affect the validity of any other part or portion of this contract.

Section 21. Entire Contract. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties concerning the treatment and disposal of sewage for the Northwest Regional Area of Lake County.

Section 22. Term. The term of this contract shall be 30 years from the date of its execution.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

VILLAGE OF FOX LAKE

COUNTY OF LAKE, ILLINOIS

By: *John H. ...*
President, Board of Trustees

By: *Norman ...*
Chairman, Lake County Board

ATTEST:

ATTEST:

Matthew ...
Village Clerk

Granary ...
County Clerk

(SEAL)

(SEAL)

Exhibit 3

R E S O L U T I O N

WHEREAS, the County of Lake owns and operates a sanitary sewer system serving incorporated and unincorporated communities in Northwest Lake County; and

WHEREAS, pursuant to the Regional Wastewater Plan, said Northwest sewer system is designed to serve the Village of Lake Villa; and

WHEREAS, on May 8, 1990 and August 14, 1990, the Lake County Board had approved two separate proposals for sewage disposal service to Lake Villa, neither of which were accepted by the Village of Lake Villa; and

WHEREAS, further negotiations with the Village of Lake Villa have resulted in an Agreement which provides for the abandonment of existing treatment facilities serving the Village and the transmission of sewage flows through the Northwest system to the Village of Fox Lake regional treatment plant; and

WHEREAS, the consolidation of sewage treatment facilities in Northwest Lake County is considered to be environmentally sound and economically cost effective; and

WHEREAS, the Village of Lake Villa has found the terms of said Agreement for Sewage Disposal to be acceptable; and

WHEREAS, the Public Service, Planning and Zoning, and Financial and Administrative Committees have reviewed said Agreement and recommend its adoption.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chairman of the County Board and the Clerk of said County be and they are hereby authorized and

directed to execute the attached Agreement for Sewage Disposal with the Village of Lake Villa for connection of its local sewer system to the Northwest Regional Sewer System.

BE IT FURTHER RESOLVED, that the Chairman of the County Board and the Clerk of said County shall not so execute said Agreement unless and until the President and Board of Trustees of Lake Villa have first approved and authorized said Agreement and the President and Village Clerk shall have executed and attested said Agreement on or before May 31, 1991.

DATED at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 9th day of April, A.D., 1991.

EXECUTION COPY

AGREEMENT FOR SEWAGE DISPOSAL

Entered Into By and Between
The County of Lake, Illinois
and
The Village of Lake Villa, Illinois
As of
April 9, 1991

AGREEMENT FOR SEWAGE DISPOSAL

THIS AGREEMENT made and executed this 9th day of April, 1991, between the VILLAGE OF LAKE VILLA, a municipal corporation located in Lake County, Illinois, hereinafter referred to as the "Village", and the COUNTY OF LAKE, Illinois, hereinafter referred to as the "County".

W I T N E S S E T H:

WHEREAS, the public health, welfare, and safety of the residents of the Village and the residents of the County require the development of coordinated and adequate systems for the collection and treatment of sewage so as to eliminate pollution of lakes and streams; and

WHEREAS, the County has established a Department of Public Works pursuant to an Act of the General Assembly of the State of Illinois entitled "An Act in Relation to Water Supply, Drainage, Sewage, Pollution, and Flood Control in Certain Counties", as amended, for the purpose of performing the function of sewage disposal, has prepared a comprehensive plan for the disposal of sewage from areas of the County, and intends to develop the facilities needed to carry out such plan; and

WHEREAS, the County has entered into an agreement with the Village of Fox Lake whereby the Village of Fox Lake will perform the function of sewage treatment for the County in the Northwest Regional Area for certain fees as outlined in the agreement between Fox Lake and the County, which agreement and any amendments

thereto are, by this reference, incorporated herein and made a part hereof as if fully set forth; and

WHEREAS, the County has constructed an interceptor and trunk sanitary sewer system in the Northwest Regional Area to collect and transport sewage to the Fox Lake Plant; and

WHEREAS, the Village of Fox Lake proposes to expand its existing treatment plant to service the Northwest Regional Area in accordance with Northeastern Illinois Planning Commission and Lake County Waste Water Plan, and to provide sufficient treatment to meet water quality standards of the Illinois Pollution Control Board and Federal Environmental Protection Agency and County on the terms and conditions herein provided; and

WHEREAS, the Village of Lake Villa currently owns and operates a sewage treatment plant to serve portions of its jurisdiction and said plant has been placed on restricted status by the Illinois Environmental Protection Agency due to pollution being discharged therefrom into the waters of Lake County; and

WHEREAS, the elimination of the Lake Villa sewage treatment plant and diversion of its effluent to the Fox Lake plant was an alternative evaluated and recommended in the 1975 Facilities Plan for Wastewater Collection and Treatment in the Northwest Area of Lake County;

WHEREAS, Lake Villa has applied for, and NIPC has approved, an amendment to the 1975 Facilities Plan determining that elimination of the existing Lake Villa plant and diversion of sewage flows from Lake Villa to the Fox Lake sewage treatment plant through two connection points to the County's collection system

is the most cost effective solution to the long-term sewage treatment needs of Lake Villa;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:

SECTION 1. DEFINITION. As used in this contract, unless the context shows clearly otherwise, the following shall mean:

- (a) "County's collection system" shall mean the facilities for receiving and transporting sanitary sewage and Industrial Wastes which County has obligated itself to receive under the terms of contracts with other persons, firms, corporations, or districts, together with any additions or extensions to such facilities constructed or otherwise incorporated into County's Northwest Project in the future.
- (b) "Customer" shall mean any dwelling, business, industry or institution that is connected to the Village system and that discharges sewage, either directly or indirectly, into the County's collection system.
- (c) "B.O.D." (Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 C., expressed in parts per million.
- (d) "Garbage" shall mean the solid wastes from the preparation, cooking, and dispensing of food and from handling, storage, and sale of produce.

- (e) "Industrial Waste" shall mean the liquid and water-carried wastes from industrial processes, as distinct from Sanitary Sewage.
- (f) "Infiltration Water" shall mean the water which leaks into a sewer.
- (g) "Meter" shall mean any device used to measure flow.
- (h) "pH" shall mean the common logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
- (i) "Properly Shredded Garbage" shall mean Garbage that has been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than $\frac{1}{2}$ inch in any dimension.
- (j) "Population Equivalent" (P.E.) shall mean:
- (1) The calculated population that would normally contribute 100 gallons of sewage per day containing 0.167 pounds of 5 day B.O.D. and 0.22 pounds of suspended solids.
 - (2) For industrial waste, the estimated number of people contributing sewage equal in strength to a unit volume of the industrial waste on the basis of the highest parameter set forth in Section 1(j)(1) hereof.
- (k) "Residential Customer Equivalent" shall mean a single family dwelling or any other Customer, based on

discharge of 2½ times the Population Equivalent set forth in Section 1 (j)(1) hereof.

- (l) "Sanitary Sewage" shall mean liquid and water-carried waste discharged from the sanitary conveniences of dwellings and other buildings.
- (m) "Sewage" shall mean Sanitary Sewage and Industrial Waste, together with such Infiltration Water as may be present.
- (n) "Suspended Solids" shall mean solids that either float on the surface or are in suspension in water, sewage, or other liquids, which are removable by laboratory filtering, expressed in milligrams per liter.
- (o) "Sewer" shall mean a public sanitary sewer of 8" in diameter or larger but does not mean storm drain carrying unpolluted water.
- (p) "Sewer Surcharge" shall mean a charge over and above the normal service charge to a customer for additional service as agreed upon by the Village.
- (q) "Village" shall mean the Village of Lake Villa, a municipal corporation of the State of Illinois, and shall include all areas within its boundaries as they may from time to time exist.
- (r) "Village service area" shall mean the area outlined on Exhibit A attached hereto and made a part hereof; provided, however, that in the event any portion of the area outlined on Exhibit A is annexed by a city or village other than the Village, such portion thus

annexed shall be deleted from the Village service area and shall no longer be the subject of this Agreement.

