

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF LAKE BARRINGTON,)
CUBA TOWNSHIP, PRAIRIE RIVERS)
NETWORK, SIERRA CLUB, BETH)
WENTZEL and CYNTHIA SKRUKRUD,)

Petitioners,)

VS.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY AND)
VILLAGE OF WAUCONDA,)

Respondents.)

_____)

SLOCUM LAKE DRAINAGE DISTRICT)
OF LAKE COUNTY, ILLINOIS)

Petitioner)

VS.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY AND VILLAGE)
OF WAUCONDA, ILLINOIS)

Respondents.)

PCB 05-55
(3RD Party NPDES Permit
Appeal)

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

PCB 05-59. All three matters were consolidated by the Board by an order dated _____.

The permit in question had been the subject of a public notice proceeding by the Illinois Environmental Protection Agency, (“IEPA Proceeding”).

I. INTRODUCTION

A. Participation by the Municipal-Environmental Petitioners

The Municipal-Environmental Petitioners were extremely active participants in the IEPA Proceeding. Lake Barrington and Cuba Township retained environmental consultants to advise on the issues and conduct independent testing. All of the Municipal-Environmental Petitioners provided comments and/or testimony in the IEPA Proceeding. In fact, over one hundred pages of the record in this matter was supplied by the Municipal-Environmental Petitioners, which also provided the only technical data furnished by any petitioner regarding the Wauconda discharge and Fiddle Creek. See Tr. 57-76, 97-102, 140-46, 150-54; R. 146-47, 231-39, 249-310, 441-44, 470-78, 569-73, 1051, 1954-57, 2102-13. SC 163-64, 173, 1023-25, 1065, 1068. PR 566-68, 1793-95.¹

B. Impact on the Municipal-Environmental Petitioners

Lake Barrington, Cuba Township and the Municipal-Environmental Petitioners were so involved because they are the immediate downstream neighbors of Wauconda. The Wauconda effluent discharges to Fiddle Creek at Anderson Road, approximately 2.4 miles from the Fox River. Fiddle Creek flows through a wetland area, a channelized section called the Slocum Lake Drainage District and then into the Fox River. As described in their testimony and submissions, Lake Barrington, a municipal corporation, borders Fiddle Creek

¹ Citations to the transcript of the IEPA proceeding, filed as an Amended Record on December 10, 2004, are designated “Tr.” Citations to the IEPA record are designated “R.____”.

on the north immediately downstream of the Wauconda discharge. Cuba Township is the township including Lake Barrington and immediately downstream of the Wauconda Discharge. Prairie Rivers Network is an Illinois not-for-profit corporation, an affiliate of the National Wildlife Federation, concerned with river conservation and water quality issues and includes members in the Fiddle Creek and Fox River watersheds. The Sierra Club is a California not-for-profit corporation with over 20,000 members in Illinois. Beth Wentzel is a watershed scientist with Prairie Rivers, and Cynthia Skrukrud is a clean water advocate with the Sierra Club. Members of Sierra Club and Prairie Rivers are adversely affected by conditions in Fiddle Creek and the Fox River.

C. IEPA Response to Public Participation and Further Discussions

As a result of the IEPA Proceeding, a number of positive changes were made in the draft Wauconda NPDES permit, including a requirement for phosphorus control and requirements for dissolved oxygen monitoring, studies of DO and nutrients in Fiddle Creek and yearly updated industrial user surveys. Pursuing discussions begun under the auspices of the IEPA, before and following issuance of the permit and the filing of the permit appeals, Wauconda and the Municipal-Environmental Group continued discussions concerning additional changes to the permit which might resolve the concerns of the permit objectors. These discussions were widely publicized as the parties attempted to involve, consult with and satisfy many local constituencies. Public presentations were made to the Lake Barrington Village Board and televised on local access TV. Eventually, these discussions led to two written documents which attempted to incorporate a resolution of the issues raised in the IEPA proceedings.

