



**NAPERVILLE PARK DISTRICT
SPORTSMAN'S PARK
TRAP SHOOTING FACILITY**

NPDES PERMIT NUMBER IL0073253

Naperville, DuPage County, Illinois

RESPONSIVENESS SUMMARY

October 2000

NAPERVILLE SPORTSMAN'S PARK
Responsiveness Summary

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
NAPERVILLE PARK DISTRICT)
SPORTSMAN'S PARK) File #392-99
TRAP SHOOTING FACILITY)
NPDES PERMIT.)
PERMIT NUMBER IL0073253)

AGENCY DECISION

On October 13, 2000, the Illinois EPA made the decision to issue new NPDES Permit No. IL0073253 to the Naperville Park District for its Sportsman's Park trap shooting facility. Permit Number IL0073253 is issued for five years and has an expiration date of September 30, 2005.

Draft NPDES Permit Modifications Following the Public Hearing

As a result of comments from the public and the U.S. EPA, the Illinois EPA modified the draft NPDES Permit that was distributed at the Public Hearing to address concerns regarding target material and lead shot. The following additional requirements have been added:

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. As previously indicated, approval of such a barrier allowing the use of lead shot would require modification of the permit subject to the public notice requirements outlined in 35 Ill. Admin. Code 309. (See Special Condition 10)

Before shooting activities can resume, the permittee must 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 must be submitted to the Agency within 90 days of the issue date of the NPDES permit. (See Special Condition 15)

Issuance of the NPDES permit expressly prohibits the deposition of toxic containing target material into waters of the state. Before shooting activities can resume, the permittee must develop and implement a 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 must be submitted to the Agency within 90 days of the issue date of the NPDES permit. (See Special Condition 16)

What Is an NPDES Permit

NPDES is the acronym for National Pollutant Discharge Elimination System. The purpose of the NPDES program is to regulate discharges from municipal treatment facilities, stormwater, control structures, industries, and mining operations into waters of the state. This federal program is managed in Illinois by the Illinois Environmental Protection Agency (Illinois EPA).

NPDES permits are processed by the Illinois EPA Bureau of Water. Each permit may regulate numerous outfalls, and some operations may have multiple NPDES permits. Permits are normally issued for a period of five years. The Illinois EPA periodically inspects facilities that have NPDES permits.

Facility Location and Operation

Sportsman's Park Gun Club is located in southern DuPage County at 743 South West Street in the city of Naperville. Sportsman's Park, a trap shooting range, has been in operation since 1948. Within the past few years, the Naperville Park District (NPD) entered into a long-term lease of the Sportsman's Park Gun Club facility from the city of Naperville, and presently oversees trapshooting activities at the facility. Participants in the trap shooting activities use shotguns to fire lead shot at flying clay targets. Therefore, facility operation results in an intermittent discharge from the shooting stations and shot fall area to an unnamed connecting channel tributary to the south pond tributary to an unnamed ditch tributary to the West Branch of the DuPage River.

Background

For a number of years, questions have been raised about various aspects of the operation of the Sportsman's Park facility. The NPD carried out a series of environmental investigations, culminating in the enrollment of the facility in the Illinois EPA's voluntary Site Remediation Program. Under this program, Illinois EPA agreed to oversee a comprehensive environmental investigation of the Park to determine if it posed any public health or environmental threat. Investigations continued from 1995 to mid-1997, ending with the conclusion that the site did not pose a threat to the groundwater, nearby private wells, or surface water, based on Illinois EPA regulations and groundwater and surface water standards. The study also concluded that as long as the general public was prevented from spending time in the "shot-fall" zone (by fencing and other means), the lead present on the site would not be a direct public health threat.

Subsequently, a private lawsuit led to a court decision that the NPD must apply for an NPDES permit in order for trap shooting to continue at the facility. Consequently, the NPD submitted an application to the Illinois EPA for a new NPDES permit. The application was received on August 28, 1998. On May 7, 1999, the Illinois EPA issued a public notice of the draft new NPDES permit for this facility. Due to the substantial response received from the public, the Illinois EPA decided to distribute the draft new NPDES permit for a second public notice period. The second public notice was issued on June 11, 1999.

Illinois EPA Public Hearing and Hearing Record

In response to the two public notices of the draft new NPDES permit, the Illinois EPA received numerous requests for a public hearing regarding the draft permit. Based on these requests, the Illinois EPA made the decision to conduct a public hearing. The Illinois EPA has discretion to conduct a public hearing when there is significant public interest in a permit application. The purpose of the hearing is to collect public comments for Illinois EPA to consider before making a final decision on the permit. Citizens may either give verbal comments at the public hearing or submit written comments to the Illinois EPA during the public comment period. The draft permit was available for review at the Municipal Clerk's Office in Naperville and at the Illinois EPA office in Springfield.

The public hearing record began on August 29, 1999, which was 45 days before the hearing, and continued until midnight, November 20, 1999, which was 30 days after the hearing. Beginning August 29, 1999, the Illinois EPA published the public hearing notice for three successive weeks (August 29, September 5, and September 12) in the Aurora Beacon News, the Naperville Sun, and the Naperville Metropolitan. The public

hearing notice was also mailed to local legislators, elected officials, interested citizens and media outlets in the area on August 26, 1999. On August 30, 1999, the public hearing notice was posted on the Illinois EPA Internet web site <<http://www.epa.state.il.us>>.

The public hearing was held on Thursday, October 21, 1999, in two sessions. The first session was from 2-4 p.m. and was intended to provide an opportunity for the attorneys involved in this case to ask questions and provide comments regarding the permit issues. The second session began at 6 p.m. and ran to 10 p.m. and was intended for questions and comments from both the general public and attorneys. Both sessions were completely open for public attendance. The hearing sessions were held at the city of Naperville Municipal Building, 400 South Eagle Street, Naperville, Illinois. Approximately 20 people attended the afternoon session and about 300 people attended the evening session. A court reporter prepared a transcript of the public hearing.

RESPONSIVENESS SUMMARY

The Illinois EPA has prepared this responsiveness summary for all comments and questions received between August 29, 1999, and November 20, 1999. The responsiveness summary describes the Illinois EPA's final decision on the NPDES Permit and responds to the questions and concerns that were posed during the comment period. This document was released at the time of the Illinois EPA's final decision on the NPDES Permit, and was mailed to all persons who had sent written comments or who had registered at the public hearing.