(s) "Village service territory" shall mean that portion of the Village service area lying outside the boundaries of the Lakes Region Sanitary District, as such boundaries may from time to time exist.

(t) "Village system" shall mean all sewers, lift stations, connecting sewers, and sewage treatment facilities presently existing or to be constructed in the future, that are owned, operated, or maintained by the Village.

SECTION 2. SEWER SERVICE.

(a) Except as provided in Section 2(c) below, the Village agrees to deliver to the County's collection system all of the sewage collected by the Village system, and the County agrees, subject to the conditions precedent and limitations set forth in Section 3 below and to the other terms and conditions of this Agreement, to accept such sewage from the Village.

(b) Except as provided in Section 2(c) below, the Village agrees that all future sewage customers of the Village system shall be served in like manner and bound by the County rules and regulations. Nothing in this Section 2(b) shall limit the Village's discretion in establishing reasonable fees and rates related solely to the Village system for its customers.

(c) The Village agrees that during the term of this Agreement, the Village will not construct, cause, permit, or

consent to the construction of sewage treatment facilities within the jurisdiction of the Village, present or future, without the written consent of the County; provided, however, that in the event the County or the Fox Lake Regional Treatment Plant is unable or unwilling to provide capacity sufficient to serve all areas of the Village, the Village may, without the consent of the County, make alternate arrangements for sewage treatment for such areas or developments within the Village as the County is unable or unwilling to serve.

SECTION 3. CONDITIONS PRECEDENT AND LIMITATIONS.

(a) The obligation on the part of the County to receive sewage from the Village shall be subject to the following conditions precedent:

(1) The construction by the Village, at its sole cost and expense, as part of the Village system, of a connecting sewer between the existing Village system and the County's interceptor sewer located on Illinois Route 59 at the intersection of Monaville Road; said sewer shall not exceed a capacity of 11,700 P.E.

(2) If required to serve properties satisfying the conditions set forth in Section 3(b) below, the construction by the Village, at its sole cost and expense, as part of the Village system, of a connecting sewer between the existing Village system

and the County's Petite Lake Road Pumping Station located on Illinois Route 59 north of Petite Lake Road; said sewer shall not exceed a capacity of 7200 P.E.

(3) The ability of the regional sewage treatment plant at Fox Lake to accept sewage that the Village delivers to the County's collection system for treatment and disposal in compliance with all applicable laws and regulations and the legal right of the County to deliver said sewage to said plant for such purposes.

(4) The securing of an amendment to the Areawide Water Quality Management Plan for Northeastern Illinois by the Village for a facility plan amendment that will permit the Village to phase out its treatment plant. The County agrees to support the Village's application for such an amendment, but the County has no obligation to incur any expenses whatsoever in connection with such support.

(b) In addition to the conditions set forth in Section 3(a) above, the County shall have no duty to accept sewage from any dwelling, business, industry or institution, and the Village shall not permit any dwelling, business, industry or institution to connect to the Village system, unless:

(1) Such dwelling, business, industry or institution is within the Northwest Facilities

Planning Area of the County of Lake under the Areawide Water Quality Management Plan for Northeastern Illinois and the Village service area; and

- (2) The sum of the actual sewage flow from the Village service territory through the Village system to the County's collection system, plus the sewage flow projected by the County from "committed development" within the Village service territory, plus the projected sewage flow from the dwelling, business, industry or institution proposed to be connected, if located within the Village service territory, does not exceed the population equivalent represented by the most recent 20-year population forecast of the Northeastern Illinois Planning Commission (the "NIPC forecast") for the Village service territory. For purposes of this paragraph, "committed development" means any development designed to be served by sanitary sewer for which a final plat has been approved, a planned unit development that has received approval of its final development plan, or any development that has received permit or construction approval from the Illinois Environmental Protection Agency for sewer

extension; provided the County has not received written notice that such approvals have been revoked or terminated. The parties agree that the year 2010 NIPC forecast, as adjusted for non-residential use, for the Village service territory is 8,505 P.E. Upon the request of either party, population equivalents for the Village service territory shall be adjusted based upon the most recent update of the NIPC forecast, but in any event, the P.E. shall not be less than 8,505 P.E. If the parties cannot agree on an appropriate adjustment within 90 days after such a request, the County and the Village shall mutually appoint a professional planning or engineering consultant whose determination of the population equivalents for the Village service territory under the updated NIPC forecast shall be final. If the publication of periodic updates of the NIPC forecast is discontinued, the parties shall accept comparable forecasts as computed and published by an agency of the state or such other recognized authority then to be selected by the parties.

- (c) No points of connection shall be permitted between the Village system and the County's collection system,

except as noted in Sections 3(a)(1) and (2) above. Said points of connection shall not exceed the sizes noted in Sections 3(a)(1) and (2) above, which have been designed to accommodate projected growth until the year 2030.

(d) Notwithstanding anything in this Agreement to the contrary, the County shall not be required to accept, and the Village shall not be entitled to collect or deliver, sewage from any dwelling, business, industry or institution that lies:

(1) within the Lakes Region Sanitary District without the prior written consent of the Lakes Region Sanitary District; or

(2) within any unincorporated area of the County without the prior consent of the County.

(e) Subject to the conditions in Section 3(a), 3(b), 3(c) and 3(d) above, and the other terms, conditions and provisions of this Agreement, the County will hold itself available, within the limits of available capacity, to service Village customers with sewers on a first come, first serve basis after the proper connection fees (as set forth herein) have been paid to the County.

SECTION 4. COUNTY REGULATIONS. The County reserves the right to enforce "An Ordinance Regulating the Use of Public and Private Sewer and Drains, Private Sewage Disposal, the Installation and Connection of Building Sewers, and the Discharge of

Waters and Wastes into the Public Sewer Systems of the County of Lake in the State of Illinois" dated February 9, 1988, and any amendments thereto, a copy of which is attached hereto as Exhibit B, for all sewers connected to the Village system and served by the County's collection system. The Village shall be notified of any proposed changes in said County ordinance and shall have 30 days to object to said proposed changes. The maximum infiltration rate for new sanitary sewers constructed within the Village system and any new tributary lateral sewers shall conform to the rules and regulations of the Illinois Environmental Protection Agency.

SECTION 5. ADMISSIBLE WASTES. In order to permit proper treatment and disposal of the Village sewage, Village agrees to prohibit discharge into the County's collection system elements not herein specified as admissible. Discharges into the County's collection system shall consist only of sewage, properly shredded garbage, and other wastes within the following parameters:

- (a) B.O.D. of sewage discharged into the County's collection system as determined by standards methods shall not exceed 300 mg/l; and
- (b) Suspended Solids discharged into the County's collection system, as determined by standard methods, shall not exceed 400 mg/l; and
- (c) The pH of sewage discharged into the County's collection system shall not be lower than 5.5, nor higher than 10.0. Acid wastes must be neutralized to a pH of 5.5 or more; and

- (d) Unionized Hydrogen Sulfide in sewage at points of discharge into the County's collection system will not exceed 1.5 p.p.m. as determined by the Titrimetric Method and Calorimetric Method outlined in Standard Methods for the Examination of Water and Wastewater, 11th Edition, published by American Public Health Association, Inc.

In the event that changes in applicable rules, regulations, or laws require the County to modify the above parameters, the Village and its customers shall be required to comply with such modified parameters.

SECTION 6. CHARGES FOR SEWAGE TREATMENT AND DISPOSAL.