D. Stipulation and Intergovernmental Agreement

The first document addressing a resolution of ongoing issues of concern was an Intergovernmental Agreement (“IGA”) reached among the Villages of Wauconda and Lake Barrington and Cuba Township. IGA’s are specifically authorized and encouraged by the Illinois Constitution.

Because the IGA was limited to governmental entities, a mechanism was needed to allow the environmental petitioners, including the Sierra Club and Prairie Rivers Network, to have the benefit of the IGA. Accordingly, a Stipulation was reached and signed by the participating parties in which the IGA parties and the environmental group and individual petitioners in PCB 05-55 achieved the same resolution of issues outlined in the IGA, as well as the right to enforce that resolution. The Stipulation with incorporated IGA is attached as Exhibit A hereto and incorporated by reference herein.

It is the belief of the parties to the Stipulation that it involves an appropriate resolution of the issues properly raised in the record in this case. To assist the Board in reviewing those issues and reaching its own conclusion concerning the correct resolution, the Municipal-Environmental Petitioners have created a chart of the issues raised by the various petitioners, their principal discussion on the record, including the petitioners who raised them, the IEPA response in the permit as issued and the treatment of those issues in the IGA and Stipulation. See Exhibit B attached hereto and incorporated by reference herein. As discussed below, it is the request of the Municipal-Environmental Petitioners that the Board, upon completing its review, confirm that the resolution reached is appropriate and may be the basis for the Board’s own independent decision in this case. It bears repeating that the Stipulation is directly tied to and driven by the record assembled in the IEPA Proceeding.

The Municipal-Environmental Petitioners recognize that the Drainage District Petitioner in 05-58 and the Resident Group Petitioners in 05-59 have not participated in the Stipulation and have even sought to penalize Lake Barrington and Cuba Township by asking that they be realigned as Respondents for signing the Stipulation and the IGA. (Joint Motion to Realign and/or Join Parties as Third Party Respondents and Leave to Amend (hereinafter “Joint Motion to Realign”) withdrawn after response by Lake Barrington and Cuba Township.) As described more fully below, numerous efforts were made to involve as many as possible in the community in the IGA and Stipulation, including the Drainage District and members of the Resident Group, and to insure that all legitimate environmental concerns received thoughtful consideration and inclusion if appropriate. At the same time, it was recognized that IEPA and the Pollution Control Board only have certain powers under the Environmental Protection Act and it was unreasonable to expect the environmental agencies to address matters which might be beyond their statutory authority, no matter how desirable that might be to some as a matter of community planning and growth.

II. STANDARD OF REVIEW

NPDES permits must contain “those terms and conditions . . . which may be required to accomplish the purposes and provisions” of the Environmental Protection Act (the “Act”), 415 ILCS 5/39(b). The IEPA's decision to issue a permit must be supported by substantial evidence. See Prairie Rivers Network v. IEPA (Aug. 9, 2001), PCB 01-112. The permit cannot be upheld if, as issued, it would violate the Illinois Environmental Protection Act or Board regulations. See id. The Board reviews third-party permit appeals, like other petitions, exclusively on the basis of the record before the Agency. See id. (citing 415 ILCS 5/40(e)(3)); see also Saline County Landfill, Inc. v. IEPA (May 6, 2004), PCB 04-117 (“It is well settled that the Board's review of permit appeals of this type is limited to information

before the Agency during the Agency's statutory review period, and is not based on information developed by the permit applicant, or the Agency, after the Agency's decision."); ESG Watts, Inc. v. IEPA (Apr. 4, 2002), PCB 01-62 (same). While the applicant must demonstrate by substantial evidence that a permit will not violate the Act or regulations, the burden of proof in a permit appeal is on the petitioner. 415 ILCS 5/40(e)(3).

III. DISCUSSION

A. Nature of Public Participation in the IEPA Proceeding, the Permit Appeals and the Stipulation and IGA.

Lake Barrington, Cuba Township and the environmental group petitioners have sought to involve the public at large in their participation in this matter and to furnish the IEPA in its Proceedings with well-founded technical bases for their concerns. In participating in the IEPA Proceeding below Lake Barrington and Cuba Township retained James Huff of the consulting firm Huff and Huff to analyze the Wauconda application and provide expertise. Huff and Huff assembled and analyzed existing data and conducted additional sampling in Fiddle Creek and the Fox River. The resulting data and analyses were supplied in the IEPA Proceeding and made available to all participants.