In the following pages, each question or comment received from the public is listed first in regular type and **the Illinois EPA response follows, in bold-faced type.**

QUESTIONS AND ANSWERS

Permit and Regulation Issues:

1. How much lead is proposed to be discharged under the proposed/draft permit?

A: The NPDES permit prohibits the use of lead shot.

2. Does the Illinois EPA have a database that identifies the effluent or total load limits of discharges in Illinois?

A: The Illinois EPA has such a database.

3. Does the Illinois EPA compare the total levels of discharges of specific contaminants between various types of dischargers when evaluating permit applications?

A: The Illinois EPA reviews proposed discharges on a discharge-by-discharge basis to determine if water quality standards will be met by the discharge in question.

4. Why is there no condition in the proposed/draft permit requiring the reduction of the volume of discharge from the operation of the site?

A: From the information provided in the application, the Illinois EPA determined that water quality standards are presently being met. As a result, no discharge volume reduction was required in the proposed/draft permit.

5. In order to obtain an NPDES permit, must the applicant demonstrate its discharge will comply with the Illinois Environmental Protection Act (Act) and appropriate Illinois Pollution Control Board (Illinois PCB) regulations?

A: Yes.

6. Does 35 Ill. Adm. Code 309.141 require a permittee to discharge in a manner that would not cause a violation of any state or federal law?

A: The Illinois EPA determined during its review of the application that state water quality standards are the most stringent requirements that must be met in this situation. 35 Ill. Adm. Code 309.141(d) requires the most stringent limitation of three general areas of law described in that section to be applied in the permit. Because the state water quality standards were determined to be the most stringent, they were used, pursuant to 35 Ill. Adm. Code 309.141(d)(1), to develop the terms of this proposed/draft permit.

7. Was the additional proposed condition prohibiting the use of lead shot at the site drafted to effectuate the purpose and/or comply with the Act? Was the condition included in response to comments from

the United States Environmental Protection Agency (U.S. EPA)?

A: The condition was proposed pursuant to meetings with the U.S. EPA, NPD and Illinois EPA, during which such a condition was discussed. The U.S. EPA submitted correspondence to the Illinois EPA expressing concern with possible future water quality problems, and expressing a desire that lead shot not fall into waters or wetlands at the site from shooting activities.

8. Did the Illinois EPA determine the NPDES permit application for this site to be complete upon its receipt from NPD?

A: At the time the permit was placed on public notice, the Illinois EPA determined it possessed a complete application.

9. Why was NPDES permit application form 2D used for this permit? Form 2D is traditionally used for new sources, and shooting activities at the site have occurred for some time.

A: The Illinois EPA has the authority to waive certain application requirements or request additional information while evaluating an application. As a result, the form 2D application was submitted, with a request for certain additional analyses as required under form 2C. The other information required under form 2C was determined to be irrelevant to the situation. The Illinois EPA believed the information provided was sufficient to review the application.

10. Is the Illinois EPA aware that no sediment sampling results were submitted as a part of the permit application?

A: There is no requirement in the NPDES program that sediment sampling results be submitted with NPDES permit applications. The concern of the NPDES program is water column quality.

11. What data was provided by NPD regarding the effect of lead on aquatic life?

A: Lead and PNA sampling results were provided with the permit application. None of the analysis result numbers provided in the application were above the water quality limits found in the draft/proposed NPDES permit.

12. Does the Illinois EPA believe this permit will protect wildlife and aquatic life? Has the Illinois EPA reviewed the eco tox information from U.S. EPA and its preliminary remediation goals regarding lead in sediments at the site? Does the Illinois EPA have any information that lead in the sediments at the site could leach into the water?

A: The Illinois EPA believes the draft/proposed permit will accomplish the goal of the NPDES program, which is to protect water quality. The data reviewed by the Illinois EPA indicates lead levels in the water are well below water quality limits. In order to have leaching occur, the water in question must be acidic. The water body here is not acidic, so it is not anticipated that leaching will occur at the site.

13. Does the Illinois EPA believe the proposed sampling point for the discharge to be representative of water conditions in the channel at the site?

A: While it is unknown which specific area of the site would most likely show lead contamination in the water column, the Illinois EPA believes the proposed sampling point will provide representative samples of water quality conditions at the site.

14. Is the water quality standard for lead based on total lead or only dissolved lead?

A: The lead water quality standard is based upon total lead in the water column.

15. Does the Illinois EPA consider the wetlands at the site waters of the state? Does the Illinois EPA know what areas of the wetlands at the site might receive shot from shooting activities?

A: The Illinois EPA considers the wetlands at the site waters of the state. The areas receiving shot discharges known to the Illinois EPA are those delineated in the permit application.

16. Is the draft/proposed NPDES permit intended to allow the discharge of storm water that contacts existing lead on the site?

A: The intent of the draft/proposed NPDES permit is to ensure water quality standards are maintained while trap shooting activities occur at the site. The wetlands, interconnecting channel and ponds at the site all constitute the waters where water quality standards must be maintained.

17. If there was no flow from the facility whatsoever, would it still require an NPDES permit?

A: That type of water body would be subject to water quality standards and would be subject to protection under the Clean Water Act.

18. How does the Illinois EPA propose to monitor discharges to the channel and the wetland?

A: The Illinois EPA believes the composite sampling regime of discharges leaving the site will be representative of water conditions throughout the site as a whole, including the channel and wetland.

19. Is this draft/proposed permit a storm water permit?

A: Although there are some similarities between the draft/proposed NPDES permit here and NPDES permits addressing solely storm water discharges, this permit is not a storm water permit.

20. What is/are the point source(s) regulated by this draft/proposed permit?

A: The point sources regulated by this permit include the shooting platforms, the shot

fall areas on the site and the target throwers.

21. Does the Illinois EPA contend that the ponds, wetland and/or channel are part of a treatment process?

No.

22. Does the type of monitoring required by the permit reflect a position of the Illinois EPA that conditions during rainfall events are worse than in dry periods? Would not storm water flows dilute concentrations of lead in the water from those present during dry weather?

A: The once per month monitoring during storm events should be representative of conditions at the site at all times. It is the Illinois EPA's understanding that discharges leave the site only during rain events. The fact that the sample must be taken at the start of a storm event eliminates dilution from being a factor in the analysis result, as the additional storm water will not have the time to enter the waters at the site and cause any dilution at the time the sample is taken. Further, the water chemistry at the site should not be significantly altered at the beginning of the storm event, even if such an alteration may occur later in the event.

