

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 22 2000

STATE OF ILLINOIS
Pollution Control Board

ROGER STONE,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and)
NAPERVILLE PARK DISTRICT,)
)
Respondent.)

PCB 01-68
(Permit Appeal)


Proposed NPDES Permit No. IL0073253

NOTICE OF FILING

TO: **See Attached Service List**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and nine (9) copies the **RESPONSE TO ROGER STONE'S MOTION FOR AND MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

Dated: December 18, 2000
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

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STATE OF ILLINOIS
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)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY and)	Proposed NPDES Permit No. IL0073253
NAPERVILLE PARK DISTRICT,)	
)	
Respondent.)	

**RESPONSE TO ROGER STONE'S MOTION FOR AND MEMORANDUM OF
LAW IN SUPPORT OF SUMMARY JUDGMENT**

NOW COMES the Respondent, Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") by and through its attorney, Sanjay K. Sofat, Assistant Counsel and Special Assistant Attorney General, pursuant to 35 Ill. Adm. Code 101.241, 101.242, 101.244, 103.140, and 105.102(b)(9), and the Conference call on December 13, 2000, hereby submits this response to Roger Stone's ("Petitioner") Motion For And Memorandum Of Law In Support Of Summary Judgment to the Illinois Pollution Control Board ("Illinois PCB" or "Board"). The Illinois EPA respectfully requests that the Illinois PCB **DENY** the Petitioner's Motion For Summary Judgment as there exist genuine issues of material fact and the Petitioner is not entitled to judgment as a matter of law. In support of its Response, the Illinois EPA states as follows:

MATERIAL FACTS IN DISPUTE

Co-respondent, Naperville Park District ("NPD"), is in the best position to explain the character of and the activities at the permitted site. Illinois EPA, therefore, incorporates the description of the facility included in the NPD's Response and the attached affidavits of Jay Spitz and Richard K. Peddicord. (Response at 2 – 5, Attachment A, Attachment B). The facts relating to how much shot will be fired and where it will be deposited are clearly in dispute. The Petitioner's motion for summary judgment is premature as those facts must be more fully developed at the Illinois PCB hearing.

As will be explained below, Sections 302.203 and 304.106 do not create an absolute prohibition on the deposition of steel shot. (35 Ill. Adm. Code 302.203 and 304.106). Under Petitioner's interpretation of the Illinois PCB's regulations, 35 Ill. Adm. Code 302.203 and 304.106 create an absolute prohibition on the deposition of steel shot in the ponds, connecting channel, and wetlands of the permitted site. When Petitioner states that "[a] Board determination that the discharge of munitions and targets into the wetlands and stream cannot be permitted would dispose of this proceeding in its entirety." -- he is asking the Illinois PCB to outlaw trapshooting facilities in Illinois. (Mot. at para. 6). Several issues of fact exist, including; how much steel shot, clay targets, and shell waddings will be discharged; where these materials will land; what impact on the water column and sediments will result; and how the permit was designed to ensure that no violation of the Environmental Protection Act ("Act") will result from the resumption of shooting at the Sportsman's Park.

In addition, the Petitioner claims as undisputed material fact that the Illinois EPA ignored the Illinois PCB's regulations in 35 Ill. Adm. Code Part 304 and 302.203 in development of an National Pollutant Discharge Elimination System ("NPDES") permit for this facility. (Memo of law at 6). The Illinois EPA disputes this characterization of its development of the Sportsman's Park's permit. The Illinois EPA did consider the application of all of the Illinois PCB's regulations to this facility's discharge and developed a permit which would ensure that none of the provisions of the Act or the Illinois PCB's regulations would be violated.

ARGUMENTS

I. THE ILLINOIS PCB MUST DENY ROGER STONE'S MOTION FOR SUMMARY JUDGMENT

The sole basis for the Petitioner's motion for summary judgment is that the discharge of steel shots, non-toxic targets, and wadding from the Sportsman's Park activities into the State's waters will violate 35 Ill. Adm. Code 302.203 and 304.106 of the Illinois PCB regulations, warranting summary judgment in his favor. As there exist numerous issues of material fact and law, the Illinois EPA requests that the Petitioner's motion for summary judgment be denied.

A. Summary Judgment Is Not Appropriate Where A Genuine Issue of Material Fact Exists

The "purpose of a summary judgment proceeding is to determine whether there are any genuine issues of triable fact." *Kobus v. Formfit Co.*, 35 Ill.2d 533, 538, 221 N.E.2d 633 (1966). The courts have granted a motion for summary judgment only when

"the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c), *also see, Fooden v. Board of Governors*, 48 Ill.2d 580, 586-87, 272 N.E.2d 497 (1971), *cert. denied* (1972), 408 U.S. 943, 92 S.Ct. 2847 (*emphasis added*). "While use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation and therefore should be allowed only when the right of the moving party is clear and free from doubt." *Purtill v. Hess*, 111 Ill.2d 229, 239, 489 N.E.2d 867, 871 (1986) (*emphasis added*), *citing Allen v. Meyer*, 14 Ill.2d 284, 292, 152 N.E.2d 576 (1958); *Beverly Bank v. Alsip Bank*, 106 Ill.App.3d 1012, 1016, 62 Ill. Dec. 572, 436 N.E.2d 598 (1982); *Schnabel v. County of Du Page*, 101 Ill.App.3d 553, 560, 57 Ill.Dec. 121, 428 N.E.2d 671 (1981). The Illinois PCB is fully aware of these general principles, as it has consistently applied these principles in the actions before it. *David Mulvain v. Village of Durand*, PCB 98-114 (Dec. 3, 1998). As there exist genuine issues of material fact and law, the Petitioner's right is not clear and free from doubt. Therefore, the Illinois PCB must deny the Petitioner's motion for summary judgment.