- (a) The Village shall be obligated to pay the County, from revenues derived from the operation of the Village system, service charges and any surcharges that may be required for its residential, commercial, institutional, and industrial customers pursuant to the County's current User Charge System attached hereto as Exhibit C. The Village shall make payment in full of said charges to the County within fifteen (15) days after the due date of its periodic customer service billing, along with a summary statement of customers and amounts billed. A complete statement of accounts and billing records shall be made available to the County upon request. In addition, the County shall have access to the Village's records relating to the Village system.

(b) The Village shall pay to the County, for every dwelling, business, industry and institution connecting to the Village system and discharging to the County's collection system after the date of this Agreement, a connection fee in the amount of \$1,300.00 per residential customer equivalent. In determining multifamily housing connection fees, the following schedule shall be used per unit:

3 or more bedrooms	100% Residential Customer Equivalent
2 bedrooms	80% Residential Customer Equivalent
1 bedroom	75% Residential Customer Equivalent

(c) The Village assumes the responsibility to collect, and shall be responsible for, all sewer connection fees, service charges, and surcharges as provided for in this Agreement.

SECTION 7. RATE ADJUSTMENTS.

(a) The system of rates and charges as set forth in Section 6, shall be related to the services and facilities provided by the County to the Village, and shall be equitable and comparable to those charges at similar classes of users within the Northwest Service Area. The County may adjust rates and charges for providing sewer services and the use of facilities by the County to the Village and to other classes of users, such as will always, together with any other monies legally available for and applied to such purpose, provide

revenues sufficient to pay the cost of maintenance and operation, the principal of and interest upon the County's Water and Sewer System Revenue Bonds, to provide a reasonable depreciation fund, and such other reserves and sinking funds as may be deemed necessary or desirable by the County for the payment of such bonds and for the extension or improvement of the sewage facilities as provided by "An Act in Relation to Water Supply, Drainage, Sewage, Pollution and Flood Control in Certain Counties", approved July 22, 1959, as amended, and by the County's ordinance creating the Waterworks and Sewerage System of the County, enacted October 13, 1964, as amended.

- (b) Except as hereinafter provided in Section 7(c), rates and charges may be adjusted by the County from time to time as necessary to meet its bond and other financial obligations. Written notice of proposed changes shall be given by certified mail to each of the participating municipalities and sanitary districts. The County shall include with such notice copies of all audits, engineering reports, financial analysis, or any other data upon which the proposed adjustment is based. Within 30 days thereafter, any participating municipality or sanitary district may file with the County its written objection to such proposed change, which must be accompanied by data supporting such objection. If such objection cannot be resolved promptly, three

(3) registered professional consulting engineers, recognized for their experience in evaluating and recommending rates and charges for water and sewer utility services shall be appointed to consider the need for such changes, one to be appointed by the County, one by the participating municipalities and sanitary districts, and one by mutual consent of the other two appointees. They shall review all data presented and all other material deemed relevant and, within 30 days after their appointment, shall report their findings and recommendation in light of the commitments, obligations, contracts, and covenants of the County, which commitments, obligations, contracts, and covenants shall be the ultimate determinant of rate adjustments made by the County.

- (c) The County shall notify the Village of any pending rate increase proposed by the Village of Fox Lake of which it has received notice. The Village may participate in those rate hearings as an interested party. Any rate increase determined to be required by Fox Lake in order to meet requirements of its system, shall be reflected in the rate the County charges the Village Customers, without the need for additional hearings.

SECTION 8. COUNTY RECORDS. The County shall keep permanent books and records of its entire System with separate accounting for revenue and expenses relating to operation of the County's collection system. As part of such records, on or before the

30th day of November of each year, it shall determine its total monetary requirements for the disposal of sewage during the next succeeding fiscal year. Such requirements shall include the cost of administration, operation, maintenance, establishment of necessary working capital and reserves, the requirements of all ordinances providing for the issuance of revenue bonds of the County to finance the acquisition, construction, or use of sewerage facilities, plus an amount not to exceed 10% of the foregoing requirements for general administrative overhead expenses. A copy of same shall be delivered to the Village on or before 30 days from said date. The Village shall have access to the County records.

SECTION 9. METERING. Upon request of the County or at the Village's own option, the Village shall, at its own expense, furnish, install, own, operate, and maintain metering equipment and devices of standard type for measuring all sewage delivered by the Village to the County's collection system pursuant to this Agreement. Such meters may be located where the Village's connecting sewers connect to the County's pumping station or interceptor sewer, as the case may be. The County shall have access at all reasonable times to such metering devices for inspection and examination. All calibration, adjustment, reading, and recording of such metering devices shall be the responsibility of the Village.

SECTION 10. OWNERSHIP AND MAINTENANCE.

(a) The County shall retain ownership of all sewer pipes and mains, interceptors, and other facilities in the

County's collection system that it now owns, or that it may in the future construct, or that it may in the future accept dedication of from the Village. The County shall maintain and operate the County's collection system and shall bear all risk of loss or damage to said system, all at its sole cost.

- (b) The Village shall retain ownership of all sewer pipes and mains and interceptors in the Village system that it now owns or that it may in the future construct, including but not limited to any future extensions thereto that are now located or that may be located within the Village, excluding any interceptors the County now owns or may in the future construct for transmission of sewage from or through the Village or any other facilities the County may construct in, or accept dedication of from, the Village. The Village shall maintain and operate the Village system and shall bear all risk of loss or damage to said system, all at its sole cost.

SECTION 11. PRETREATMENT. The Village shall develop a pretreatment program to detect and enforce against violations of pretreatment standards promulgated under Section 307(b) and (c) of the Federal Clean Water Act, including an inventory of industrial users tributary to the Village system and an inspection and enforcement program designed to identify and eliminate violations of pretreatment standards. The County reserves the right to require any additional program of pretreatment by Customers

within the Village of sewage of unusual quality or composition as required by federal or State of Illinois law.

SECTION 12. REGULATORY BODIES. This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them.

SECTION 13. EPA BOUNDARY AMENDMENTS. The County agrees not to oppose or object to any petition to amend the Areawide Water Quality Management Plan for Northeastern Illinois to add any parcel within the Village service area to the Northwest Facilities Planning Area of the County of Lake.

SECTION 14. CONTRACTS WITH OTHERS. The County reserves the right to contract with the Lakes Region Sanitary District within the District (but not within the Village service territory) or with other persons, natural or corporate, private or public, located outside the Village service area, to perform services similar to those to be performed under this Agreement; provided, however, that in the event the Village denies a request to provide sewer service to any property outside the Village but in the Village service area, the County also may, without the consent of the Village, enter into contracts to provide sewer service, either directly or indirectly, to such property.

SECTION 15. ASSIGNMENT. Neither of the parties hereto shall have the right to assign this Agreement or any of its rights and obligations hereunder nor to terminate its obligations

hereunder by dissolution or otherwise without first securing the written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 16. EFFECTIVE DATE AND TERM OF CONTRACT. This Agreement shall be in full force and effect and binding upon the parties hereto for a period of 30 years from the date of execution.

SECTION 17. NOTICE. Whenever in this Agreement notice is required to be given the same shall be given in writing, by Certified Mail, addressed to the respective parties at the following addresses:

Village of Lake Villa
Village Clerk
P.O. Box 176
65 Cedar Avenue
Lake Villa, IL 60046

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

unless a different address shall be hereafter designated in writing by either of the parties. The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for and payments of sewage disposal costs may be made by regular mail.

SECTION 18. EXECUTION OF DOCUMENTS. This Agreement shall be executed in three counterparts, any of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, and resolution or ordinances necessary to give effect to the terms of this Agreement.