_____. In addition, Kot Environmental Consulting was retained to provide an analysis of the biological impacts of the proposed permit on the Fiddle Creek Watershed. R.470-78.

The environmental groups and individuals, Sierra Club and Prairie Rivers Network and their scientists Beth Wentzel and Cynthia Skrukruud also provided technical input and analysis in the IEPA Proceeding. See e.g. R.566-68, 1023-25, 1065, 1768, 1793-95.

Following a government party discussion process sponsored by IEPA during its public proceedings, see e.g. IEPA Decision and Response to Comments, R.2210 et seq.

(hereinafter “IEPA Decision”) at 2215, Lake Barrington, Cuba Township and the environmental groups continued their discussions with Wauconda and the community throughout the permit process, both before and after issuance of the permit. Wauconda was receptive to ongoing discussions and the municipal parties and environmental groups sought input from their communities as discussions proceeded. The Drainage District and Resident Group, petitioners in PCB 05-58 and 59, have claimed in a motion filed in this proceeding (Joint Motion to Realign, withdrawn after response by Lake Barrington and Cuba Township) that such discussions were secret. As clearly stated in the affidavit of Lake Barrington Trustee Kevin Richardson, attached to Lake Barrington and Cuba Township’s Response and Objection to the Joint Motion to Realign, attached as Exhibit C hereto and incorporated herein, this was simply not the case. Besides the groups and individuals consulted, regular reports of the progress of the discussions were made to the Lake Barrington Village Board meetings and a broad ranging Power Point presentation concerning the discussions was broadcast on local access TV. As a government organization, Petitioner Slocum Lake Drainage District attended the governmental discussion process, R.1081-87, 1091-93, and was invited to the negotiations concerning the IGA. The Drainage District attended at least two of the negotiation meetings before declining to participate further. In addition, Trustee Richardson met personally with Mr. Jay Glenn who described himself as leader of the Resident Group in PCB 05-59. (Mr. Glenn is the attorney representing the petitioners in PCB 05-59.) Mr. Glenn, however, made it clear that the goal of his group, whose widely publicized motto was “Plug the Pipe,” was to deny a permit to Wauconda and require it to cease its discharge to Fiddle Creek entirely until his group’s concerns with water, traffic and other Wauconda growth issues were satisfied. See Exhibit C. Those discussions with

Mr. Glenn, therefore, did not continue because of concerns that his goals went beyond the statutory authority of the Environmental Protection Act and were not legally achievable. Moreover, as illustrated by the chart of issues raised, Exhibit B, the legitimate and statutorily cognizable concerns of the Drainage District and the Resident Group are addressed by IEPA's permit revisions and, importantly, the Stipulation and IGA.²

There is, of course, no requirement that settlement discussions be public: the contrary is more often the case. The participants in the IGA and the Stipulation sought public input in this process because of a concern that any resulting agreement regarding the NPDES permit deal appropriately with all legitimate environmental issues. The Pollution Control Board and IEPA should encourage the process used as embodying the principles underlying the Environmental Protection Act and good public policy.

B. The Achievement of the IGA and the Stipulation

Third party NPDES permit appeals are a relatively new phenomenon before the Pollution Control Board, with little in the way of settled practice or instruction in the Board rules to provide guidance. And there is even less settled wisdom about how to resolve a third-party permit appeal. Thus, as the parties to the Stipulation proceeded in their discussions and began to find common ground, they approached the problem of memorializing any resolution from several standpoints. As several of the parties were government organizations, they realized they could resolve their issues through an IGA, a mechanism they were familiar with and which is encouraged by the Illinois Constitution.