B. Sportsman's Park's Activities Would Not Cause A Violation of 35 Ill. Adm. Code 304.106 And 302.203

A close examination of the Petitioner's interpretation of Sections 302.203 and 304.106, and the language of Sections 302.203 and 304.106, shows that the Illinois EPA's issuance of the NPDES permit was consistent with the Act and the applicable Illinois PCB regulations.

Discharge of Steel Shots Is Not An Effluent Under 35 Ill. Adm. Code 304.106

35 Ill. Adm. Code 304.106, Offensive Discharges, prohibits the presence of certain wastes in an effluent. Specifically, it provides that, "... no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids...." Therefore, a Section 304.106 violation can only occur if an effluent contains any of the prohibited substances. The Petitioner argues that the discharge of solids falls within the definition of "Effluent." (Memo of law at 12). The Illinois EPA contends that the Petitioner's position is clearly outside the scope of the effluent definition. In support of this, the Illinois EPA provides the following analysis:

35 Ill. Adm. Code 301.275 defines effluent to mean "any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer...." 35 Ill. Adm. Code 301.275 (*emphasis added*). Wastewater, in turn, is defined as "sewage, industrial waste, or other waste, or any combination of these...." 35 Ill. Adm. Code 301.425 (*emphasis added*). The industrial waste definition includes solid, liquid, or gaseous wastes originating from an industrial process. The industrial waste is defined as "any solids, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business or from the development, processing, or recovery, except for agricultural crop raising, of any natural resources." 35 Ill. Adm. Code 301.285 (*emphasis added*).

The Illinois EPA's position is that 'resulting' is the operative word that defines the scope of this definition. In other words, the industrial waste definition includes only those wastes that are generated as a result of the industrial process, manufacturing, trade or business activities of an industrial facility. The Illinois EPA finds support for this

position in the Sanitary Water Board's Technical Release document 20-22. The subject matter of that Technical Release focused on the "Sewage and Industrial Waste Treatment Requirements and Effluent Criteria." Technical Release 20-22 (April 1, 1967). The industrial waste definition appears under the "Industrial Residue" section of the Technical Release, which starts with the sentence that, "water-borne industrial residues generally require treatment before discharge to a watercourse." Technical Release 20-22, pg. 4 (April 1, 1967). In this document, the industrial waste is defined as "any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing trade or business or from the development, processing, or recovery of any natural resources...." *Id.* Note that this definition is essentially identical to the one provided at 35 Ill. Adm. Code 301.285. From the above discussion, it is clear that the industrial waste definition was designed to address the various types of wastes that an industrial facility might generate. The Petitioner's attempt to expand the meaning of this definition to include steel shot, non-toxic targets, and wadding clearly contradicts with the intent of the original drafters. Therefore, the Illinois EPA strongly objects to the Petitioner's attempt to widen the universe of the types of wastes covered by the industrial waste definition.

Next, the Petitioner states that the definition of "other wastes" includes solids. However, a plain review of the definition reveals that no such word is used in the language. The other wastes is defined as "garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye, stuffs, acids, chemicals and all other substances not sewage or industrial waste whose discharge would cause water pollution or a violation of the effluent or water quality standards." 35 Ill. Adm. Code 301.330.

The definition has two major components. The first component enumerates the substances that are prohibited in the State's waters. The second component includes all other substances that would cause water pollution or a violation of the effluent or water quality standards. Clearly, steel shots, non-toxic targets, or wadding are not enumerated in the definition. Further, the Illinois EPA believes that the discharge of shot, targets or waddings pursuant to Sportsman's Park's NPDES permit would not cause *water pollution*¹ or *violation of effluent or water quality standards*. Moreover, the Petitioner has made no attempt to prove otherwise.

Sportsman's Park's Discharge Does Not Violate 35 Ill. Adm. Code 302.203

The Petitioner argues that Section 302.203² strictly prohibits the deposition of bottom deposits or settleables. Under the Petitioner's strict construction of Section 302.203, even the deposition of one particle at the bottom of the State's waters is a violation of Section 302.203. The Illinois EPA strongly objects to the Petitioner's narrow and literal interpretation. Section 302.203 does not stand for a total prohibition of the deposition of the unnatural bottom deposits. This position finds its support in the Illinois PCB regulations and opinions.

¹ Section 3.55 of the Act provides that Water Pollution is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharges 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. 415 ILCS 5/3.55.

² 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. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section. 35 Ill. Adm. Code 302.203.

The Illinois PCB regulation at 35 Ill. Adm. Code 304.124³ contains a limit for total suspended solids ("TSS"). The Illinois EPA regularly uses this limit in NPDES permits issued to various facilities all across the State. Under the Petitioner's interpretation, most of these NPDES permits would be in violation of Section 302.203. Therefore, the Petitioner's interpretation must be rejected as it produces impractical and absurd results.

