

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Petitioners,)

v.)

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

Respondents.)

PCB 05-55
(Permit Appeal-NPDES)

SLOCUM LAKE DRAINAGE)
DISTRICT OF LAKE COUNTY,)
ILLINOIS,)

Petitioner,)

v.)

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

Respondents.)

PCB 05-58
(Permit Appeal-NPDES)

AL PHILLIPS, VERN MEYER, GAYLE DEMARCO,)
GABRIELLE MEYER, LISA O'DELL, JOAN LESLIE,)
MICHAEL DAVEY, NANCY DOBNER, MIKE POLITO,))
WILLIAMS PARK IMPROVEMENT ASSOCIATION,)
MAT SCHLUETER, MYLITH PARK LOT OWNERS)
ASSOC., DONALD KREBS, DON BERKSHIRE,)
JUDY BRUMME, TWIN POND FARMS)
HOMEOWNERS ASSOC., JULIA TUDOR,)
CHRISTINE DEVINEY,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and VILLAGE OF WAUCONDA,)

Respondents.)

PCB 05-59
(Permit Appeal-NPDES)

STIPULATION

Petitioners Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukrud (sometimes "Settling Petitioners"), and Respondent Village of Wauconda ("Wauconda"), have agreed to the making of this Stipulation and submit it to the Illinois Pollution Control Board ("Board") for consideration in the proceedings reviewing the Wauconda NPDES permit. The parties agree that the statement of facts contained herein represents a fair summary of the record currently under review by the Board and that would be presented by the parties if a hearing were held and that the permit modifications proposed are based on the record in the permit proceeding below and represent an environmentally responsible resolution of the issues raised in that proceeding. Wauconda agrees to be bound by the provisions agreed to in this Stipulation and agrees not to contest their validity in any subsequent proceeding to implement or enforce their terms. Wauconda further agrees to accept an NPDES permit in accordance with the provisions of the Intergovernmental Agreement.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2004).

II. AUTHORIZATION

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

III. STATEMENT OF FACTS

A. Parties

1. On September 17, 2004, a Petition was filed by the Settling Petitioners pursuant to Section 40(e)(1) of the Act, 415 ILCS 5/40(e)(1) (2004), against the Illinois Environmental Protection Agency (“Illinois EPA”) and Wauconda to review the August 23, 2004 decision of the Illinois EPA to issue a modified National Pollutant Discharge Elimination System (“NPDES”) permit (Permit IL 0020109) to Wauconda (referred to herein as “the Modified Permit”).

2. The Village of Lake Barrington (“Lake Barrington”) is an Illinois Municipal Corporation and is located in Lake County. It borders Fiddle Creek on the north and is downstream of the Wauconda discharge.

3. Cuba Township is a township existing under the laws of the State of Illinois and is located in Lake County. Fiddle Creek runs through Cuba Township downstream of the Wauconda discharge.

4. Lake Barrington and Cuba Township (the “Governmental Petitioners”) were significant participants in the public proceeding on the Wauconda permit and in subsequent comments. The Governmental Petitioners retained a technical expert to assist in their presentation and presented extensive technical documentation.

5. Prairie Rivers Network is an Illinois not-for-profit corporation concerned with river conservation and water quality issues in Illinois. Prairie Rivers Network members live in the Fiddle Creek and Fox River Watersheds.

6. Sierra Club is a California not-for-profit corporation, which has among its purposes to protect and restore the quality of the natural and human environment and submitted comments on the proposed permit.

7. Beth Wentzel is a member of and a watershed scientist with the Prairie Rivers Network and submitted comments on the proposed permit.

8. Cynthia Skrukrud is a member of the Sierra Club and a clean water advocate for that organization. She presented testimony for the record in this matter and submitted comments on the proposed permit.

9. Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukrud (the “Environmental Group Petitioners”) presented significant testimony for the record and in comments thereafter as to the technical issues raised by the Wauconda permit and their significance for environmental policy in Illinois.

10. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

11. The Village of Wauconda is an Illinois Municipal Corporation and is located in Lake County.

B. Site Description and Permitting Process

1. Wauconda owns and operates a Wastewater Treatment Plant (“WWTP”) pursuant to NPDES Permit IL 0020109. Wauconda’s WWTP discharges to Fiddle Creek, tributary to the Fox River.