There was concern, however, to include as well the environmental groups and individuals

² In large measure the comments and IEPA Proceedings participation by the Drainage District and the Resident Group were very general and were not tied to the statute or the Board's regulations. Without addressing the sufficiency of those comments for the purposes of permit appeal, the Municipal-Environmental Petitioners have sought to illustrate in Exhibit B how the Stipulation addresses the concerns of the Petitioners in PCB 05-58 and 05-59 as well.

who could not participate directly in an IGA. It was believed that a Stipulation settlement document could be used to extend the benefits of the IGA to these groups and individuals. The Stipulation additionally had two other purposes. Most importantly, it was a mechanism to present to the Board an agreement among the participating parties as to certain facts and issues and the participants' belief as to their proper interpretation and resolution. While confining themselves entirely, as they must, to the permit record, the petitioners identified in the Stipulation the issues raised in the IEPA Proceeding and the desired and appropriate resolution of those issues. The Municipal-Environmental Petitioners ask that the Board consider the issues raised, and the record support provided and urge that the Board determine that it has sufficient basis to exercise its independent judgment to reach the conclusions and resolutions reached by the parties and contained in the Stipulation. See February 3, 2005 Board Order in PCB 05-55, 58 and 59, at 2. Petitioners recognize that the Board is not bound by those resolutions and will consider each issue independently, but believes that the Board will find that the resolutions reached in the Stipulation also represent an appropriate resolution of the issues in this permit appeal.

The parties to the Stipulation also asked that the Board accept the Stipulation as a settlement of the permit appeal, in much the same fashion as a stipulation may be accepted as a settlement in an enforcement case, essentially without additional review of the issues. The Board declined to do so in its Order of February 3, 2005, and the Municipal-Environmental Petitioners understand and accept the Board's ruling. They continue to believe, however, that the Board may independently review each issue raised and the record and the resolution indicated by the Stipulation and consider whether that resolution independently represents an appropriate determination in the appeal. In the context of a

third party permit appeal, it is respectfully suggested to the Board that this mechanism represents a way of encouraging responsible settlements, one which involves the public as much as possible,³ without compromising the obligation of the Board to review permit appeals according to statutory criteria and its own rules. Additionally, it is significant that Wauconda, without conceding that the permit as issued is not correct, has agreed in the Stipulation to accept a revised permit incorporating the additional limitations identified, insuring their incorporation in a permit document with appropriate public availability. Accordingly, and again as a matter of good public policy and the principles underlying the Environmental Protection Act's commitment to public participation and private and local government involvement, see e.g. 415 ILCS 5/2(a)(iv)(b) and (c); 7(a) and (b); 11(a) and (c), the Board is requested to endorse the approach taken and through its independent review of the resolutions reached adopt the revisions to the NPDES permit agreed to by the participants to the Stipulation.

Finally, it is urged that the Board recognize this process and the resulting permit as positive and significant for responsible environmental policy in Illinois. The permit incorporates stringent controls as well as enlightened provisions to deal with emerging issues such as nutrient loading, antidegradation implementation, wetlands protection and the identification of a variety of substances which may be present in wwtp effluent, and, if present, may require further attention from regulators in the future. The process was open and cooperative, and technically informed, and took place within the context of the Board's

³ While IEPA normally participates in a resolution of a direct permit appeal by the permit applicant, this agency participation is more difficult where the IEPA and the applicant are both respondents defending the permit and where the IEPA must be concerned about the programmatic impacts of a resolution which goes beyond usual agency practice, e.g. regarding antidegradation or nutrient limitations, and therefore might have precedential effect.

and IEPA's statutory structure for permit disputes. It followed a governmental agency discussion process sponsored and endorsed by IEPA and constitutes a successful result of that process. The Stipulation illustrates the best of the Illinois environmental regulatory system and it is requested that the Board endorse the efforts of the parties and, after its independent review, adopt the resolutions reached for Wauconda's NPDES permit.