Additional support is found in the Illinois PCB's opinion in *In The Matter of: Petition of Illinois American Water Company's Alton Public Water Supply Replacement Facility Discharge To The Mississippi River For An Adjusted Standard From 35 Ill. Adm. Code 302.203, 304.106, And 304.124*, 2000 WL 1419647, AS 99-6 (Sept. 7, 2000) ("hereinafter IAWC"). In IAWC, the petitioner requested the Illinois PCB to grant an adjusted standard from Section 302.203. In the Substantially Different Factors part of the opinion, the Illinois PCB provided that, "The Board's general water quality concerns are to protect against health hazards, protect aquatic life in streams that support it, and protect potability in streams that are potable." *Id.* at 2000 WL 1419647, *10. The Illinois PCB further provided that, "[t]he Board's effluent concerns with TSS are increased turbidity and 'harmful deposits'." *Id.* In granting the requested relief, the Illinois PCB stated that, "... there will be a very slight increase in turbidity and new bottom deposits will be so slight that they will be difficult to measure. Such bottom deposits could hardly be described as 'harmful', which was one of the factors that the Board looked to in adopting the effluent standard for TSS ... Although the visibility of the plume could be a violation

³ No person shall cause or allow the concentration of the following constituents in any effluent to exceed the following level, subject to the averaging rules contained in Section 304.104(a). ... Total Suspended Solids (From sources other than those covered by Section 304.120) -----15 mg/l. 35 Ill. Adm. Code 304.124

of Section 302.203 of the Board's rules (waters of the state must be free of color or turbidity other than natural origin), the Board does not find that the violation is significant." *Id.* The Illinois EPA believes that the discharge of steel shots, non-toxic targets, or wadding as permitted would not cause any general water quality concerns (protect against health hazards, protect aquatic life in streams, and protect potability in streams) and would not create harmful deposits.

Moreover, the Illinois PCB's, *Explanation of Proposed Water Quality Standards Revisions, #R71-14*, Proposed May 12, 1971, provides the intent of the original drafters of Rule 203(a), which is now codified as Section 302.203. In that proposed opinion, the Illinois PCB stated that, "[t]his section contains general non-numerical criteria ... Sludge or bottom deposits either organic or inorganic can disturb bottom dwelling organisms and thus upset the natural food chain. The decomposition of organic deposits may depress dissolved oxygen values. Floating debris, visible oil, unnatural color and turbidity, are, of course, aesthetically unpleasing as well as having potential toxic effects." *Id.* at 3 (*emphasis added*). The Petitioner or any other party has not brought any evidence before the Illinois EPA that indicates that the Sportsman's Park's discharge may disturb bottom dwelling organisms or may indirectly upset the natural food chain. Further, the Sportsman's NPDES permit requires that only non-toxic targets are fired. Importantly, this permit contains a special condition that will control the discharge of floatables into the State's waters. Special condition 14 requires Sportsman's Park to develop and implement a Best Management Practices ("BMP") program to limit and control the deposition of shotgun shell wadding, either directly or indirectly, into the waters of the State. (See Attachment I).

In sum, the Illinois EPA believes that Section 302.203 demands a case-by-case basis analysis by the Illinois PCB. The Illinois EPA asserts that based on the facts present in this case, the activities at the Sportsman's Park will not violate Section 302.203.

Further, the Illinois PCB opinions cited by the Petitioner to support his interpretation are distinguishable and thus inapplicable to the case at hand. In *EPA v. Commans, et al.*, 2979 WL 20600. PCB 77-60 (Aug. 9, 1979), the Illinois PCB found that *Commans*, among various provisions of the Act and the Board regulations, violated Rule 203(a), which is now codified as Section 302.203. In *Commans*, defendants had deposited pieces of broken concrete, asphalt, and black dirt on the banks of Salt Creek. The Illinois PCB found these materials to diminish the aesthetic quality of the State's aquatic environment. The Petitioner in the case at hand, however, does not make any attempt to prove how the discharge of a few steel shots into the water would amount to the situation similar to diminishing the aesthetic quality of the State's aquatic environment. Clearly, the activities at Sportsman's Park do not violate the standard used by the Illinois PCB in *Commans*.

The Petitioner also cites *City of East Moline v. Illinois EPA*, 1989 WL 144768, PCB 87-127 (Nov. 15, 1989), to support his narrow and impractical interpretation of Section 302.203. In *City of East Moline*, the petitioner had asked for a variance from the water quality standards of 35 Ill. Adm. Code 302.203 relating to unnatural sludge for its discharge to an unnamed tributary of the Mississippi River. The Illinois PCB denied the petitioner's relief and concluded that the petitioner's discharge violated both Section 302.203 and Section 304.106. The Illinois PCB's conclusion was in part based on the

Illinois EPA's findings that "the quality of the water changed from clear to brown and turbid; sludge was up to 14-20 inches deep; no fish were found below the discharge point in the tributary, but were found upstream; and benthic organisms were reduced substantially." *Id.* at 1989 WL 144768, *6. The *City of East Moline* is not applicable to the case at hand as the Petitioner has not alleged any fact that indicates that the quality of the water has or is deteriorating; there are unnatural deposits of steel shots; no fish were found below the discharge points; and that number of benthic organisms have reduced substantially.