SECTION 19. AMENDMENTS; WAIVER. This Agreement may not be amended or modified in any respect except by written agreement expressly referring to this Agreement and duly authorized, executed and delivered by authorized representatives of the parties hereto in accordance with applicable Illinois statutory procedures. The Village acknowledges and agrees that, in entering into this Agreement, the County is not holding itself out as a public utility nor as in any other manner offering to provide sewer service to the Village except as set forth in this Agreement. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

SECTION 20. REMEDIES. The parties to this Agreement shall have all of the remedies provided by the laws of the State of Illinois applicable to an Agreement of this type.

SECTION 21. ENTIRETY. This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties concerning the disposal of sewage by the Village and acceptance of such sewage by the County for disposal.

SECTION 22. SEVERABILITY. If any section, clause, sentence, or provision of this Agreement shall be held invalid, the validity of any other part of this Agreement, which can be given

effect without such invalid part(s), shall not be affected thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

VILLAGE OF LAKE VILLA

By: Joyce F. Frayer
Joyce Frayer
Village President

ATTEST:

Judith P. Dewar
Judith P. Dewar
Village Clerk

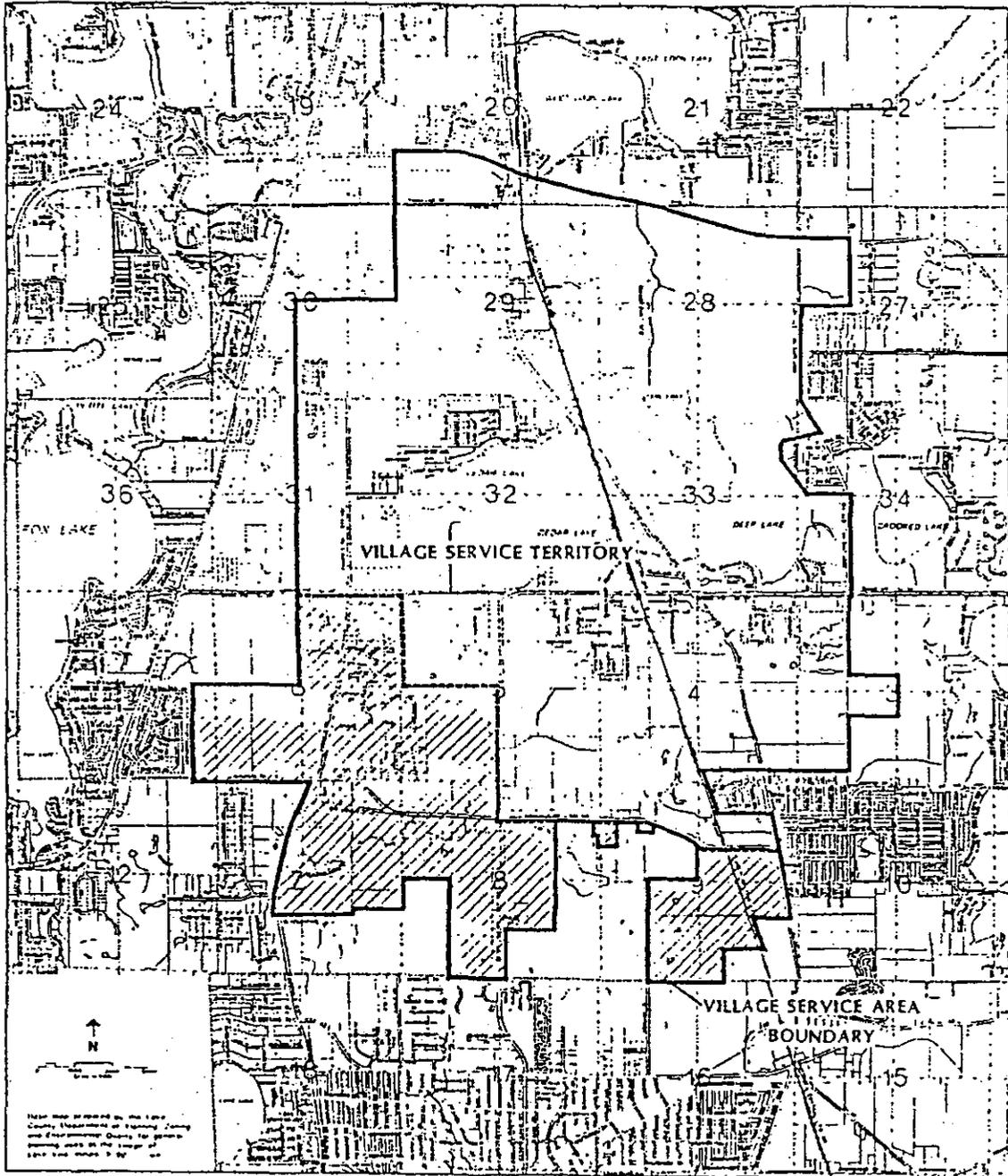
COUNTY OF LAKE

By: Robert J. Joyce
Chairman, Lake County Board

ATTEST:

Paula Luning Hem
County Clerk

VILLAGE SERVICE AREA



LAKE VILLA SEWER SERVICE AREA MAP
JANUARY 28, 1991

 LAKES REGION SANITARY DISTRICT

EXHIBIT A

EXHIBIT
3A

Blumberg No. 0101



AN ORDINANCE REGULATING THE USE OF PUBLIC AND PRIVATE SEWERS AND DRAINS, PRIVATE SEWAGE DISPOSAL, THE INSTALLATION AND CONNECTION OF BUILDING SEWERS, AND THE DISCHARGE OF WATERS AND WASTES INTO THE PUBLIC SEWERAGE SYSTEM (S) OF THE COUNTY OF LAKE IN THE STATE OF ILLINOIS.

BE IT ORDAINED AND ENACTED BY THE COUNTY BOARD OF LAKE COUNTY, STATE OF ILLINOIS AS FOLLOWS:

SECTION I DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

(1) "County" - The County of Lake, a political subdivision of the State of Illinois.

(2) "Superintendent" - The Superintendent of the Department of Public Works or his duly authorized deputy or representative.

(3) "Ordinance" - Means this ordinance.

(4) "Federal Act" - The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq) as amended by the Federal Water Pollution Control Act of Amendments of 1972 (Public Law 92-500 and Public Law 93-243) and the Clean Water Act of 1977 (Public Law 95-217).

(5) "State Act" - The Illinois Environmental Protection Act effective July 1, 1970 (Illinois Revised Statutes, Chapter 111 1/2, Section 1001-1051).

(6) "Person" - Any and all persons, natural or artificial including any individual, firm, company, public or private corporation, association, society, institution, enterprise, governmental agency or other entity.

(7) "Shall" - Means mandatory; "May" - Means permissive.

(8) "BOD" - Biochemical oxygen demand which is defined as the quantity of oxygen used in the biochemical oxidation of organic matter in five (5) days at 20 degrees C., determined by standard laboratory test procedures and expressed in mg/l.

(9) "Building Drain" - The part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of a building and conveys it to the building sewer or other approved point of discharge, beginning five (5) feet (1.4 meters) outside the inner face of the building wall.

(10) "Building Sewer" - The extension from the building drain to the public sewer or other place of disposal.

(11) "Control Manhole" - A structure specifically designed and constructed for sampling and metering industrial wastes discharged to a public sewer.

(12) "Easement" - An acquired legal right for the specific use of land owned by others.

(13) "Garbage" - Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

(14) "Properly Shredded Garbage" - Garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public

sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.