February 28, 2005

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**Comparison of Issues Raised, IEPA Permit Response
and Treatment by Stipulation and IGA**

| | <u>Issue Raised By Petitioners</u> (Lake Barrington and Cuba Township designated as “LB/CT.” Sierra Club and Prairie Rivers Network designated as “SC/PR.” Slocum Lake Drainage District designated as “District” and Petitioners in 5-59 designated as “Residents”) ⁴ | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> ⁵ |
|----|---|--|---|
| 1. | <p>Discharges of phosphorus and nitrogen may contribute to water quality standard violations regarding offensive conditions. 35 Ill. Adm. Code 302.203.</p> <p>LB/CT: Tr.61-73,73-76; R.249-310.⁶</p> <p>SC/PR: Tr.151-54; R. 566-68, 1023-25, 1793-95.</p> <p>Residents: Tr.180-97; R.479-80, 1069-70.</p> | <p>Phosphorus Removal. Permit. See e.g. Decision⁷ R.2211.</p> <p>Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p> | <p>No net increase in BOD5, TSS load. Wauconda will design for Total Nitrogen Removal (“TNR”). Parties will seek funding for TNR. IGA(3)(A)(F).</p> |

⁴ For the most part, comments by members of the Residents Group were very general. Mr. Jay Glenn, who is not a petitioner but an attorney for the petitioners, made several comments as an individual. Without addressing whether Mr. Glenn’s individual comments may be imputed to the Resident Group, they are nevertheless included as Resident Group comments in this compilation for the sake of completeness.

Note that much of Mr. Glenn’s submission, over 170 pages, involved reporting by the Wauconda Sand & Gravel Superfund Site, presumably because it has a discharge to the Wauconda WWTP. The relevance of this information to the permit at hand was never fully explained. The pollutant associated with the Wauconda Sand & Gravel Superfund Site is vinyl chloride. This compound has been tested for in the effluent from the Wauconda WWTP, and has not been detected.

⁵ References to IGA are to the sections of the IGA, which is attached to, and incorporated in, the Stipulation.

⁶ “Tr.” designates references to the IEPA Proceeding Transcript. “R” designates references to the Record.

⁷ “Permit” references the permit at issue. The IEPA Decision is found at R.2210 et seq. and is cited “Decision.”

| | <u>Issue Raised By Petitioners</u> | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> |
|----|---|---|---|
| 2. | <p>Fiddle Creek shows evidence that it is an Impaired Waterway. Lake Barrington consultant, Huff and Huff, supplied monitoring results showing DO violations and nitrates plus nitrites above IEPA use impairment levels.</p> <p>LB/CT: Tr.57-60, 61-73, 73-76; R.249-310.</p> <p>SC/PR: Tr. 97-101; R.163-64, 566-68, 1023-25, 1793-95.</p> <p>Residents: R.479-80, 578-828, 1069-70.</p> | <p>Phosphorus Removal. Permit. See e.g. Decision R.2211.</p> <p>DO limits added.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p> | <p>No net increase in BOD5, TSS load.</p> <p>Wauconda will design for Total Nitrogen Removal (“TNR”).</p> <p>Parties will seek funding for TNR. IGA(3)(A)(F).</p> |
| 3. | <p>Added nitrogen loading upon Fox River not adequately considered. Fox River DT22 into which Fiddle Creek discharges is impaired for nitrogen, siltation, pathogens and suspended solids.</p> <p>LB/CT: Tr.61-73, 73-76; R.249-310.</p> <p>SC/PR: R.566-68, 1793-95.</p> | | <p>No net increase in BOD5/ TSS load.</p> <p>Wauconda will design for TNR and Parties will seek funding for TNR. IGA(3)(A)(F).</p> |
| 4. | <p>Water quality standards for dissolved oxygen are being violated below Wauconda outfall. Lake Barrington consultant provided monitoring results showing DO exceedences.</p> <p>LB/CT: Tr. 57-60, 61-73, 73-76; R.249-310.</p> <p>SC/PR: Tr. 97-101, 150-54; R.566-68, 1023-25, 1793-95.</p> <p>Residents: Tr.102-07.</p> | <p>DO limits added. DO monitoring required.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R at 2211.</p> <p>Permit Special Condition 17.</p> | <p>BOD5 load limit held constant. IGA(3)(A).</p> <p>Aeration of effluent required. IGA(3)(D).</p> |