23. What sort of effluent limits and/or water quality standards are contained in the draft/proposed permit?

A: There are no effluent limits contained in the permit. There are water quality standards contained in Special Conditions 5 and 9 of the permit.

24. What is the consequence to NPD for discharging at levels greater than the water quality standards found in the permit?

A: It will have violated a water quality standard. It would then be subject to possible enforcement action for the violation. Further, if the action level is violated on any two consecutive monthly discharge monitoring reports, NPD must develop and implement a preventative action plan to ensure the discharge does not violate the water quality standard.

25. During months where there is no flow from the site, is the NPD required to submit a discharge monitoring report?

A: Yes, the report would state that no discharge occurred from the site during that month.

26. Even if there is no discharge from the site, might there be an overflow of the pond(s) at the site? If so, are there concerns that lead could flow out in any overflow from the ponds?

A: It is conceivable an overflow could occur. However, the specific gravity of lead would very likely prevent it from being suspended in the water column in the ponds and carried out in an overflow of the ponds.

27. Is the focus of the NPDES permit whether dissolved lead is leaving the ponds and flowing to the DuPage River? Is the lead found in sediment samples at the site due to whole lead pellets in the sediment and not from decomposition of lead pellets over time creating lead fines or lead corrosion?

A: The NPDES permit is concerned with the protection of the water column. The lead known to the Illinois EPA in the ponds is in a solid form that due to its specific gravity will sink to the bottom and will rest in the pond sediments. From the data received by the Illinois EPA, it does not appear that lead in the ponds is affecting the water column.

28. Does this draft/proposed permit create a mixing zone?

A: No, it does not. The NPD did not apply for a mixing zone in its permit application. The actual water quality limits derived for this discharge are the applicable limits for the discharge, without the allowance of a mixing zone prior to the sampling point.

29. Does the Illinois EPA believe the lead pellets are effluent as defined in the regulations?

A: The Illinois EPA believes the comments of the committee that drafted the Subtitle C Illinois Pollution Control Board regulations provide guidance that dry solids do not constitute an effluent under the appropriate regulations.

30. Does the law require sampling for contaminant concentrations at the point of discharge? If not, should the sampling point be at the point the lead shot falls into waters of the United States?

A: The Illinois EPA believes a sampling point at the end of a gun barrel used to fire lead shot is not an appropriate sampling point, due to safety concerns and the lack of a U.S. EPA approved sampling method for such sampling. The chosen sampling point is believed by the Illinois EPA to provide a representative sample of water quality in the water column of the site.

31. Would there be any impediment to taking the sample in the stream or where the stream enters the south pond at the site?

A: There may be safety issues for individuals attempting to sample in the stream and/or access problems during the winter months. The Illinois EPA believes that a sampling point that is accessible from land will provide a representative sample that will allow it to monitor discharges from the site to ensure that they meet water quality standards protective of the environment.

32. Since the draft/proposed permit requires sampling one time per month when there is a rainfall event, how does the NPD know which event to sample? How will the Illinois EPA know if there was a discharge from the facility in a given month?

A: If there is only one rainfall event, NPD must sample it. If there are multiple rainfall events, NPD could choose which event to sample. However, if it did not sample during a particular event and no other events occurred during the month, it would be in

violation of its NPDES permit. The NPDES system is based in large part on the honor system, so a discharger is responsible for complying with the terms of the permit on its own. The Illinois EPA does send inspectors to permitted facilities on a periodic basis to review the facility's compliance with its permit, and issues of improper sampling could be found through those inspections. Further, third parties can provide information about site conditions to the Illinois EPA that might indicate apparent violations of permit terms.

33. Does the monthly average standard for lead in the draft/proposed permit, 0.107 milligrams per liter, maintain the water quality standard in the water at the site? How would NPD comply with the standard if the sampling frequency was increased? Does this standard take the place of the standard described in 35 Ill. Adm. Code 302.203?

A: That limit is the water quality standard for lead at the site. The Illinois EPA believes the data provided shows that any lead in the water will be at very low concentrations, so the sampling frequency as set in the permit should provide a representative sample. If the Illinois EPA believes additional sampling is needed at the site in the future, such a requirement could be imposed at that time. The water quality standard and the other permit terms were developed to protect the quality of the water column; the permit does not explicitly or implicitly waive any other applicable requirements of the Act or the Illinois PCB's regulations.

34. Why was Special Condition 13, requiring the NPD to use best management practices to control shotgun shell wadding, included in the permit? What sort of control is required?

A: The Illinois EPA is concerned, in part, with floatable material, such as shell wadding, discharging from the site and creating water quality problems. The NPD is required to submit its report on the best management practices it will employ at the site within 180 days of permit issuance. If the Illinois EPA finds obvious deficiencies with the proposal, it will provide feedback to NPD on the issues of concern.

35. Since the Illinois EPA has previously noted that the NPDES permit in question does not address the permittee's past activities, and it has noted that issuance of the permit would not restrict the ability of the state, the federal government or a private citizen from taking legal action against the NPD for soil and/or sediment contamination from past activities at the site, could the Illinois EPA place such a statement within the contents of the permit?

A: The Illinois EPA agrees that this draft/proposed permit does not address soil and/or sediment contamination issues from past activities at the site. It further agrees that issuance of the permit would not preclude enforcement activities by the government or private citizens for violations related to such contamination. Because this is a broadly understood concept under the law, the Illinois EPA generally does not include such statements in NPDES permits.

36. When will the permit become final?

A: The permit becomes a final agency action once it is issued in final form by the Illinois EPA. Thereafter, those with a legally recognized right to appeal the permit can do so,

which, under certain circumstances, will result in a stay in the effective state of the permit until the appeal is resolved.

37. I understand that this is the first time a permit of this kind has been proposed for a gun club. Why are you making an exception in this case?

A: This is only the second NPDES permit application for such a facility ever received and reviewed by the Illinois EPA. The first applicant ceased operating as a shooting range prior to issuance of the permit, so no further action was taken on the permit. Thus, there is no "exception" being made for this facility; rather, this is the first time a permit application for such a facility has reached this stage of consideration.

38. Can you explain how the Naperville Park District did not know that the trapshooting program was in violation of the Act, and required a permit? When discussions began with the IEPA in 1997, why wasn't this issue brought to the Park District's attention?

A: At the time the Illinois EPA's Bureau of Water became involved in discussions concerning environmental issues at the site, it did not believe an NPDES permit was required for shooting activities at the site. Since that time, the Illinois EPA has determined that a permit is necessary and the NPD subsequently submitted a permit application.