(15) "Industrial User"

(a) For the purpose of industrial cost recovery, any nongovernmental, nonresidential user of publicly owned sewerage works which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A - Agriculture, Forestry, and Fishing

Division B - Mining

Division D - Manufacturing

Division E - Transportation, Communications, Electric,
Gas and Sanitary Services

Division I - Services

In determining the amount of a user's discharge for purposes of industrial cost recovery, the County will exclude domestic wastes or discharges from sanitary conveniences. After applying the sanitary waste exclusion of this paragraph, discharges in the above divisions that have a volume exceeding 25,000 gpd or the weight of BOD or suspended solids equivalent to that weight found in 25,000 gpd of sanitary waste are considered industrial users. Sanitary wastes, for purposes of this calculation of equivalency, are wastes containing 0.17 pounds of BOD and 0.20 pounds of suspended solids per 100 gallons of wastewater per day.

(b) Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

(c) For the purpose of user charges, industrial users shall include manufacturing activities involving the mechanical or chemical transformation of materials or substances into other products. These activities occur in establishments usually described as plants, factories, or mills, and characteristically use power driven machines and material handling equipment.

(16) "Industrial Waste" - The wastewater discharged, permitted to flow, or escaping from any industrial, manufacturing, commercial or business establishment or process, or from the development, recovery of processing of any natural recovery of processing of any natural resource as distinct from employees' waste or wastewater from sanitary conveniences.

(17) "Major Contributing Industry" - An industrial user that has a flow of 50,000 gallons or more per average work day, or has a flow greater than ten percent of the flow carried by the sewerage works receiving the waste, or has in its waste, a toxic pollutant in toxic amounts as defined in standards issued under Section 307 (a) of Federal Act, or is found by the permit

issuance authority, in connection with the issuance of the NPDES permit to the publicly owned treatment works receiving the waste, to have significant impact, either singly or a combination with other contributing industries, on that treatment works or upon the quality of effluent from that treatment works.

(18) "mg/l" - Means milligrams per liter.

(19) "Natural Outlet" - Any outlet into a watercourse, pond, ditch, lake or other body of surface water.

(20) "NPDES Permit" - Means any permit or equivalent document to regulate the discharge of pollutants pursuant to Section 402 of the Federal Act.

(21) "pH" - The logarithm (base 10) of the reciprocal of the hydrogen-ion concentration expressed in gram molecular weight (moles) per liter.

(22) "Phosphorus" - The total concentration of orthophosphate, polyphosphates and organic phosphorus compounds in wastewater, the quantity of which is determined by standard laboratory test procedures and expressed in mg/l of elemental phosphorus.

(23) "Population Equivalent" - A term used to evaluate the impact of industrial or other wastes on a treatment works or stream. One population equivalent is 100 gallons of sewage per day, containing 0.17 pounds of BOD and 0.20 pounds of suspended solids.

(24) "Pretreatment" - The treatment of wastewaters from sources before discharge into the public sewer.

(25) "Public Sewer" - A sewer in which all owners of abutting properties have equal rights of connection and use, and

is operated, maintained and controlled by the County or other public agencies.

(26) "Residential, Commercial, or Non-industrial User" - Any user of the sewerage works not classified as an industrial user or excluded as an industrial user.

(27) "Residential Customer Equivalent" - A term used as a basis of billing for sewage collection and treatment service which is equivalent to a single-family residential user with an average sewage load of 2 1/2 times that of a "Population Equivalent".

(28) "Sanitary Sewer" - A sewer that conveys sewage and polluted industrial wastes, and to which stormwater, surface drainage, groundwater or unpolluted wastewater are not intentionally admitted.

(29) "Sewage" - A combination of the wastewater from residential, commercial, industrial and institutional buildings together with such groundwater infiltration and surface water inflow that may be in the sewers.

(30) "Sewage Treatment Plant" - An arrangement of devices, structures and processes for the treating and disposing of sewage.

(31) "Sewerage System" - All facilities of the County for collecting, pumping, treating and disposing of sewage and industrial wastes.

(32) "Slug" - Any discharge of sewage, industrial waste or other wastewater which in concentration of any given constituent or in quantity of flow exceeds, for any period of duration longer

than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration or quantity during normal operating conditions.

(33) "Storm Sewer" or "Storm Drain" - A sewer that conveys stormwater runoff and surface water drainage, but excludes sewage and polluted industrial wastes.

(34) "Stormwater Runoff" - That portion of precipitation which is not absorbed into the ground and which is drained from the ground surface to a natural outlet or watercourse.

(35) "Suspended Solids" - Solids that either float on the surface of, or are in suspension in water, sewage, industrial wastes, or other wastewaters; the quantity of which is determined by standard laboratory filtering test procedures and referred to as nonfilterable residue and expressed in mg/l.

(36) "Unpolluted Wastewater" - Wastewater that would not cause any violation of water quality standards of the Water Pollution Regulations of Illinois when discharged to a natural outlet or watercourse.

(37) "Wastewater" - The wastewater from any domestic, commercial, industrial and institutional uses.

(38) "Watercourse" - Any stream, creek, brook, branch, natural or artificial depression, slough, gulch, ditch, reservoir, lake, pond, or other natural or manmade drainageway in or into which stormwater runoff and surface water drainage flow either continuously or intermittently.

SECTION II USE OF PUBLIC SEWERS REQUIRED

(1) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within any area under the jurisdiction of the County, any human or animal excrement, garbage or other objectionable waste.

(2) It shall be unlawful to discharge to any natural outlet or watercourse within any area under the jurisdiction of the County, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

(3) Except as hereinafter provided, and subject to the provisions of Article V of the County Board of Health Ordinance, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

(4) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the County and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located any public sanitary sewer of the County, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the public sanitary sewer in accordance with the provisions of this ordinance, within ninety (90) days after date of official notice to do so, provided that said sewer is within 300 feet of the property line.

SECTION III PRIVATE SEWAGE DISPOSAL

(1) Where a public sanitary sewer is not available under the Section II (4), the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Section.

(2) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Health Officer. The application for such permit shall be made on a form furnished by the County Health Department which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Health Officer. A permit and inspection fee as required by the County shall be paid at the time the application is filed.

(3) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Health Officer. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Health Officer when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of written notice by the Health Officer.

(4) The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the County Board Health Ordinance. No septic tank or cesspool shall be permitted to discharge to any natural outlet or watercourse.

(5) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, and at no expense to the County.

(6) At such times as a public sanitary sewer becomes available to a property served by a private sewage disposal system, as provided in Section II (4), the building sewer shall be connected to said sewer within ninety (90) days and the private sewage disposal system shall be cleaned of sludge and filled with sand or gravel.

(7) No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the building or zoning authority having jurisdiction over said property.

SECTION IV BUILDING SEWERS AND CONNECTIONS

(1) No unauthorized person shall uncover, make any connections with, or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

(2) It shall be unlawful to discharge wastewater to any public sanitary sewer except those wastewaters in compliance with standards promulgated pursuant to the Federal Act, the State Act, or any rules, regulations, ordinances or standards of the County.

(3) The owner of a building or his agent shall make application for permit on a special form furnished by the County. The permit application shall be supplemented by any plans, specifica-

tions, or other information considered pertinent in the judgement of the Superintendent. An industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics, and type of activity.

(4) A building sewer permit will only be issued and a sewer connection shall only be allowed if it can be demonstrated that the downstream sewer system, including sewers, pump stations and wastewater treatment facilities, have sufficient reserve capacity to adequately and efficiently handle the additional anticipated waste load.

(5) All costs and expense incident to the installation connection and continuing maintenance and repair of the building sewer shall be borne by the owner. The person installing and maintaining or repairing the building sewer for said owner shall be a plumber or sewer contractor and he shall indemnify the County from any loss or damage that may directly or indirectly be occasioned by said installation.

(6) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(7) Old building sewers may be used in connection with new building only when they are found on examination and test by the Superintendent to meet all requirements of this ordinance.

(8) Building sewers shall be constructed in accordance with the Standard Specifications for Sanitary and Water Service Connections of Lake County dated 1978, and any revisions, thereto.

(9) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by a means which is approved in accordance with Section IV (2), and discharged to the building sewer.

