

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WESLEY BRAZAS, JR.,)	
)	
Petitioner)	
)	
v.)	PCB 06-131
)	
MR. JEFF MAGNUSSEN, PRESIDENT)	(Appeal from Illinois EPA decision
VILLAGE OF HAMPSHIRE)	granting modified NPDES permit)
and the)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondents)	

POST-HEARING BRIEF

NOW COMES the Respondent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by one of its attorneys, James Allen Day, Assistant Counsel and Special Assistant Attorney General, and hereby files its post-hearing brief in the above-captioned matter.

I. ISSUE

Was the public notice for the permit at issue (NPDES permit IL0020281) deficient due to errors relating to the calculation of concentration and load limits? This issue was set forth in Paragraph 24 of Mr. Brazas' amended petition.

II. ARGUMENT

The Petitioner bears the burden of proof in this matter. 415 ILCS 5/40(a)(1)(2004); 35 Ill. Adm. Code 105.112(a). Mr. Brazas has failed to cite any support for the proposition that permit limits must correspond according to the typical mathematical equation. In fact, no State or federal

statute or regulation includes such a requirement. Thus, Mr. Brazas' petition must fail, and the permit be upheld, in light of his failure to establish that the perceived "flaw" in the public notice was in fact violative of any legal standard.

Although Mr. Brazas' failure to carry his burden of proof is sufficient grounds to resolve this matter in favor of upholding the permit as proposed, for sake of clarification the Illinois EPA nonetheless wishes to address the substance of the claim.

III. BACKGROUND

Hampshire sought the permit modification at issue in order to double the capacity of its wastewater treatment plant, from 0.75 mgd to 1.5 mgd. The Illinois EPA responded to the application by issuing a draft permit and Public Notice Fact Sheet. The Fact Sheet noted that mass load limits equal $8.34 \times (\text{Design Average and/or Maximum Flow in MGD}) \times (\text{Applicable Concentration in mg/L})$. After reciting this standard formula, the Fact Sheet explained that, "Section 303 (d) listed impacts, as well as concerns for continued degradation of the receiving stream, led to restrictions on pollutant loading for the expanded (1.5 MGD) plant. Further increases in BOD and TSS loading are not allowed due to the documented dissolved oxygen problems in Hampshire Creek. The permit for the expanded plant must therefore allow no increase in loading from previously permitted levels. This will result in correspondingly lower effluent concentrations of BOD and TSS. Similarly, because ammonia was also listed as a cause of impairment, no loading increase may be allowed for this substance and likewise, lower effluent concentrations will result. The result will be a very high quality effluent that will bring about positive changes in both the biological and chemical condition of Hampshire Creek."

IV. ARGUMENT

The above-quoted statement from the Fact Sheet explains why the Illinois EPA held mass load limits at the lower levels from the prior (existing) permit rather than the higher mass load limits that would be produced by application of the standard formula. The Agency's decision to hold those mass limits at the lower levels from the prior permit is also documented at Pages 271, 447, 528, 532 and 546 of the Agency Record.

The deviation from the standard formula does not violate any state or federal statute or rule, and is motivated by the Illinois EPA's commitment to safeguard human health and the environment. Applying the standard formula would result in higher mass load limits and improperly contribute to the degradation of a 303(d)-listed water.

V. CONCLUSION

Mr. Brazas has failed to prove that the public notice for the permit at issue (NPDES permit IL0020281) deficient due to errors relating to the calculation of concentration and load limits. The Board must uphold the Illinois EPA's issuance of the modified permit number IL0020281 to the Village of Hampshire.

Respectfully submitted,

Illinois Environmental Protection Agency

By: _____/s/_____

James Allen Day
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel

DATED: June 6, 2006

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
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THIS FILING PRINTED ON RECYCLED PAPER

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ILLINOIS ENVIRONMENTAL)	
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Respondents)	

NOTICE OF FILING

TO:

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

**Jeffrey R. Magnussen, President
Village of Hampshire
234 South State Street, P.O. Box 457
Hampshire, Illinois 60140-0457**

Mark Schuster Schnell, Bazos, Freeman, Kramer, Schuster & Vanek 1250 Larkin Avenue #100 Elgin, Illinois 60123	Wesley J. Brazas, Jr. 44W331 Big Timber Road Hampshire, Illinois 60140
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**Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **POST-HEARING BRIEF** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____/S/_____
James Allen Day
Assistant Counsel
Division of Legal Counsel

Dated: June 6, 2006
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on June 6, 2006, I have served electronically the attached **POST-HEARING BRIEF**, upon:

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

And, by mailing it from Springfield, Illinois with sufficient postage affixed for first class mail, upon the following:

Mark Schuster
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1250 Larkin Avenue #100
Elgin, Illinois 60123

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Bradley P. Halloran
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Village of Hampshire
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_____/S/_____
James Allen Day
Assistant Counsel
Illinois Environmental Protection Agency