II. PETITIONERS REQUEST FOR SANCTIONS MUST BE DENIED

In his motion for summary judgment, the Petitioner states: "Because the position taken by the Illinois EPA is so patently *ultra vires* – lacking any color of authority to disregard the prohibitions imposed by Sections 302.203 and 304.106 – the Illinois PCB should sanction the Illinois EPA and order it to reimburse Mr. Stone for all of this [sic] expenses, including legal fees incurred in proceedings before the Agency as well as this Board." (Mot. at para 7). The Petitioner's request for imposition of sanctions against the Illinois EPA is unjustified and outside the authority of the Illinois PCB to grant.

The Petitioner's basis for requesting sanctions appears to be twofold. First, the Illinois EPA is to be sanctioned for "ignoring" two specific Illinois PCB regulations when drafting the NPDES permit at issue in this case. (Memo of law at 15). The second basis appears to be the Petitioner's claim that "the Agency has blatantly disregarded its non-discretionary statutory obligation to pursue legal remedies requiring the NPD to remove tons of illegally discharged lead and toxic-containing targets, and the restoration

of the environment to its uncontaminated and unpolluted state.” (Motion at para. 8. *See also* Memo of law at 15). In fact, the Petitioner is asking the Illinois PCB to impose sanctions against the Illinois EPA based on the content of a permit it has issued and the alleged failure of the Illinois EPA to pursue enforcement against the NPD for past violations of the Clean Water Act. He is making the radical claim that the Illinois EPA’s permitting and enforcement functions (the core duties delegated to the Illinois EPA under the Act) are not discretionary and that the Illinois PCB may sanction the Illinois EPA when a party disagrees with the manner in which these duties are exercised. *See*, 415 ILCS 5/4, 30, 39. The Act provides for third party appeals of NPDES permits and citizen enforcement of the Act when a party feels the Illinois EPA has not properly exercised its discretionary permitting and enforcement functions. 415 ILCS 5/31(d), 40(e). The legislature did not intend for sanctions against the Illinois EPA to be available before the Illinois PCB as a challenge to the Illinois EPA’s exercise of its statutory duties.

A. Reference To Rule 137 Sanctions Is Inappropriate And The Illinois PCB May Only Grant Sanctions Against The Illinois EPA For Violations Of Illinois PCB Or Hearing Officer Orders.

The Petitioner asserts that the Illinois EPA would be subject to sanctions in a court proceeding under Rule 137 for asserting and pursuing positions that are known to have no support in the law. (Memo of law at 15). Of course, Rule 137 does not apply to the Illinois PCB proceedings, but since the Illinois PCB often uses the Rules of Civil Procedure for guidance in appropriate circumstances, it is worth noting why this case does not present one of those circumstances.

The Illinois EPA has not brought any action in any Court or before this body that would cause either party to incur unnecessary costs as a result of its conduct, nor has it defended any litigation by the Petitioner in a frivolous manner. As explained above, the Illinois EPA does have a basis in law and fact for the permitting decisions it has made in this case. Just because the Petitioner has a different interpretation of the proper legal standard to be applied to the novel facts of this case, does not mean that the Illinois EPA “ignored” the law, or acted in an “ultra vires” manner. The Illinois EPA would not be subject to Rule 137 sanctions in any Court, since the record is clear that the Illinois EPA has made a good faith attempt to address a new permitting situation in a manner that protects the environment and the rights of the applicant. If the Petitioner felt that no permit could lawfully be written for this facility under Illinois law, he should have sought such an order from the District Court. Instead, the Petitioner sought and obtained an order that this facility must apply for and obtain an NPDES permit. The Petitioner should not now be permitted to obtain sanctions against the Illinois EPA, because he disagrees with the permitting decision.

Unlike a circuit court, the Illinois PCB only has those powers granted to it by statute. The legislature has not conferred comparable powers upon the Illinois PCB as those embodied in Rule 137. Under the current 35 Ill. Adm. Code 101.280 (Subpart J) and the new Section 101.800 (Subpart H), the Illinois PCB may only sanction the Illinois EPA for unreasonable violations of Illinois PCB or Hearing Officer orders or the Illinois PCB’s procedural rules. The Petitioner has alleged no Illinois PCB Order, Hearing Officer Order, or procedural rule that the Illinois EPA has violated.

B. The Illinois PCB May Not Grant The Sanctions Requested By The Petitioner.

Even if sanctions were found to be warranted in this case, the Illinois PCB does not have authority to grant attorney's fees as a sanction. In *ESG Watts, Inc. v. Pollution Control Board*, the third district appellate court held that attorney's fees are only available to the Illinois PCB where it has been given specific statutory authority to grant them or there is an agreement between the parties. 286 Ill.App.3d 325, 339, 676 N.E.2d 299, 308 (1997), *appeal denied*, 173 Ill.2d 684 N.E. 2d 1335 (1997). That court found that the Illinois PCB has no specific statutory authority to grant attorneys fees as a sanction and there has certainly been no agreement between the parties to shift the expenses of this third party permit appeal from the Petitioner to the citizens of the State of Illinois. *See also, Central C& D Recycling, Inc. v. Illinois Environmental Protection Agency*, (June 17, 1999) PCB 99-122, fn 2.