39. Will the proposed permit allow the expansion of the trapshooting operation (more shooters per year)?

A: The NPDES permit does not directly regulate the extent of use of the site, including the number of shooters at the site.

40. Will the proposed permit require steel shot or a barrier to prevent lead deposition into the waterway?

A: Please see the Response to Comment #81.

41. Has any sort of lead recapture system been considered, including the idea of a barrier?

A: Please see the Response to Comment #81.

42. Once the IEPA issues this permit, is the permit subject to further appeal or approval? If so, how long can this appeal process take?

A: After the Illinois EPA issues an NPDES permit, the applicant, as well as third parties who have previously participated in the permit public notice and review process, may file an appeal of the permit with the Illinois Pollution Control Board. Generally, a litigated appeal in front of the Illinois PCB will take from six months to more than one year to obtain a final order. After the Illinois PCB renders its final decision, that decision can, in turn, be appealed to the Illinois Appellate Court. A decision from that body will likely take from six months to more than one year.

43. Under storm conditions, a large amount of mud could be present in the water. Would the lead naturally present in this water exceed the limits of this permit, or otherwise confuse the distinction between naturally occurring lead and lead shot?

A: Due to the specific gravity of lead, it is unlikely that the lead shot would be found suspended in the water column. Acidic conditions would need to be prevalent in order to transform the lead into a dissolved phase. The receiving water at this site is not acidic and has a pH near 7. Naturally occurring lead concentrations would not exceed the water quality standards for lead.

44. How was it determined that the water-sampling site would be representative of the whole water body? Does this take into account the disturbance of the land over the years and the possible presence of agricultural tiles

A: The NPDES permit prohibits the use of lead shot. Therefore, the amount of lead present at the site will not increase. The extended retention time provided by the two ponds and the connecting channel should ensure that uniform conditions exist throughout the joined water bodies. The flow of water through the system, as well as other factors such as wind conditions, provide mixing of the surface water. Therefore, the outflow from the south pond will provide a convenient location at which a representative sample can be collected. The Illinois EPA is not aware of any agricultural tiles that drain onto the site.

45. Special Condition 5 of the permit mentions action levels for lead, and outlines a two-year schedule for implementing plans to correct the situation if those levels are exceeded. Does this mean that the facility can be in violation of the permit and continue operating for two years?

A: As outlined in the proposed permit, the Action Levels contained in Special Condition 5 are one-half the water quality standards described in that section. Thus, they are well below the actual water quality limit, and consequently, are not violations of the water quality standards themselves. However, if lead concentrations rise to the Action Levels in any two consecutive discharge monitoring reports, the NPD is required to develop and implement a plan to ensure the water quality standards are not later violated. The Action Levels act as a safeguard to ensure measures are taken to prevent water quality violations from occurring.

46. Does this permit represent a significant change in policy toward gun clubs in Illinois and the United States? Could this mean that IEPA and USEPA will be requiring other gun clubs to use steel shot? Will IEPA and USEPA remain passive in enforcing this policy or become more proactive?

A: Apart from an earlier application from a target shooting facility located in Illinois that ceased operation prior to issuance of a permit, the NPD permit application is the first NPDES permit for a shooting facility in Illinois that has progressed to this stage of consideration. Previously, the U.S. EPA issued an NPDES permit for a U.S. Navy gunnery range, outside of Illinois, for naval gunnery practice activities. The U.S. EPA, in its oversight capacity regarding Illinois' NPDES program, and other states

have been interested in the issues and progress of this matter. The Illinois EPA must review the applicable law and the specific technical and environmental circumstances in each application when it considers requests for NPDES permits. Historically, Illinois EPA has taken the actions necessary to ensure that facilities that it believes should obtain permits do indeed obtain permits. Permit applications are reviewed on a case-by-case basis, but it is possible that future permits issued to similar facilities will parallel this permit. Lead shot could be prohibited in instances where shot may discharge into water.

47. I understood the use of lead shot was banned in general. Under what circumstances is it not banned?

A: The NPDES permit prohibits the use of lead. Under no circumstances is the use of lead shot allowed. A request to change this special condition would require modification of the permit subject to the public notice requirements and opportunity for hearing outlined in 35 Ill. Admin. Code 309.

48. Do you know how many other gun clubs use lead shot that is fired over water?

A: No.

49. (Regarding Special Condition 4) Please give examples of effluent deterioration (sic) that illustrate maintenance, operational or other problem (sic) that are cause of deterioration (sic). What are some other problem (sic) that would cause deterioration (sic)?

A: Increased levels of pollutants in a discharge would indicate possible effluent deterioration that could be the result of operational or maintenance problems. This special condition explicitly affords the Illinois EPA the ability to increase monitoring frequency if an increase in pollutant levels is detected. For example, if the monthly discharge monitoring reports indicate an upward trend in lead concentrations, the Illinois EPA may modify the permit to require more frequent sampling.

50. (Regarding Special Condition 6) What are the pollutants in this list that calls (sic) for extra precautions?

A: The pollutants listed in Special Condition 6 (PNAs) have the potential to be present in the surface water as a result of the clay targets. This potential warrants monitoring, even though no sampling data has shown the presence of these pollutants at concentrations of concern.

51. (Regarding Special Condition 7) What is a storm event? Explain, please.

A: A storm event is defined as rainfall totaling more than 0.1 inches occurring at least 72 hours after the previously measurable (greater than 0.1 inch) rainfall.

52. (Regarding Special Condition 9) How is monitoring conducted? What qualification does one who monitors need to have? How often and where is the evaluation of samples made? What is the deadline on acting on result and how soon after a "event" does results be addressed (sic)? Is there a

readdressing of the standard made and by whom?

A: Monitoring must be conducted in accordance with state and federal regulations. The individual conducting the monitoring must adhere to the established guidelines. The permittee is required to collect grab samples of the outflow from the south pond at least once each month. Samples must be collected within the first thirty minutes of outflow from a storm event. The samples must also be taken at a point before the outflow enters the receiving stream. A U.S. EPA approved test method must be used to analyze the samples. Results must be submitted to the Illinois EPA no later than the 15th of the following month. The results are reviewed and entered into the Illinois EPA's data system. If it is determined that the information submitted constitutes a violation of the NPDES permit, appropriate action is taken. The water quality standards for lead mentioned in this permit are not dependent on the monitoring results. The standards are based on state and federal regulations.