(10) No person(s) shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

SECTION V USE OF THE PUBLIC SEWERS

(1) No person shall discharge, or cause to be discharged, any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any public sanitary sewer.

(2) Stormwater and all other unpolluted drainage shall be discharged to storm sewers or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged upon approval of the Superintendent, to

a storm sewer or natural outlet.

(3) No person shall discharge or cause to be discharged to a public sanitary sewer the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such waters or wastes can harm either the sewers, sewage treatment process, or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of such waters of waste in relation to flows and velocities in the sewers, materials or construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, and maximum limits established by regulatory agencies. The substance prohibited are:

(a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.

(b) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant.

(c) Any waters of wastes having a pH lower than 5.5 or higher than 9.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewerage works.

(d) Solid or viscous substance in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewerage system such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, woods, whole blood, paunch, manure, hair and fleshings, entrails and paper dishes, cup, and milk containers either whole or ground by garbage grinders.

(e) Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150 deg. F.), (0 deg. and 65 deg. C.).

(f) Oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty degrees Fahrenheit (150 deg. F.), and (0 deg. and 65 deg. C.).

(g) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourth (3/4) horsepower (0.76hp metric) or greater shall be subject to the review and approval of the Superintendent.

(h) Any waters or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions whether neutralized or not.

(i) Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the County as

necessary after treatment of the composite sewage, to meet the requirements of the State, Federal or other public agencies of jurisdiction for such discharge to the receiving waters.

(j) Any waters or wastes having a pH in excess of 9.5.

(k) Any waters or wastes containing substances exceeding the following maximum concentrations of pollutants:

Pollutant	Maximum Concentration	Pollutant	Maximum Concentration
5-day BOD	300 mg/l	Iron	10.0 mg/l
Total Suspended Solids	350 mg/l	Lead	0.1 mg/l
Total Dissolved Solids	1000 mg/l	Manganese	1.0 mg/l
Chemical Oxygen Demand	500 mg/l	Mercury	0.0005 mg/l
Ammonia	50 mg/l	Nickel	1.0 mg/l
Arsenic	0.1 mg/l	Oil (Hexane Soluble)	50.0 mg/l
Borate (Boron)	1.0 mg/l	Phenols	0.5 mg/l
Cadmium	1.0 mg/l	Phosphorus	25.0 mg/l
Chromium (Hexavalent)	0.25 mg/l	Selenium	1.0 mg/l
Chromium (Total)	4.2 mg/l	Silver	1.0 mg/l
Copper (Total)	1.0 mg/l	Zinc	0.1 mg/l
Cyanide	0.025 mg/l		

(2)

(1)

(1) IPCB Regulations, Chapter 3, Section 703 (a)

(2) IPCB Regulations, Chapter 3, Section 702 (a)

(l) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the County in compliance with applicable State or Federal regulations.

(m) Any mercury or any of its compounds in excess of 0.0005 mg/l as Hg at any time except as permitted by the County in compliance with applicable State and Federal regulations.

(n) Any cyanide in excess of 0.025 mg/l at any time except as permitted by the County in compliance with applicable State and Federal regulations.

(o) Materials which exert or cause:

(1) unusual concentrations of inert suspended solids (such as, but not limited to Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);

(2) excessive discoloration (such as but not limited to, dye wastes and vegetable tanning solutions);

(3) unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works;

(4) unusual volume flow or concentrations of wastes constituting "slugs" as defined herein.

(p) Waters of wastes containing substances which are

not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of agencies having jurisdiction over discharge to the receiving waters.

(4) If any waters or wastes are discharged, or are proposed to be discharged to the public sanitary sewers, which waters contain the substances or possess the characteristics enumerated in Section V, (3), and/or which are in violation of the standards for pretreatment provided in Chapter 1, EPA Rules and Regulations, Subchapter D, Water Programs, Part 403-"General Pretreatment Regulations For Existing and New Sources of Pollution" published in Federal Register Volume 43, No. 123, Monday, June 26, 1978, and any amendments thereto, and which in the judgement of the County may have deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may reject the wastes; require pretreatment to an acceptable condition for discharge to the public sanitary sewer; require control over the quantities and rates of discharge; and/or require payment to cover the added costs of handling and treating the wastes not covered by existing sewer charges. If the Superintendent permits the pretreatment or equalization of wastewater flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances, and laws.

(5) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection.

(6) Where pretreatment of flow-equalizing facilities are provided, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(7) Each industry shall be required to install a control manhole and, when required by the County, the Owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the County. The manhole shall be installed by owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(8) The owner of any property serviced by a building sewer carrying industrial wastes shall provide laboratory measurements, tests, and analyses of waters and waste to demonstrate compliance with this ordinance and any special conditions for discharge

established by the County or regulatory agencies having jurisdiction over the discharge. The number, type, and frequency of laboratory analyses to be performed by the owner shall be as stipulated by the County, but no less than once per year the industry must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with the Federal, State, and local standards are being met. The owner shall report the results of measurements and laboratory analyses to the County at such times and in such manner as prescribed by the County. The Owner shall be the expense of all measurements, analyses, and reporting required by the County. At such times as deemed necessary, the County reserves the right to take measurements and samples for analysis.

(9) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association and "USEPA Guidelines Establishing Test Procedures for Analysis of Pollutants" pursuant to 40 CFR Part 136 and shall be determined at the control manhole, provided or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customary accepted methods to reflect the effect of constituents upon the sewerage works and

to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite sample or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composite samples, whereas pH's are determined from periodic grab samples.)

(10) No statement contained in this Section shall be construed as preventing any special agreement or arrangement between the County and any industrial concern whereby an industrial waste or unusual strength or character may be accepted by the County for treatment, subject to payment therefore by the industrial concern, provided such payments are in accordance with the applicable ordinance governing Sewer User Service Charges and Industrial Cost Recovery.

SECTION VI PROTECTION OF SEWER SYSTEM FROM DAMAGE

(1) No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, or tamper with any structure system. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct and damaging public property.

SECTION VII POWERS AND AUTHORITY OF INSPECTORS

(1) The County and other duly authorized employees of the County, the Illinois Environmental Protection Agency, and the

U.S. Environmental Protection Agency, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this ordinance. The County or its representative shall have no authority to inquire into any processes, including metallurgical, chemical, oil refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterway or facilities for waste treatment.

(2) While performing the necessary work on private properties referred to in Section VI, Item (1) above, the County, the Illinois Environmental Protection Agency, and the U.S. Environmental Protection Agency shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the County employees and the County shall indemnify the company against loss or damage to its property by County employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Section V, Item (9).

(3) The County and other duly authorized employees of the County bearing proper credentials and identification shall be permitted to enter all private properties through which the County holds a duly negotiated easement for the purposes of, but

not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

SECTION VIII PENALTIES

(1) Any person found to be violating any provision of this ordinance except Section VI shall be served by the County with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person who shall continue any violation beyond the time limit provided for in Section VIII, Item (1), shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding ONE HUNDRED (\$100.00) DOLLARS for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

(3) Any person violating any of the provisions of this ordinance shall become liable to the County for any expense, loss, or damage occasioned the County by reason of such violation.

SECTION IX VALIDITY

(1) All ordinances or parts of ordinances in conflict herewith are hereby repealed.

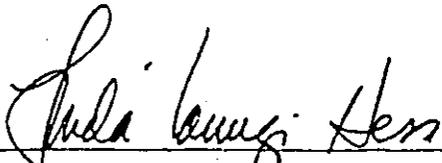
(2) The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

SECTION X ORDINANCE IN FORCE

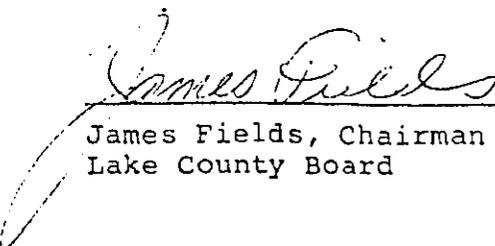
(1) This ordinance shall be in full force and effect ten (10) days after its passage, approval, recording, and publication as provided by law.