Although neither the old procedural rules nor the new procedural rules provide for the imposition of attorney's fees as a sanction, the new procedural rules (which take effect January 1, 2001) eliminate the sanction of reasonable expenses of the other party in obtaining a sanction order from the Illinois PCB which had been included in the prior rules.⁴ Since the Illinois PCB has specifically chosen not to include as sanctions for non-compliance with Illinois PCB or Hearing Officer Orders attorneys fees or reasonable expenses, such sanctions certainly can not be imposed where there has been no allegation of non-compliance with an Illinois Board or a Hearing Officer Order. *See, In the Matter of Revision of the Board's Procedural Rules*: 35 Ill. Adm. Code 101-130, R00-20, First

⁴ This change was made due to comments concerning the Illinois PCB's authority to do so under the Act.

Notice Opinion, March 16, 2000 at 18, and Second Notice Opinion, November 2, 2000 at 6.

The Illinois PCB's current procedural rules also explain that, with the single exception of the preparation of the Illinois EPA Record, the expense of bringing a permit appeal is to be borne by the appellant, not the Illinois EPA. 35 Ill. Adm. Code 105.104.

III. THE ILLINOIS PCB MAY NOT ORDER THE ILLINOIS EPA TO COMMENCE ENFORCEMENT PROCEEDINGS AGAINST THE APPLICANT AS A CONDITION OF ALLOWING THE TEMPORARY DISCHARGE CONTAMINATED STORMWATER.

The Petitioner has asked the Illinois PCB to "order the Illinois EPA to commence enforcement activity under Section 31 of the Act as a condition of allowing the NPD to temporarily discharge contaminated stormwater pending remediation . . ." (Mot. at p. 6, *See also* Memo of law at 14). By asking for this relief, the Petitioner is asking the Illinois PCB to usurp both the enforcement *and* permitting functions of the Illinois EPA and is using this permit appeal and summary judgment motion in an improper attempt to an enforcement proceeding against the NPD. The Petitioner is correct to state that the permitting process cannot be used by the Illinois EPA to create a variance or adjusted standard from Board requirement. (Memo of law at 2). However, the Petitioner's attempt to use the permit appeal process as a substitute for the enforcement process and to circumvent the prosecutorial discretion of the Attorney General and the Illinois EPA is even more unsound.

The Petitioner's repeated claims that the Illinois EPA's enforcement duties under Section 31 of the Act are non-discretionary would result in the Illinois EPA being required to issue a Violation Notice for every potential violation that comes

to the Illinois EPA's attention within 180 days and a Notice of Intent to Pursue Legal Action for every Compliance Commitment Agreement that the does not meet every requirement of the Act. This would bring the Illinois EPA to a halt if it were unable to prioritize the violators pursued based on severity of the violation and Illinois EPA resources. As explained in the NPD's Response, as soon as the Illinois EPA and the NPD were notified by the District Court that an NPDES permit was required for this activity, the NPD terminated shooting at the facility and submitted a permit application. *Stone v. Naperville Park District*, 38 F. Supp.2d 651 (N.D. Ill. 1999). The U.S. Supreme Court has upheld the discretion of U.S. EPA not to seek an injunction for similar activity as long as no environmental harm was occurring and a permit application was submitted. *See, Weinberger v. Romero-Barcello*, 456 U.S. 305, 315, 102 S.Ct. 1798, 1805, (1982).

The Illinois PCB and the courts have consistently held that the Illinois EPA may not substitute a permit denial for an enforcement action. *Illinois Environmental Protection Agency v. Illinois Pollution Control Board*, 252 Ill. App. 3d 828, 830, 624 N.E. 2d 402, 404 (3d Dist. 1993); *Centralia Environmental Services, Inc. v. Illinois Environmental Protection Agency*, (October 25, 1990), PCB 89-170, slip. op. at 10-13. The law is also settled that a grant of a permit is not a license to pollute and if, at a future date, the Sportsman's Park violates the Act or the Illinois PCB regulations, this NPDES permit is not a shield to the alleged violations. *Landfill, Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 387 N.E. 2d 258 (1978); *David Mulvain v. Village of Durand, et al*, PCB 98-114 (May 21, 1998) slip. op. at 4.

Movant states there is no factual dispute that NPD has violated the Act and regulations in the past by discharging lead into the waters of the State without an NPDES permit. (Memo of law at 12). Even assuming arguendo this is an undisputed fact, these are wholly past violations that may not be remedied through the denial of a permit. Conversely, the Petitioner can not use its challenge to the validity of this NPDES permit as an alternative to bringing a citizen's suit under the CWA or to eliminate the Illinois EPA and Attorney General's prosecutorial discretion to bring enforcement proceedings under the Act. Therefore, there is no basis to grant the unusual relief requested by the Petitioner of overturning the bulk of the permit, but mandating the stormwater provisions while an Illinois PCB-ordered remediation is conducted.