2. Pursuant to an application by Wauconda, on August 23, 2004, Illinois EPA modified Wauconda’s NPDES Permit to allow upgrades, improvements and expansion of Wauconda’s WWTP. Pursuant to the Modified Permit, Wauconda is permitted to increase the capacity of its WWTP in two stages. In Stage 1, the WWTP will be able to increase its throughput from 1.4 million gallons per day (“MGD”) to 1.9 MGD. In Stage 2, the WWTP will be able to increase its throughput from 1.9 MGD to 2.4 MGD.

3. A public proceeding was held by the Illinois EPA on Wauconda’s permit on September 9, 2003. The Governmental Petitioners and the Environmental Group Petitioners were significant participants in the public proceeding and in subsequent comment process.

C. Governmental and Environmental Group Petitioners Claims

At the public proceeding and in their comments to Illinois EPA, and in their petitions to the Board, the Governmental and Environmental Group Petitioners have raised legal and scientific issues regarding the draft permit including the following:

1. The permit allows discharges of phosphorus and nitrogen that cause, have reasonable potential to cause, or contribute to violations of the water quality standards regarding offensive conditions, 35 Ill. Adm. Code 302.203, in violation of 40 CFR 122.44(d) and 35 Ill. Adm. Code 309.141.
2. The permit allows discharges that may cause, have a reasonable potential to cause, or contribute to violations of state water quality standards regarding dissolved oxygen (“DO”), 35 Ill. Adm. Code 302.206, in violation of 40 CFR 122.44(d) and 35 Ill. Adm. Code 309.141.
3. The permit and the Illinois EPA assessments did not comply with Illinois antidegradation rules protecting the existing uses of the receiving waters. 35 Ill. Adm. Code 302.105(a).
4. The Illinois EPA assessment fails to include the analysis of alternatives required by 302.105(f).
5. Illinois EPA’s antidegradation assessment was insufficient under 302.105(f) by failing to consider impacts to biological communities, increased loadings, or alternatives or by providing a showing of benefits which fully justify the project.

6. Illinois EPA's permit analysis, including its 2003 antidegradation assessment, fails to address the impact of the discharge on the Fox River, an impaired waterway.

7. Fiddle Creek should be considered an impaired waterway for nutrients, phosphorus and total nitrogen, and low DO and should be subject to federal requirements for such waters.

8. In light of the existing problems with Fiddle Creek and its wetlands and the Fox River, the pounds per day of TSS, BOD5, ammonia, and total nitrogen discharged by the WWTP should not be permitted to exceed the levels in the prior Wauconda permit, *i.e.* no net increase.

9. In light of the wetland impacts already experienced, Wauconda should be required to develop, with the concurrence of its wetland neighbors, a wetland management plan to maintain and restore the Fiddle Creek wetlands.

10. Plant and algal growth along Fiddle Creek, stimulated by excessive nutrients, has impeded the capacity of the creek during high flow conditions, causing flooding. Wauconda should be required to limit discharges, both loading and hydraulic, to reduce such impacts and should be required to contribute to the maintenance of such waterway.

11. The IEPA permit fails to require Wauconda to implement a pretreatment program for its industrial dischargers.

D. Wauconda's Position on Settling Petitioners Claims

Wauconda believes NPDES Permit IL 0020109 fully complies with both applicable federal and state law and was properly issued and modified by Illinois EPA. Nevertheless, Wauconda desires to resolve its dispute with respect to the Settling Petitioners' claims.

E. The Settlement Efforts

The Settling Petitioners and Wauconda have undertaken a lengthy settlement process to achieve a possible resolution of their dispute over the Wauconda permit. Technical experts have been consulted. A variety of public views have been solicited, environmental groups in addition to the Environmental Group Petitioners have been involved and a wide spectrum of public input has been obtained. Wauconda and the Settling Petitioners believe their process has led to a successful resolution of difficult community-based environmental problems. This process has resulted in the Intergovernmental Agreement described below.