DATED, at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 9th day of February A.D., 1988.

ATTEST:



Linda Ianuzi Hess
Lake County Clerk



James Fields, Chairman
Lake County Board

Agenda Item # 33

STATE OF ILLINOIS)
)SS
COUNTY OF LAKE)

COUNTY BOARD OF LAKE COUNTY, ILLINOIS
REGULAR SEPTEMBER A.D., 1989 SESSION
SEPTEMBER 12, A.D., 1989

MR. CHAIRMAN AND MEMBERS OF THE COUNTY BOARD:

Your Public Service and Financial and Administrative Committees present herewith a Joint Resolution, authorizing notice of an adjustment in rates for sewage disposal service to the Villages and Sanitary Districts in the Northwest Regional Sewer Service Area in accordance with the terms of their respective Agreements with Lake County; and request its adoption.

Respectfully submitted,

Mike Pabson
CHAIRMAN
John L. Belew
VICE-CHAIRMAN
John Belmont
Robert Strenger
[Signature]

James Dulan
CHAIRMAN
Robert Gilly
VICE-CHAIRMAN
John Belmont
Debra J. Halas
[Signature]

Certified to be a true copy of
Records of the Lake County
Board of Public Works

SEP 12 1989 APPROVED

Certification not valid unless seal
of Lake County, SERVICES ADMINISTEE

Linda Lawrence
County Clerk



Barclay Calabrese
Andrew J. Moore
Edward S. Lottman
Dwight Nider
FINANCIAL AND ADMINISTRATIVE COMMITTEE

LAKE VILLA - LAKE COUNTY
EXHIBIT C

EXHIBIT
3C
Shamburg No. 5191

RESOLUTION

WHEREAS, the County of Lake has heretofore entered into various inter-governmental Agreements for sewage disposal in connection with the Northwest Regional Sewer program; and

WHEREAS, said Agreements provide for adjustments in rates and charges for sewage disposal service by the County conditioned upon proper written notice being given; and

WHEREAS, the Village of Fox Lake has notified the County of an increase in the costs of sewage treatment incident to the improvement and expansion of the Regional Treatment Plant, which must be reflected in the rates and charges for sewage disposal service; and

WHEREAS, the Public Service Committee of the County Board has reviewed the documentation submitted by the Village of Fox Lake substantiating said cost increase; and

WHEREAS, recommendations in regard to a rate adjustment have been made by the Northwest Sewer Advisory Committee.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Villages of Round Lake, Round Lake Park, Round Lake Beach, Round Lake Heights, Hainesville, the Round Lake Sanitary District and Lakes Region Sanitary District, be notified in accordance with the terms of their respective Agreements with Lake County of an increase in the rates for sewage disposal service as follows:

	<u>METERED USERS</u>	<u>UNMETERED USERS</u>
November 1, 1989	\$2.10/1000 Gal.	\$14.00 Per Month Per R.C.E.
May 1, 1990	\$2.55/1000 Gal.	\$17.00 Per Month Per R.C.E.
May 1, 1991	\$3.60/1000 Gal.	\$23.75 Per Month Per R.C.E.

DATED, at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 12th day of September, A.D., 1989.

Exhibit 4

MAR 18 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 C & F PACKING CO., INC.,)
 an Illinois corporation,)
)
 Respondent.)

No. PCB
(Enforcement)

03-153

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, C & F Packing Co., Inc., an Illinois corporation, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the



duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7).

3. At all times relevant to this Complaint, Respondent, C & F Packing Co., Inc., ("C & F Packing") was and is an Illinois corporation located in Elk Grove Village, Cook County, Illinois.

4. At all times relevant to this Complaint, Respondent, C & F Packing, was constructing a production facility/warehouse to be used in the manufacture of fresh and pre-cooked meat products. The facility's site is located in the Park Place Business Center along Route 83 in Lake Villa, Lake County, Illinois ("Site"). The Site is over five acres in size.

5. Storm water from the site discharges to an advance identification program ("ADID") wetland, which is located in the Squaw Creek sub-basin in the Fox River Watershed.

6. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), contains the following definition:

"WATERS" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

7. The ADID wetland, part of the Squaw Creek sub-basin in the Fox River watershed, is a "water" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

8. On May 11, 2001, Respondent's silt fencing was inadequate to contain the silt, the dirt piles were too close to the edge of the site, and there was an insufficient buffer zone to allow the storm water runoff to remain on the Site along Route 83 in Lake Villa.

9. Respondent's containment measures were not sufficient to prevent silt discharges from the site. Silt-laden runoff from this area flowed into the ADID wetlands area receiving the discharge and into a pond in front of the park.

10. Respondent's construction project and related discharges into an ADID wetland were not covered under any general NPDES storm water permit for construction site activities.

11. Section 12(a) of the Act, 415 ILCS 5/12(a)(2002), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

12. Section 302.203 of the Pollution Control Board ("Board") Water Pollution regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency or any other legal entity, or their legal representative, agent or assigns.

14. Respondent C & F Packing, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

15. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

"CONTAMINANT" is any solid, liquid or gaseous matter, any odor or any form of energy, from whatever source.

16. Silt-laden storm water is a contaminant as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

17. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), provides the following definition:

"Water Pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

18. The silt-laden storm water which flowed into the ADID wetland, part of the Squaw Creek sub-basin in the Fox River watershed, altered the physical, thermal, chemical, or radioactive properties of the ADID wetland and was likely to render it harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life, or was likely to create a nuisance.

19. By causing or allowing silt-laden storm water to flow into the wetland, Respondent caused, threatened or allowed water pollution, and thereby violated section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 302.203.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, C & F Packing Co., Inc., on this Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(a) of the Act, and 35 Ill. Adm. Code 302.203;

3. Ordering the Respondent to cease and desist from any further violations of Section 12(a) of the Act, and 35 Ill. Adm. Code 302.203;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(a) of the Act and pertinent regulations, and an additional

penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II
CREATING A WATER POLLUTION HAZARD

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count II.

19. Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), provides as follows:

No person shall:

* * * * *

(d) Deposit any contaminant upon the land in such place and manner as to create a water pollution hazard.

20. Respondent placed large dirt stockpiles on the site. Dirt and silt from Respondent's stockpiles ran offsite and flowed into the wetlands.

21. By allowing dirt and silt-laden storm water, contaminants, to flow into the wetlands, Respondent created a water pollution hazard and thereby violated Section 12(d) of the

Act, 415 ILCS 5/12(d).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, C & E Packing Co., Inc., on this Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(d) of the Act;
3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(d) of the Act and pertinent regulations, and an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III
FAILURE TO OBTAIN A NPDES PERMIT

1-17. Complainant realleges and incorporates by reference herein paragraphs 1 through 17 of Count I as paragraphs 1 through

17 of this Count III.

18. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), provides as follows:

No person shall:

* * * * *

(f) Cause, threaten, or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, any waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

19. Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required

a. Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

20. C & F Packing did not apply for and was not covered by a general NPDES storm water permit.

21. By allowing storm water discharges from a construction site without first obtaining coverage under the general NPDES storm water permit for construction site activities, C & F Packing violated Section 12(f) of the Act and 35 Ill. Adm. Code

309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, C & F Packing Co., Inc., on this Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);
4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
FAILURE TO OBTAIN A CONSTRUCTION PERMIT

1-17. Complainant realleges and incorporates by reference herein paragraphs 1 through 17 of Count I as paragraphs 1 through

17 of this Count IV.