CONCLUSION

For the reasons and arguments provided herein, the Illinois EPA respectfully requests that the Illinois PCB DENY the Petitioner's motion for summary judgment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Sanjay K. Sofat
Special Assistant Attorney General

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

SS

PROOF OF SERVICE

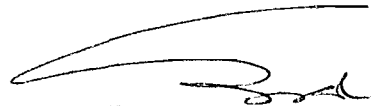
I, the undersigned, on oath state that I have served the attached the **RESPONSE TO ROGER STONE'S MOTION FOR AND MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT** upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

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

Andrew H. Perellis
Jeffrey S. Srulovitz
Seyfarth Shaw
55 East Monroe Street, Suite 4200
Chicago, IL 60603-5803

James R. Morrin
Leo P. Dombrowski
Wild man Harold Allen & Dixon
225 West Wicker Drive
Suite 2800
Chicago, IL 60606

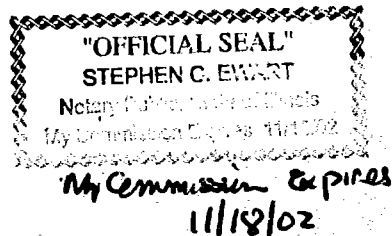
and mailing it from Springfield, Illinois on December 18, 2000, by U.S. Mail with sufficient postage affixed.



Sanjay K. Sofat

SUBSCRIBED AND SWORN BEFORE ME
THIS 18th DAY OF DECEMBER, 2000.

S. C. Ewart



Attachment 1

NPDES Permit No. IL0073253

Illinois Environmental Protection Agency

Division of Water Pollution Control

1021 North Grand Avenue East

Post Office Box 19276

Springfield, Illinois 62794-9276

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

New (NPDES) Permit

Expiration Date: September 30, 2005

Issue Date: October 13, 2000

Effective Date: October 13, 2000

Name and Address of Permittee:

Naperville Park District
320 West Jackson Avenue
Naperville, Illinois 60540

Facility Name and Address:

Sportsman's Park
743 South West Street
Naperville, Illinois 60540
(DuPage County)

Discharge Number and Name:

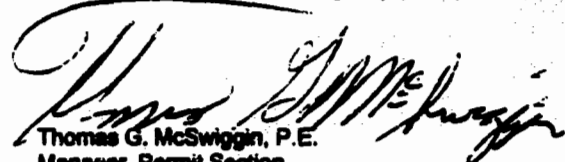
Shooting Stations and Shot Fall Area

Receiving Waters:

Unnamed Connecting Channel tributary to South
Pond tributary to an Unnamed Ditch tributary to the
West Branch of the DuPage River

In compliance with the provisions of the Illinois Environmental Protection Act, Title 35 of Ill. Adm. Code, Subtitle C and/or Subtitle D, Chapter 1, and the Clean Water Act (CWA), the above-named permittee is hereby authorized to discharge from a trap shooting facility at the above location to the above-named receiving stream in accordance with the standard conditions and attachments herein.

Permittee is not authorized to discharge after the above expiration date. In order to receive authorization to discharge beyond the expiration date, the permittee shall submit the proper application as required by the Illinois Environmental Protection Agency (IEPA) not later than 180 days prior to the expiration date.



Thomas G. McSwiggan, P.E.
Manager, Permit Section
Division of Water Pollution Control

NPDES Permit No. IL0073253

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day DAF (DMF)		CONCENTRATION LIMITS mg/l		SAMPLE FREQUENCY	SAMPLE TYPE
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		
1. From the effective date of this permit until the expiration date, the outflow from the shot fall area shall be monitored and limited at all times as follows:						
Monitoring Point: 001*****						
Flow	See Special Condition 1					Measure When Monitoring
pH					1/Month	Grab**
Lead***					1/Month	Grab**
Priority Pollutant PNA's****					1/Month	Grab**

*Monitor Only.

**See Special Condition 7.

***See Special Condition 5.

****See Special Condition 6.

*****See Special Condition 11.

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Special Conditions

SPECIAL CONDITION 1. Flow shall be reported as a daily maximum and monthly average. In the event that no outflow occurs during a given month, a statement of "No Discharge" shall be reported on the DMR for that month.

SPECIAL CONDITION 2. For the purpose of this permit, this outflow is limited to storm water, free from process and other wastewater discharges.

SPECIAL CONDITION 3. If an applicable effluent standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the NPDES Permit, the Agency shall revise or modify the permit in accordance with the more stringent standard or prohibition and shall so notify the permittee.

SPECIAL CONDITION 4. The Agency may request more frequent monitoring by Letter and Without Public Notice for finite periods in the event of operational, maintenance or other problems resulting in possible effluent deterioration.

SPECIAL CONDITION 5. The water quality standards for lead at this location are 0.51 mg/l (daily maximum) and 0.107 mg/l (monthly average). Based on these standards, the Agency has developed "Action Levels" of 0.25 mg/l (daily maximum) and 0.05 mg/l (monthly average). In the event either of these "Action Levels" is exceeded on any two consecutive monthly Discharge Monitoring Reports which report an outflow, the Permittee shall initiate the development and implementation of a "Preventative Action Plan" in accordance with the compliance schedule outlined below. The Plan shall be aimed at preventing any further increase in the lead concentrations present in the outflow. (An alternative means of compliance with this requirement may include providing documentation to the Agency that the "Action Level" exceedances were not representative of the actual levels of lead in the outflow).

COMPLIANCE SCHEDULE

Item	*Compliance Date
1. Submit preliminary plan	6 months
2. Submit final plan & apply for necessary permits	12 months
3. Initiate necessary action	15 months
4. Submit an interim status report	18 months
5. Complete plan objective	24 months

*Monthly DMR forms must be submitted to the Agency no later than the 15th of the following month. Therefore, the "Compliance Date" shall be calculated from the 15th day of the month in which the DMR reporting the second "Action Level" exceedance was due.