IV. TERMS OF SETTLEMENT

A. Intergovernmental Agreement

1. On December 17, 2004, Lake Barrington, Cuba Township and Wauconda entered into an Intergovernmental Agreement ("IGA"), a copy of which is attached hereto as Attachment A and incorporated herein by reference thereto. Pursuant to the IGA, Wauconda has agreed, among other things, to increase the treatment efficiency of its WWTP during both the Phase 1 and Phase 2 construction, such that there will be no

net increase in the loads in Fiddle Creek of CBOD₅ and Suspended Solids, and Wauconda has also agreed in the IGA to seek a further modification of its NPDES Permit to implement these revised load limits. Wauconda has also agreed to install four groundwater monitoring wells and to periodically test both the wells and its effluent as specified in the IGA. Pursuant to the IGA, Wauconda has also agreed to design nitrate removal capabilities for the Phase 1 and Phase 2 expansion of its WWTP. Wauconda agrees to fully comply with the Modified Permit as issued by Illinois EPA and the additional requirements of the IGA.

2. Wauconda has also agreed to take certain additional actions, including the implementation of nitrate removal and the enhancement of Fiddle Creek, contingent on grant funding and dismissal of all permit appeals. The parties to the IGA will work together to secure the grant funding to support these efforts.

B. Enforceability of the Intergovernmental Agreement

By virtue of being signatories to this Stipulation, all of the Settling Petitioners shall have the authority to enforce the terms and conditions of IGA, whether or not they are signatories thereto.

C. Dismissal of PCB 05-55 and Action by the Board

1. In consideration of Wauconda's agreement to commitments contained in the IGA, upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation or sooner, when and if so requested by Wauconda, the Settling Petitioners shall dismiss their petition in case number PCB 05-55 with prejudice.

2. Wauconda and the Settling Petitioners believe that this Stipulation and the IGA properly address all of the environmental issues raised by the permit and this Stipulation and the IGA constitute an environmentally responsible resolution of the issues raised in the permit proceedings below.

D. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, shall be submitted as follows:

For Village of Lake Barrington:

Christopher Martin
Village Administrator
Village of Lake Barrington
23860 Old Barrington Rd.
Lake Barrington, IL 60010

Percy Angelo
Mayer, Brown, Rowe & Maw LLP
190 S. LaSalle St.
Chicago, IL 60603

James Bateman
600 Hart Road, Suite 260
Barrington, IL 60010

For Beth Wentzel:
809 S. 5th St.
Champaign, IL 61820

For Cynthia Skrukrud:
4209 W. Solon Rd.
Richmond, IL 60071

For Cuba Township:

Priscilla H. Rose
Town Clerk
Town of Cuba
28000 W. Cuba Rd.
Barrington, IL 60010

For Prairie Rivers Network:

Prairie Rivers Network
809 S. 5th St.
Champaign, IL 61820

For Sierra Club:

Sierra Club
200 N. Michigan Ave.
Suite 505
Chicago, IL 60601

For Village of Wauconda:

Daniel Quick
Village Administrator
101 N. Main Street
Wauconda, IL 60084

Rudolph Magna
Magna & Johnson
495 N. Riverside Drive
Suite 201
Gurnee, IL 60031

William D. Seith
Total Environmental Solutions, P.C.
631 E. Butterfield Rd.
Lombard, IL 60148

E. Modification of Stipulation

The parties may, by mutual written consent, agree to modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.D. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

F. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced by the Settling Petitioners as such through any and all available means.

2. Wauconda agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation, then this Stipulation shall nonetheless remain in full force and effect as a binding Settlement Agreement among the parties hereto.

4. It is the intent of the Settling Petitioners and Wauconda that the provisions of this Stipulation and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

5. This Stipulation may be executed in one or more counterparts, which counterparts, when affixed together, shall constitute one and the same document.

WHEREFORE, the foregoing Stipulation represents an environmentally responsible resolution of the issues raised in permit proceeding below and the Settling Petitioners and Wauconda request that the Board adopt and accept the foregoing Stipulation as written.

For Village of Lake Barrington:

For Cuba Township:

Dorothy H. Schofield
Village President

David Nelson
Supervisor

Date: _____

Date: _____

For Prairie Rivers Network:

Jean Flemma
Executive Director

Date: _____

Beth Wentzel:

Date: _____

For Village of Wauconda:

James Eschenbauch
Village President

Date: _____

For Sierra Club:

John Darin
Director, Illinois Chapter

Date: _____

Cynthia Skrukrud:

Date: _____