18. Sections 12(b) of the Act, 415 ILCS 5/12(b) (2002), provides as follows:

No person shall:

* * * *

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

19. Section 309.202(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.202(a), provides, in pertinent part, as follows:

Construction Permits

* * * *

a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, ...

20. On November 27, 2001, Respondent had completed construction of its sanitary sewers and a process wastewater pretreatment system. On that date or an earlier date better known to the Respondent, the sewers were connected to Fox Lake and in use; the pretreatment system was fully constructed but not in use.

21. By completing construction of sanitary sewers and a

process wastewater pretreatment system without first obtaining a construction permit from the Illinois EPA, C & F Packing violated Section 12(b) of the Act and 35 Ill. Adm. Code 309.202(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, C & F Packing Co., Inc., on this Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(b) of the Act and 35 Ill. Adm. Code 309.202(a);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(b) of the Act and 35 Ill. Adm. Code 309.202(a);

4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and

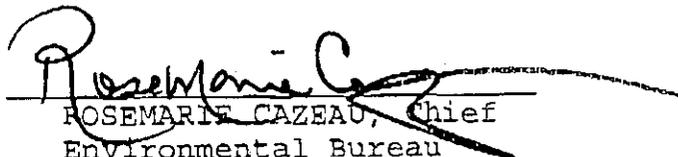
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:

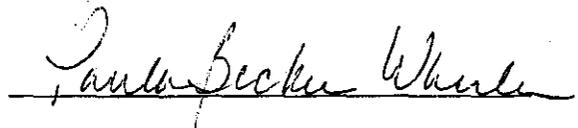

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-1511

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 18th day of March, 2003, the foregoing Complaint and Notice of Filing upon the persons listed on said Notice, by Certified Mail.



PAULA BECKER WHEELER

Exhibit 5

ORIGINAL

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 13 2003

PEOPLE OF THE STATE OF ILLINOIS,
Complainant,

-vs-

C & F PACKING CO., INC.,
an Illinois corporation,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

No. PCB 03-153
(Enforcement-Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, C & F PACKING CO., INC., an Illinois corporation, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future

EXHIBIT
5

enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

I.
JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2002).

II.
AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.
APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent, and each of them, and on any officer, director, agent, employee or servant of Respondent, as well as Respondent's successors and assigns. Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this

settlement.

IV.
STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, C & F PACKING CO., INC. ("C & F PACKING"), is an Illinois corporation, duly authorized to transact business in Illinois.

B. Facility Description

At all times relevant to the Complaint, C & F PACKING leased a parcel of property within the business park commonly known as Park Place Business Center on Route 83 in Lake Villa, Lake County, Illinois ("Site"). At the Site, Respondent was constructing a production facility/warehouse to be used in the manufacture of fresh and pre-cooked meat products. The Site is over five acres in size.

C. Noncompliance

Complainant has alleged the following violations of the Act

and Illinois Pollution Control Board ("Board") regulations against the Respondent:

- COUNT I: WATER POLLUTION, violations of 415 ILCS 5/12(a) (2002) and 35 Ill. Adm. Code 302.203;
- COUNT II: CREATING A WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2002);
- COUNT III: FAILING TO OBTAIN A NPDES PERMIT, violations of 415 ILCS 5/12(f) (2002) and 35 Ill. Adm. Code 309.102(a);
- COUNT IV: FAILING TO OBTAIN A CONSTRUCTION PERMIT, violations of 415 ILCS 5/12(b) (2002) and 35 Ill. Adm. Code 309.202(a).

D. Response to allegations

Respondent neither admits nor denies the alleged violations.

V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

ANALYSIS:

The parties mutually state as follows:

1. *Character and Degree of Injury:*

The impact to the public from the alleged violations of the Act was the threat of and actual water pollution in to Illinois wetland areas and waterways. Permits are the only way the State can monitor and control the discharge of contaminants to waters of the State and treatment works.

2. *Social and Economic Benefit:*

The parties agree that operation of Respondent's business is of social and economic benefit, provided it operates in conformance with the requirements of the Act and pertinent Board water pollution regulations.

3. *Suitability to the Area:*

Operation of Respondent's business at the Site is suitable to the area, provided that all necessary permits are obtained in a timely fashion and adequate storm water runoff measures are in place and maintained while construction activities are ongoing.

4. *Technical Practicability:*

Obtaining all necessary permits prior to initiating construction and employing and maintaining adequate storm water

runoff controls at its worksite are both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent is currently operating within the boundaries and the conditions specified in its permits.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

The violations that are the subject of the Complaint lasted approximately three months, and resulted in noticeable turbidity in the runoff from the Site.

2. *Diligence of Respondent:*

The Respondent has completed construction, removed all dirt stockpiles from the Site, and obtained all relevant permits, as described in the Complaint, and is now operating in compliance with its permits.

3. *Economic Benefit of Noncompliance:*

The Respondent received an economic benefit from the alleged noncompliance, however the exact value of the economic benefit is difficult to quantify.

4. *Deterrence:*

A penalty of Eleven Thousand Dollars (\$11,000.00) against the Respondent will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has no previously adjudicated violations of the Act and Board Regulations.

VII.

TERMS OF SETTLEMENT

1. The Respondent neither admits nor denies the violations as alleged in the Complaint.

2. The Respondent shall pay a penalty of Eleven Thousand Dollars (\$11,000.00) within 30 days of the date the Board issues

an Order accepting this Stipulation.

3. All Payments shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund ("EPTF"), and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Copies of the certified checks or money orders, and all related correspondence, shall be sent by first class mail to:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Flr.
Chicago, Illinois 60601

4. Respondent's Federal Employers Identification Number ("FEIN") must be on the certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following address:

515 Park Avenue
Lake Villa, Illinois 60046

For purposes of payment and collection, the Respondent's attorney may be reached at the following address:

Mr. Scott Richmond
Attorney at Law
474 Summit Street
Elgin, Illinois 60120

5. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)

(2002), interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

6. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

7. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

8. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Paula Becker Wheeler
Assistant Attorney General (or other designee)
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

9. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

VIII.
CEASE AND DESIST

Respondent shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

IX.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board regulations.

X.
RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Consent Order, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

XI.
RELEASE FROM LIABILITY

In consideration of Respondent's payment of Eleven Thousand Dollars (\$11,000.00), and Respondent's commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of the Complaint herein, upon the payment of all monies owed. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undiscovered violations, or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

LISA MADIGAN
Attorney General
State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: _____
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: _____

FOR RESPONDENT:

C & F PACKING CO., INC.

BY: Dennis J. Olson
Dennis J. Olson

Title: Secretary/Treasurer

FEIN: 36-2496475

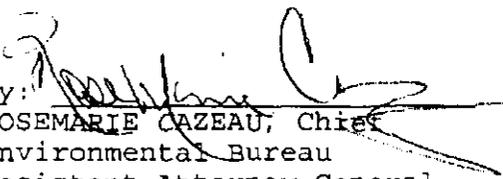
Dated: 5-1-03

AGREED:

FOR THE COMPLAINANT:

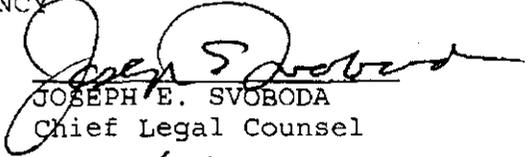
LISA MADIGAN
Attorney General
State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 5/5/03

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 5/2/03

FOR RESPONDENT:

C & F PACKING CO., INC.

BY: _____

Title: _____

FEIN: _____

Dated: _____

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 13th day of May, 2003, the foregoing Stipulation and Proposal for Settlement and Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on said Notice, by Certified Mail.



PAULA BECKER WHEELER