53. (Regarding Special Condition 10) What is your rationale for taking samplings (sic) of water at the end of the culvert leaving the range? Since it is documented that the sediments in the stream have higher than standards of lead in this stream at it is the shot fall area (sic) why not make your catch placement at the south end of this stream? Please explain your reasons and purposes.

A: Please see the Answer to Question #44.

54. (Regarding Special Condition 11) Your statement at October 21, 1999 hearing that you use the honor system for those responsible for reporting and doing the catches - how do you long distance evaluate the expertise of the one performing this duty? Explain why your experts are not used to gather accurate information and conduct the catch properly?

A: The Illinois EPA does not have the personnel required to conduct monitoring at every facility in Illinois regulated under the NPDES permit program. Section 122.41(h) of Title 40 of the Code of Federal Regulations, 40 CFR 122.41(h), requires the Permittee, i.e. Naperville Park District, to invoke a self-monitoring program to demonstrate compliance with its NPDES permit. Additionally, 40 CFR 122.41(I)(3)&(4) gives the Illinois EPA the authority to randomly conduct inspections and collect discharge samples at regulated facilities. Illinois EPA inspections, the submission of monthly reports, the use of U.S. EPA approved test methods and various other measures provide a means of assuring that the limits and conditions of NPDES permits are met.

55. (Regarding Special Condition 12) What is your course of action if you are not notified that shooting has stopped at this site?

A: Failure to comply with any requirement outlined in the NPDES permit would constitute a violation of the permit. The Permittee would then be subject to possible enforcement action which could consist of civil and/or criminal penalties.

56. (Regarding Special Condition 13) Does this condition apply to the known wetlands in the range part of Sportsman's Park? Explain what are the consequences of not following the second paragraph's instructions.

A: It has been determined that the wetlands at this facility are waters of the state. Therefore, the wetlands would be subject to this special condition and should be included in the Best Management Practices (BMP) program. Failure to comply with the second paragraph of this special condition, or any portion of the NPDES permit, would constitute a violation of the permit (see the answer to Question #55).

Surface Water-Related Issues:

57. Would the barrier proposed by the Naperville Park District (NPD) completely preclude all lead discharged from shooting activities from landing in the wetland or waters at the site?

A: Please see the Response to Comment #81.

58. Has the Illinois EPA found other shooting ranges where lead has leached from sediments into the water column? At those sites, where are the sediments most contaminated?

A: In data reviewed by the Illinois EPA regarding other ranges in Illinois, there has been no indication that lead is leaching into the water column from sediments. Generally, the sediments are most contaminated in the area where the most lead falls.

59. Can lead exist in a non-dissolved state in sediments?

A: Yes.

60. Was the water from Sportsman's park tested for substances other than lead, such as fertilizers, pesticides or herbicides? If not, shouldn't an evaluation be done for these chemicals as well?

A: The water tested was analyzed for pollutants other than lead, but fertilizers, pesticides and herbicides were not included. These pollutants are not expected to be present at levels of concern.

61. It seems as though the level of lead in the water has never been of concern to the IEPA, and the potential for lead to enter the water has never been viewed as significant. If that is so, then why are we discussing protecting the water from lead? Has the USEPA overridden the Illinois EPA's opinion in this case?

A: All sampling data submitted to the Illinois EPA and utilized to develop the NPDES permit indicates that lead concentrations in the surface water are well below the water quality standards for lead. However, lead is present and therefore is of concern. The monitoring program is required to ensure that lead concentrations in the surface water do not exceed the water quality standards and pose a threat to aquatic life and/or human health. Comments submitted by the U.S. EPA during the public comment periods were incorporated into the review process.

62. It has been mentioned that lead contaminated water from this park can enter a direct tributary of the

DuPage River. We do not understand where this tributary is. We would also like to know how the water at this park is Federal or navigable.

A: The weir at the southwest corner of the South Pond overflows into an unnamed ditch that is tributary to the West Branch of the DuPage River. Overflow from the pond may never actually reach the river, but the potential does exist under extreme flow conditions. Navigable waters are defined in the federal Clean Water Act as "Waters of the United States." The ponds, connecting channel and the wetlands fit the definition of "waters of the United States" as outlined in the federal regulations under 40 CFR 122.2.

Groundwater-Related Issues:

No questions asked.

Land-Related Issues:

63. Has NPD provided any information indicating discharges from the site will not contaminate sediments, apart for information provided during the hearing?

A: The Illinois EPA is not aware of additional information on the subject apart from that provided during the hearing. The issue under review for purposes of NPDES permit issuance is the protection of water quality in the water column.

64. Is the land covered by this permit considered safe? How is "safe" defined in this case?

A: The Illinois EPA has a program, the Site Remediation Program, which has been established by the General Assembly to allow applicants to submit parcels of land for environmental investigation under state oversight. Sportsman's Park was evaluated under that program and was determined not to represent a threat to public health as long as people were not allowed general access to the shot-fall zone, which has been fenced. The regulations covering cleanup objectives, and the various methods for meeting these objectives [the Tiered Approach to Corrective Action Objectives (TACO)], are contained in 35 Illinois Administrative Code Part 742.

65. If lead can be recovered from sites like these for recycling, why would it cost one to two million dollars to clean it up?

A: The Illinois EPA is not in possession of any site-specific study of lead cleanup costs at Sportsman's Park. However, the costs of site cleanup can easily exceed the value of materials reclaimed in many instances. The relative values will be determined by many site-specific factors, not the least of which is the market value of the reclaimed material, in this case lead.

66. If the lead present is safe, why have I read that the site must be cleaned up within 8 years if the shooting operation closes?

A: Illinois EPA staff have not been able to discover the source for any media story that might have identified a timetable of eight years for cleanup of lead, following cessation of shooting at the site. Condition 13 of the draft permit requires the Park District to inform Illinois EPA Bureau of Land if they cease shooting at the site, but the Illinois EPA has never specified any timetable for a cleanup of existing lead at the site, as long as access to the shot fall area remains restricted.

67. Isn't Illinois EPA required by law to effect a cleanup of the lead in Sportsman's Park within a specified amount of time, once the use of lead shot is banned there? (Ex.48)

A: No. Please see the Response to Comment #109.

Natural Resources/Wildlife Issues:

68. Could the discharge of lead shot cause the poisoning of migratory birds at the site? Would such poisoning violate the Migratory Bird Treaty Act?