SPECIAL CONDITION 6. Permittee shall analyze the outflow for the following polynuclear aromatic hydrocarbons (PNA's):

Acenaphthene	Chrysene
Acenaphthylene	Dibenzo(a,h)anthracene
Anthracene	Fluoranthene
Benzo(a)anthracene	Fluorene
Benzo(a)pyrene	Indeno (1,2,3-cd)pyrene
3,4-Benzofluoranthene	Naphthalene
Benzo(ghi)perylene	Phenanthrene
Benzo(k)fluoranthene	Pyrene

Priority Pollutant PNA monitoring refers to the sum of these polynuclear aromatic hydrocarbons.

SPECIAL CONDITION 7. Grab samples shall be collected within the first thirty minutes of outflow from the storm event.

SPECIAL CONDITION 8. As required in the instructions for Form 2D, the permittee must submit to the Agency Items V and VI of NPDES application Form 2C. This information must be submitted within two years of the issue date of this permit.

SPECIAL CONDITION 9. The outflow, alone or in combination with other sources, shall not cause a violation of any applicable water quality standard outlined in 35 Ill. Adm. Code 302.

SPECIAL CONDITION 10. Issuance of this permit expressly prohibits the use of lead shot at this facility. Use of lead shot would require modification of this permit subject to the public notice requirements outlined in 35 Ill. Admin. Code 309. If a barrier is proposed to prevent lead shot from entering the waters of the state, design criteria must be submitted to the Agency proving that the barrier will meet this objective.

SPECIAL CONDITION 11. Samples taken in compliance with the outflow monitoring requirements shall be taken at a point representative of the outflow, but prior to entry into the unnamed ditch tributary to the West Branch of the DuPage River.

NPDES Permit No. IL0073253

Special Conditions

SPECIAL CONDITION 12. The permittee shall record monitoring results on Discharge Monitoring Report (DMR) forms using one such form for each month. In addition to the water quality monitoring results, the permittee shall certify that no lead shot was used at the facility during the preceding report period. Such certification shall be affixed to the monthly DMR. The completed Discharge Monitoring Report form and attachment shall be submitted monthly to IEPA, no later than the 15th of the following month, unless otherwise specified by the Agency, to the following address:

Illinois Environmental Protection Agency
Bureau of Water
Compliance Assurance Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

SPECIAL CONDITION 13. In the event trap-shooting activities at this facility permanently cease, the Permittee shall notify the Agency's Bureau of Land, Site Remediation Section at the address listed under Special Condition 12.

SPECIAL CONDITION 14. The permittee shall develop and implement a Best Management Practices (BMP) program to limit and control the deposition of shotgun shell wadding, either directly or indirectly, into the waters of the State. In developing the BMP, the permittee shall evaluate the shooting activities and outflow to determine if the shell wadding is being contributed to any surface waters. If so, the BMP program shall include measures designed to control the discharge of this material into the waters of the State.

A report summarizing and outlining the BMP shall be submitted to this Agency within 180 days of the issue date of this permit. The BMP shall be fully implemented and a report submitted indicating the status of final compliance within 365 days of the issue date. All reports shall be submitted to the address specified in Special Condition 12.

SPECIAL CONDITION 15. Before shooting activities can resume, the permittee shall develop and implement a Best Management Practices (BMP) program to ensure that lead shot is not used at this facility. A report summarizing and outlining the BMP shall be submitted to this Agency within 90 days of the issue date of this permit. The report shall be submitted to the address specified in Special Condition 12.

SPECIAL CONDITION 16. Issuance of this permit expressly prohibits the deposition of toxic containing target material into waters of the State. Before shooting activities can resume, the permittee shall develop and implement a Best Management Practices (BMP) program to prevent the deposition of toxic containing target material, either directly or indirectly, into the waters of the State. Such a program may include, but not be limited to, the use of nontoxic targets. A report summarizing and outlining the BMP shall be submitted to the Agency within 90 days of the issue date of this permit. The report shall be submitted to the address specified in Special Condition 12.

Attachment H
Standard Conditions

Definitions

Act means the Illinois Environmental Protection Act, 415 ILCS 5 as Amended.

Agency means the Illinois Environmental Protection Agency.

Board means the Illinois Pollution Control Board.

Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) means Pub. L. 92-500, as amended, 33 U.S.C. 1251 et seq.

NPDES (National Pollutant Discharge Elimination System) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318 and 405 of the Clean Water Act.

USEPA means the United States Environmental Protection Agency.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Maximum Daily Discharge Limitation (daily maximum) means the highest allowable daily discharge.

Average Monthly Discharge Limitation (30 day average) means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average Weekly Discharge Limitation (7 day average) means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Aliquot means a sample of specified volume used to make up a total composite sample.

Grab Sample means an individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

24 Hour Composite Sample means a combination of at least 5 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24-hour period.

8 Hour Composite Sample means a combination of at least 3 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over an 8-hour period.

Flow Proportional Composite Sample means a combination of sample aliquots of at least 100 milliliters collected at periodic intervals such that either the time interval between each aliquot or the volume of each aliquot is proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot.

