

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**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.

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, JUNE 6, 2006

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  
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THIS FILING PRINTED ON RECYCLED PAPER

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<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
	)	
<b>Respondents</b>	)	

**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  
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**Wesley J. Brazas, Jr.  
44W331 Big Timber Road  
Hampshire, Illinois 60140**

**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.

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, JUNE 6, 2006

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  
Schnell, Bazos, Freeman, Kramer, Schuster & Vanek  
1250 Larkin Avenue #100  
Elgin, Illinois 60123

Wesley J. Brazas, Jr.  
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James Allen Day  
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