A: The Illinois EPA believes both situations could occur.

69. Can the ingestion of lead sediment by wildlife and fish present problems to them? Can lead accumulate in the food chain?

A: Yes.

70. What evidence of actual harm to wildlife or aquatic life do any of the requesters of the public hearing in this matter possess?

A: The United States Fish and Wildlife Service (U.S. F&WS) has submitted information for the record concerning migratory birds that have died of lead poisoning. Andrew Perellis, attorney for Roger Stone, a public hearing requester in this matter, believes the U.S. F&WS information contends that the death of the birds may be attributable to conditions at the site. Rick Tarulis, attorney for NPD, believes U.S. F&WS' information does not state the birds in question ingested lead at the site.

71. (By Andrew Perellis): What does the NPD propose to do about lead killing migratory birds at the site? Why has it taken 40 years and tens of thousands of dollars for the NPD to now say it will take steps to keep birds out of the site, when U.S. F&W personnel believes there is "strong reason to believe" birds found at/near the site poisoned with lead ingested that lead at the site?

A: (By Rick Tarulis on behalf of the NPD): There is no evidence that lead from the site is killing migratory birds. Due to the tall weeds at the site, NPD believes migratory birds do not go to the site, much less are injured by lead at the site. If evidence suggests migratory birds do frequent the site, the NPD has agreed to take measures to save such birds, such as installing netting to keep birds away from the area and/or placing decoys or live swans at the site to keep migratory birds away. The NPD has suggested that certain conditions be placed into the permit to better protect the environment, such as requiring NPD to notify the Illinois EPA's Bureau of Land if

shooting activities cease at the site and that water at the site be tested periodically regardless of whether a rain event takes place. The NPD is concerned with the environment and wishes to operate the site in only a safe and legal manner.

72. The United States Fish and Wildlife Service has stated that there is a strong reason to believe that the lead at the park is killing birds. Does the Park District and the IEPA consider it safe, from an environmental and human perspective, if many birds continue to die there from lead poisoning?

A: Please see the Response to Comment #109.

Miscellaneous/Other Issues:

73. (By Rick Tarulis): Will Roger Stone object to this permit if NPD decides to allow the use of steel shot only at the site?

A: (By Andrew Perellis): He and his client, Roger Stone, will review the record and make a decision.

74. (By Rick Tarulis): Will Roger Stone object to the permit if the NPD decides to build a barrier to prevent shot from entering the wetland area?

A: (By Andrew Perellis): We (he and Mr. Stone) do not believe the barrier is feasible or lawful.

75. Is there any other land in Naperville that has been considered as a possible location for this park?

A: The Illinois EPA has no information on this question, which is a matter for local determination by the Park District or other local authority.

76. If the IEPA is going to prohibit additional lead entering the wetlands of the park, when will it require the removal of the lead already present?

A: Please see the Response to Comment #109.

COMMENTS AND RESPONSES

Permit and Regulation Issues:

77. The permit should contain a condition that will prohibit discharging under the permit until any party wishing to file an appeal or a motion to stay the permit has had the 35-day opportunity to do so, and until the Pollution Control Board has issued a final ruling on any appeal that may be filed.

R: The Illinois EPA generally does not place such conditions in permits. In most cases, permits are not appealed, and to place such a condition in a permit would unnecessarily delay the permittee's ability to operate its facility and effluent discharge. More importantly, such a provision would delay the applicability of revised limitations or conditions that may be environmentally or legally required of a discharger to prevent possible environmental harm.

78. The Agency's regulations and the case law clearly show that an NPDES permit is final and effective when issued.

R: Please see the Answer to Question #36.

79. No permit could comply with the law and allow the discharge of lead into the waters of the state.

R: Each discharge must be reviewed on the specific facts related to it and the applicable rules and regulations. If a discharge can meet the applicable effluent and water quality standards, the Illinois EPA is required by law to issue the applicant an NPDES permit.

80. Illinois EPA must consider more than water quality in its permit decision. A recent federal court decision in Illinois is cited to demonstrate that permits under the Clean Water Act must be consistent with the Act's stated purpose "to restore and maintain the chemical, physical, and biological integrity of the nation's waters." Illinois EPA *must* consider how discharging tons of lead into a sensitive environment at the Park affects the wildlife and resources that use the Park, not merely the water quality.

R: The Illinois EPA believes that, utilizing its technical capabilities in its analysis of the facts involved in this application, it has considered the chemical, physical and biological integrity of the waters involved. Ensuring water quality standards are met is a primary means of ensuring the chemical, physical and biological integrity of waters of the state. As part of the NPDES permit, the use of lead shot is prohibited.

81. A barrier to catch "all lead" warrants a permit modification. If this permit is issued, it should contain a prohibition on the shooting of lead at the Park. To shoot lead (for example, with the addition of a lead-catching barrier) the applicant should need to file for a modification of the permit. [Additional problems with the Park District's barrier proposal are also presented.]

R: The NPDES permit prohibits the use of lead shot at this facility. A proposal to use lead shot in conjunction with a barrier would require modification of the permit

subject to the public notice requirements and opportunity for hearing outlined in 35 Ill. Admin. Code 309.

82. Water quality standards in Special Condition 5 must be stated in the permit as a limit applicable at every point in the water system, not just at the monitoring point. Exceedance of the water quality standard violates the permit. The level of 510 micrograms per liter is almost 200 times the level U.S. EPA has found to be acceptable to prevent injury to wildlife.

R: The Illinois EPA believes the monitoring point to be utilized will provide accurate information on water quality throughout the site. If samples indicate contaminant concentrations above water quality standards, that would constitute a violation of the permit. The water quality standards for lead (0.51 mg/l daily maximum, 0.107 mg/l monthly average) included in the permit were developed pursuant to all state and federal regulations governing the NPDES permitting program.

83. All the concentration limits on page 2 of the permit should be enforceable limits rather than "monitoring only."

R: Discharges from the site containing concentrations of the listed contaminants in excess of any water quality or effluent standards for those contaminants would be in violation of the Act and the Illinois PCB's regulations, and are enforceable. Further, if lead is discharged at concentrations greater than 0.51 milligrams per liter (mg/l) daily maximum or 0.107mg/l monthly average, that would be in violation of the permit, Act and the Illinois PCB's regulations.

84. The multiple samples should be taken at the points of where (sic) lead shot enters the water (i.e. the wetlands, the connecting stream, and ponds), and taken at the end of the shooting session, rather than during storm events. See ILL. ADMIN. CODE 304.102.