- (1) **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or for denial of a permit renewal application. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (2) **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. If the permittee submits a proper application as required by the Agency no later than 180 days prior to the expiration date, this permit shall continue in full force and effect until the first Agency decision on the application has been made.
- (3) **Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (4) **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- (5) **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up, or auxiliary facilities, or emits systems only when necessary to achieve compliance with the conditions of the permit.
- (6) **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause by the Agency pursuant to 40 CFR 122.62. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- (7) **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.
- (8) **Duty to provide information.** The permittee shall furnish to the Agency within a reasonable time, any information which the Agency may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with the permit. The permittee shall also furnish to the Agency upon request, copies of records required to be kept by this permit.
- (9) **Inspection and entry.** The permittee shall allow an authorized representative of the Agency, upon the presentation of credentials and other documents as may be required by law, to:
 - (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - (d) Sample or monitor at reasonable times, for the purpose of assuring permit compliance, or as otherwise authorized by the Act, any substances or parameters at any location.
- (10) **Monitoring and records.**
 - (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - (b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records, and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of this permit, measurement, report or application. This period may be extended by request of the Agency at any time.
 - (c) Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of such analyses.
 - (d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit. Where no test procedure under 40 CFR Part 136 has been approved, the permittee must submit to the Agency a test method for approval. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to ensure accuracy of measurements.
- (11) **Signature requirement.** All applications, reports or information submitted to the Agency shall be signed and certified.
 - (a) **Application.** All permit applications shall be signed as follows:
 - (1) For a corporation: by a principal executive officer of at least the level of vice president or a person or position having overall responsibility for environmental matters for the corporation;
 - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - (3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
 - (b) **Reports.** All reports required by permits, or other information requested by the Agency shall be signed by a person described in paragraph (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described in paragraph (a) and
 - (2) The authorization specifies either an individual or a position responsible for

the overall operation of the facility, from which the discharge originates; such as a plant manager, superintendent or person of equivalent responsibility; and

(3) The written authorization is submitted to the Agency.

(c) **Changes of Authorization.** If an authorization under (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) must be submitted to the Agency prior to or together with any reports, information, or applications to be signed by an authorized representative.

(12) **Reporting requirements.**

(a) **Planned changes.** The permittee shall give notice to the Agency as soon as possible of any planned physical alterations or additions to the permitted facility.

(b) **Anticipated noncompliances.** The permittee shall give advance notice to the Agency of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) **Compliance schedules.** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(d) **Monitoring reports.** Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Agency in the permit.

(e) **Twenty-four hour reporting.** The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Agency in the permit to be reported within 24 hours.

The Agency may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(f) **Other noncompliances.** The permittee shall report all instances of noncompliance not reported under paragraphs (12)(c), (d), or (e), at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (12)(e).

(g) **Other information.** Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the Agency, it shall promptly submit such facts or information.

(13) **Transfer of permits.** A permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Agency at least 30 days in advance of the proposed transfer date;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees; and

(c) The Agency does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement.

(14) **All manufacturing, commercial, mining, and agricultural dischargers must notify the Agency as soon as they know or have reason to believe:**

(a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant identified under Section 307 of the Clean Water Act which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acetate and cyanide; five hundred micrograms per liter (500 ug/l) for 2,4-dichlorophenol and for 2-methyl-4,6-dichlorophenol; and one milligram per liter (1 mg/l) for arsenic.

(3) Five (5) times the maximum concentration value reported for that pollutant in the NPDES permit application; or

(4) The level established by the Agency in this permit.

(b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the NPDES permit application.

(15) **All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Agency of the following:**

(a) Any new introduction of pollutants into that POTW from an indirect discharge which would be subject to Sections 301 or 308 of the Clean Water Act if it were directly discharging these pollutants; and

(b) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(c) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(16) **If the permit is issued to a publicly owned or publicly regulated treatment works, the permittee shall require any industrial user of such treatment works to comply with federal requirements concerning:**

(a) User charges pursuant to Section 204(b) of the Clean Water Act, and applicable regulations appearing in 40 CFR 35;

(b) Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307 of the Clean Water Act; and

(c) Inspection, monitoring and entry pursuant to Section 308 of the Clean Water Act.

(17) **If an applicable standard or limitation is promulgated under Section 301(b)(2)(C) and (D), 304(b)(2), or 307(b)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked, and reissued to conform to that effluent standard or limitation.**

(18) **Any authorization to construct issued to the permittee pursuant to 35 R.C. Adm. Code 309.154 is hereby incorporated by reference as a condition of this permit.**

(19) **The permittee shall not make any false statement, representation or certification in any application, record, report, plan or other document submitted to the Agency or the USEPA, or required to be maintained under this permit.**

(20) **The Clean Water Act provides that any person who violates a permit condition implementing Sections 301, 302, 308, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 308, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both.**

(21) **The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.**

(22) **The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.**

(23) **Collected screening, sludges, sludges, and other solids shall be disposed of in such a manner as to prevent entry of these wastes (or runoff from the wastes) into waters of the State. The proper authorization for such disposal shall be obtained from the Agency and is incorporated as part hereof by reference.**

(24) **In case of conflict between these standard conditions and any other condition(s) included in this permit, the other condition(s) shall govern.**

(25) **The permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 R.C. Adm. Code, Subtitle C, Subtitle D, Subtitle E, and all applicable orders of the Board.**

(26) **The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit is held invalid, the remaining provisions of this permit shall continue in full force and effect.**