| | <u>Issue Raised By Petitioners</u> | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> |
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| 5. | <p>Further degradation of Fiddle Creek and wetlands due to excessive nitrogen in violation of anti-degradation requirements.</p> <p>LB/CT: Tr. 57-60, 61-73, 73-76. Ett 97-101. R.249-310.</p> <p>SC/PR: Tr. 97-101, 151-54; R.163-64, 566-68, 1023-25, 1793-95.</p> | <p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p> | <p>Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(F)(G).</p> |
| 6. | <p>Impact on wildlife and known threatened fish species in Fiddle Creek.</p> <p>LB/CT: Tr. 61-73, 73-76; R.____.</p> <p>SC/PR: R.163-64.</p> <p>Residents: R.479-82, 1029, 1069-70.</p> | <p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> <p>DO limits added.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p> | <p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p> |
| 7. | <p>Antidegradation assessment inadequate in that it was based on September 15, 1993 stream survey which identified elevated levels of contaminants which were not evaluated in assessment. Conditions not evaluated as of November 28, 1975 and impacts on pollutant sensitive and endangered species and possible alternatives not considered. Phosphorus and nitrogen analysis deferred.</p> <p>LB/CT: Tr. 57-60, 61-73, 73-76; R.249-310. Ett 97-101.</p> <p>SC/PR: Tr. 97-101, 151-54; R.163-64, 566-68, 1023-25, 1793-95.</p> | <p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> <p>DO limits added.</p> <p>Study of DO and nutrients in Fiddle Creek.</p> <p>Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p> | <p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p> |

| | <u>Issue Raised By Petitioners</u> | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> |
|----|--|---|---|
| 8. | <p>Permit does not require Wauconda to implement industrial pretreatment program. Presence of Superfund Sites. LB/CT: R. ____. SC/PR: R.163-64. Residents: Tr.48-53, 53-56, 61-73, 180-97; R.169, 351-87, 388-421, 479-80, 487-88, 578-828, 1045, 1048-49, 1069-70, 1742, 1744-46.</p> | <p>Updated annual industrial user survey required so that need for pretreatment program can be reevaluated. See e.g. Decision R.2211. Permit Special Condition 8.</p> | <p>Wauconda will adopt pretreatment ordinance and implement program. IGA(3)(C). Wauconda will test effluent for full priority pollutants, pathogens and endocrine disruptor chemicals followed by monitoring well testing for detected compounds. IGA(3)(E).</p> |
| 9. | <p>Potential impacts on private wells. LB/CT: Tr, 57-60, 61-73; R.146-47, 231-39, _____. Residents: Tr. 48-53, 180-97; R.92-93, 142-44, 148-49, 169, 479-80, 578-828, 1029, 1069-70, 1742.</p> | <p>Updated annual industrial user survey required so that need for pretreatment program can be reevaluated. See e.g. Decision R.2211. Permit Special Condition 8.</p> | <p>Wauconda will test effluent for full priority pollutants, pathogens and endocrine disruptor chemicals followed by monitoring well testing for detected compounds. IGA(3)(E). Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(F)(G).</p> |

| | <u>Issue Raised By Petitioners</u> | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> |
|-----|---|---|---|
| 10. | <p>Alleged effluent, bypass and odor violations by Wauconda and distrust of Wauconda monitoring.</p> <p>Residents: Tr. 53-56, 180-97; R.351-87, 388-421, 479-80, 486-88, 499, 556-60, 578-828, 1045-46, 1048-49, 1069-70, 1742, 1744-46.</p> | <p>Permit is for upgrade of Wauconda wwtp.</p> <p>Updated annual industrial user survey required so that need for pretreatment program can be reevaluated. Special Condition 8.</p> | <p>Wauconda will adopt pretreatment ordinance and implement program. IGA(3)(C).</p> <p>Wauconda will test effluent for full priority pollutants, pathogens and endocrine disruptor chemicals followed by monitoring well testing for detected compounds. Test results will be shared and participants may conduct own testing. IGA(3)(E).</p> |
| 11. | <p>Generalized concerns regarding wetlands.</p> <p>LB/CT: Tr. 57-60; R.231-39.</p> <p>Residents: Tr.48-52, 180-97; R.20, 52, 351-87, 388-421, 578-828, 1069-70.</p> | <p>Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17.</p> | <p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p> |
| 12. | <p>Stormwater/flooding impacts due to excessive nutrients.</p> <p>LB/CT: Tr. 73-76.</p> <p>District: Tr. 110-15.</p> <p>Residents: R.142-44, 148-49, 479-80, 1069-70.</p> | <p>Phosphorus removal. Permit. See e.g. Decision R.2211.</p> | <p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G).</p> |