R: Please see the Answer to Question #44.

85. A special condition must be added to require remediation of existing lead in the sediments and wetlands, so as to prevent further water pollution, including environmental harm or potential water quality violations. A special condition also should require best management practice to control runoff from the shotfall zone.

R: Please see the Response to Comment #109.

86. Shooting should be prohibited whenever Action Levels in Special Condition 5 are exceed (sic), and until the Preventative Action Plan demonstrates that future violation will not occur. The Preventative Action Plan should be implemented within 12 months of when the Action Levels are first exceeded.

R: The water quality standards for lead were developed to protect aquatic life and human health. Concentrations of lead at levels below these standards are acceptable. Therefore, the Action Levels were set at 50 percent (one-half) of the water quality standards to ensure appropriate action would be taken to limit lead concentrations before they violated the standards. Since the permit prohibits the use of lead shot, the amount of lead deposited at the facility will not increase. Considering that the surface water at the site is not acidic in nature, it is not expected that the existing

lead pellets will dissolve. Therefore, any increase in lead concentrations in the surface water would be expected to be gradual (if at all). The 24 month compliance schedule for the Preventative Action Plan will allow sufficient time for development, Illinois EPA review and implementation.

87. Regarding the sufficiency of the permit application, the Agency noted that it deemed the application complete at the time the draft permit was issued.

R: Yes.

88. The sampling data submitted by the Park District was adequate and shows that water quality standards are being met and will be met. The "Ecotox Standards" and "Preliminary Remediation Goals" raised by Mr. Stone's attorney are irrelevant and have nothing to do with the water quality standards at the Park.

R: Please see the Answer to Question 12.

89. NPDES permits are given to allow operation of manufacturing and public utility facilities for economic reasons, or vital public needs. This would be the first NPDES permit of its kind issued for recreational purposes, hardly a vital economic or public need.

R: Section 39 of the Act requires the Illinois EPA to issue an NPDES permit to any applicant that demonstrates that its discharge will not cause a violation of the Act or the Illinois PCB's regulations promulgated thereunder. "Economic reasons" or "vital public needs" are not specified in the Act as criteria to be met in issuing NPDES permits. This will be the first NPDES permit the Illinois EPA has issued for a gun club, not the first permit for a recreational facility.

90. This permit is intended for assisting industry and the economy, but is being used to allow a questionable sport to continue harming wetlands and wildlife, and does not help preserve the environmental condition of the country.

R: Please see the Response to Comment #89.

91. I am concerned about the scientific nature of the sampling required by the permit. I would like the permit to require sampling within a half hour of every storm, not just once a month, and more specific language about how the samples are to be analyzed and by whom.

R: All samples must be collected, stored and analyzed in accordance with the federal regulations outlined in 40 CFR 136. This requirement is specified in the list of Standard Conditions attached to every NPDES permit issued by the Illinois EPA. (Also see the Answer to Question #22).

92. The testing procedures described in the permit are inadequate. Testing should be done in the shot-fall area, where contamination would be most likely to occur. Also, compliance monitoring should not be left up to the Park District, on the "honor system."

R: Please see Answer to Question #44. Additionally, 40 CFR 122.41(h) of the federal

regulations requires the permittee, i.e. Naperville Park District, to implement a self-monitoring program to demonstrate compliance with its NPDES permit.

93. The IEPA should not allow the source of this contamination to continue to operate, and should consider requiring the use of steel shot.

R: The NPDES permit prohibits the use of lead shot.

94. We would like to continue to use lead shot. The USEPA has issued a permit to the Navy to continue discharging lead into a navigable water, and we would like that precedent to stand here.

R: The permit issued by the USEPA to the Navy can only be referred to as a "precedent" if all pertinent factors are identical (receiving stream, wastestream characteristics, etc.) Such is not the case in this instance. Each NPDES permit application is reviewed on a case-by-case basis. The NPDES permit drafted for this facility prohibits the use of lead shot.

95. I am concerned about the implications of this permit, if it is issued for steel shot only, for the hundreds of other gun clubs in Illinois and the country.

R: Please see the Answer to Question #46.

96. The use of steel shot poses special problems for trap shooters. Steel shot has less range and "stopping-power" than lead shot. It does not form the same type of pattern, so a "choke" must be added to the gun. Steel shot damages the barrels of older guns, which are made of softer materials than newer barrels. Special powder and wadding are needed for steel shot. Sixty percent of shooters like to reload their own shells, but with steel shot that is now impossible, forcing them to pay more for their shells. Costs would significantly increase with steel shot, by 100% or more. Regular shooters could be paying more than \$100 additional per month if forced to use steel shot.

R: Although economic factors are considered when drafting an NPDES permit, they are not the only factors. The Illinois EPA must weigh environmental benefits against economic adversities. The final decision in this case is to prohibit the use of lead shot.

97. If steel shot is required, how will this be enforced, since violations would be impossible to detect as a result of the hundreds of tons of lead shot already present on the site. Would this enforcement, too, fall under the "honor system?" If steel shot is required, there should be conditions added to guarantee compliance.

R: A special condition has been added to the NPDES permit requiring the Naperville Park District to submit a Best Management Practices (BMP) program to the Illinois EPA outlining its plan to prevent the discharge of lead shot. The plan must be developed and implemented before shooting activities can resume. In addition, special condition 12 has been amended to require the Naperville Park District to submit a signed statement each month with their Discharge Monitoring Report form certifying that no lead shot was used at the facility during that month.

Under the NPDES program, Illinois EPA field inspectors periodically visit permitted sites to evaluate compliance with the facility's permit, the Act and the Illinois PCB's regulations. If, through investigations, it was apparent that lead shot was continuing to be used at the site, that would be a violation of the permit and subject the NPD to possible enforcement action from the Illinois EPA.

98. I am an engineer and have done some modeling calculations related to a barrier at the park. I see no way a barrier can prevent lead from reaching the wetland areas of the park without being incredibly high.

[Lengthy comments were submitted by several parties criticizing the proposed barrier design and questioning its adequacy to prevent lead shotfall into the wetland areas of the site. It was argued that the design was incomplete, inadequate, and unproven. It was also noted that design recommendations for trap shooting ranges specifically advise against shooting into water. In addition, it was noted that the barrier design was based upon the enforcement of rules and regulations regarding launching angles, and it was suggested that such enforcement might be hard to assure. Several comments were received arguing that the late introduction of the barrier concept into the permit process would necessitate re-starting the process in order to allow adequate consideration and comment by the public.]