| | <u>Issue Raised By Petitioners</u> | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> |
|-----|--|--|---|
| 13. | Maintenance of Slocum Lake Drainage Ditch. LB/CT: Tr.73-76. District: Tr.110-15; R.437. | Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. Special Condition 17. | No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA3(A)(F)(G). |
| 14. | Wauconda should be required to disinfect effluent. LB/CT: _____, SC/PR: Tr.151-54, 213; R.163-64. District: Tr. 110-15; R.247. Residents: Tr. 48-53, 180-97; R.20, 52, 92-93, 131, 142-44, 148-49, 231-39, 169, 486-88, 497, 578-828, 1744-46. | IEPA and Wauconda announced that Wauconda sought and accepted permit amendment to disinfect effluent. R.1076-77, 2215. | Effluent disinfection will be provided. IGA3(B). |
| 15. | Wauconda discharges to a sensitive area of residences, wetlands, forest preserve property, and river access. LB/CT: Tr. 57-60. SC/PR: R.163-64. Residents: Tr. 180-97; R.92-93, 142-44, 148-49, 169, 351-____, 388-421, 578-828, 1742. | Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2211. Permit Special Condition 17. | No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G). Effluent disinfection will be provided. IGA3(B). |

| | <u>Issue Raised By Petitioners</u> | <u>IEPA Permit Response</u> | <u>Stipulation and IGA</u> |
|-----|---|---|---|
| 16. | <p>Procedural due process and bias. Cross-examination should be provided in IEPA Proceeding. Insufficient time to testify.</p> <p>Residents: Tr. 180-97; R.169, 351-87, 578-828, 1742.</p> | <p>Wauconda given the option of answering questions. [Questions asked were in fact answered, and Mr. Glenn was allowed to testify beyond any time limits. See e.g. Tr. 26-27, 37, 48-52, 87-96, 102-___, 117-18, 148-50, 150-54, 159-61, 162-64, 166-70, 184-85, 190-91.] IEPA followed hearing with questions to Wauconda which were answered.</p> | |
| 17. | <p>Demand to end present discharge. "Plug the Pipe." Require merger with a neighboring utility.</p> <p>District: R.247.</p> <p>Residents: Tr. 180-97; R.169, 556-60, 578-828, 1069-70, 1742, 1744-46.</p> | <p>Phosphorus removal. Permit. See e.g. Decision R.2211. Study of DO and nutrients in Fiddle Creek. Possible permit reopening. See e.g. Decision R.2210. Permit Special Condition 17.</p> | <p>No net increase in BOD5, TSS. Nitrogen removal design required. Cooperation to secure funding for nitrogen removal and restoration of wetlands and Slocum Drainage Ditch. IGA(3)(A)(F)(G). Effect is to limit impact of permit revision. Questions regarding legality of request to end the discharge.</p> |
| 18. | <p>Fear of bypass to Bang Lake drain to Slocum Lake.</p> <p>Residents: Tr. 180-97; R.487-88, 498, 556-60, 578-828, 1042-43, 1048-49.</p> | <p>Bypass not possible. Decision R.____.</p> | |
| 19. | <p>Unpermitted development in Wauconda area. IEPA must require Wauconda to stop approving developments. Reckless expansion in area. Residents R.578-828, 1042-42, 1048-49.</p> | <p>Beyond statutory authority. Decision R.____.</p> | |