R: Please see the Response to Comment #81.

99. I believe this permit should have a special condition that prohibits the discharge of any pollutant into the waters of the United States, lead, steel, wadding, or anything else, navigable or not. The precedent was set with the Lincoln Park Gun Club and should be followed here.

R: The purpose of the NPDES permit is to protect water quality. The Illinois EPA feels that this NPDES permit will accomplish this objective.

100. The Clean Water Act does not establish effluent limits for the discharge of lead pellets into waters of the U.S. Best Professional Judgment must be used here. Over time, lead that rests in water will dissolve and enter both surface water and groundwater. Therefore, it should not be allowed in this permit. However, steel shot is also a pollutant, as are the cotton wadding and plastic casings of shotgun shells. Therefore, they should all be prohibited from use, as they were at the Lincoln Park Gun Club in Chicago.

R: State regulations developed pursuant to the federal Clean Water Act contain both effluent limits and water quality standards for lead [35 Ill. Adm. Code 304.124(a) and 302.208(e), respectively]. The most stringent criteria, water quality standards, were utilized in the development of this permit. The required monitoring will indicate any changes in lead concentrations. Special Condition 5 (Preventative Action Plan) is included to prevent lead concentrations from exceeding the water quality standard. Special Condition 14 (Best Management Practices) requires the Permittee to limit and control the deposition of shotgun shell wadding.

101. The proposed permit does not regulate discharges into the waters of the state, it only **monitors** them. This does not comply with the Clean Water Act.

R: Monitoring (collecting grab samples) is a tool used to determine compliance with

conditions of the NPDES permit developed in compliance with the Clean Water Act to regulate the point source discharge of pollutants from this facility. The permit limits the discharge of lead by prohibiting the use of lead shot and requiring a Preventative Action Plan if lead concentrations in the pond increase.

Surface Water-Related Issues:

102. Lead in the water may eventually enter the DuPage River.

R: It is unlikely that outflow from this site would ever reach the DuPage River. However, requirements of this permit (specifically Special Condition 5) were developed to ensure that any outflow leaving the site would have lead concentrations below the allowable water quality standards. This, in conjunction with the large amount of dilution available in the DuPage River, would likely prevent adverse affects even if the outflow did reach the river.

103. Lead contaminated water is not confined to the park but can flow freely to the surrounding areas.

R: The potential does exist for surface water from this site to flow to surrounding areas. However, no evidence has been found that indicates lead is present at concentrations above the water quality standards. Routine sampling is required to monitor lead levels. If elevated levels are detected, the Naperville Park District is required to develop and implement a plan of action designed to prevent lead concentrations from exceeding the water quality standards.

Groundwater-Related Issues:

104. There is lead in the groundwater that may move further and contaminate wells and drinking water.

R: Based on several environmental investigations conducted at this facility, Illinois EPA has found no evidence of a groundwater problem caused by the lead present on the site. No groundwater contamination with lead has been demonstrated beneath the park, and the Clubhouse well and five nearby residential wells that were tested show no sign of lead contamination.

105. This permit should require groundwater monitoring -- I am concerned that lead in the surface waters could enter the groundwater.

R: Please see the Response to Comment #104.

106. The Green Acres Homeowners' Association requests that the permit be issued and the park continue operation. The IEPA has determined that the park has not contaminated the area's groundwater.

R: The Illinois EPA hereby acknowledges the position of the Green Acres Homeowner's Association.

107. Several private wells nearby have been tested for lead and none have been shown to have a problem.

R: Please see the Response to Comment #104.

108. I am concerned that lead might move northwest in groundwater from the park into sump pumps in the Lawn Meadows Subdivision.

R: Please see the Response to Comment #104.

Land-Related Issues:

109. There may be a need to clean up the lead already present at the site as a result of a Natural Resource Damage Assessment, under CERCLA (the federal Comprehensive Environmental Response, Compensation, and Liability Act).

R: The Illinois EPA has recently been informed that U.S.EPA is contemplating performing an Ecological Risk Assessment at Sportsman's Park, based in part on the CERCLA Preliminary Assessment results from last year. An Ecological Risk Assessment is a study (performed under the auspices of CERCLA) intended to determine whether current conditions at a site pose either an imminent or a long-term threat to wildlife or the local ecosystem as a whole.

In contrast, a Natural Resource Damage Assessment involves a determination of whether a site has suffered ecological damage, compared to some baseline time period, and assessing the value of that damage and what might be required to restore the ecosystem or compensate for the loss. Both federal and state agencies serve as natural resource trustees to oversee this process. It is too early at this point to know whether any natural resource trustee will address natural resource injury issues at Sportsman's Park, and much too early to speculate on the results of such a study if it does occur.

110. Tons of lead shot that exist on the site must be removed from the channel and the wetlands.

R: Please see the Response to Comment #109.

111. There is lead-pellet contamination outside the fenced area, which could be a hazard to children.

R: The NPDES permit controls the discharge of pollutants from the shooting stations and shot fall area into waters of the state. The Naperville Park District has been notified of the concern with lead shot outside the fenced area.

Natural Resource/Wildlife Issues:

112. As to any potential violations of the Migratory Treaty Bird Act (sic), the Park District has been

speaking with Mr. Joseph Budzyn of the U.S. Fish and Wildlife Service to respond to any concerns the Service may have regarding lead and migratory birds. As Mr. Budzyn himself acknowledges, protecting birds from potential lead exposure is a relatively inexpensive matter, and the Park District is presently committed to installing such protection. In any event, no one has shown that the conditions at the park have harmed any birds, and the permit with the conditions of steel shot and the barrier, if lead shot is used, will not result in the violation of any federal or state laws.

R: Please see the Answer to Question #70.

113. Lead shot present in the water's sediments and on the land can be ingested by wildlife, poisoning them.

R: Please see the Response to Comment #109.

114. This permit will not remove the lead already present in the park. The lead is a threat to fish both at the park and in the DuPage River. There are "no fishing" signs posted as a result of the lead.

R: Water quality standards have been developed to protect aquatic life. Concentrations of a pollutant below its respective water quality standards should not adversely affect aquatic life. According to information submitted to the Illinois EPA by the Naperville Park District, lead levels in the surface water at this facility are well below the water quality standard for lead. Special Condition 5 (Preventative Action Plan) requires that action be taken to limit and control lead concentrations in the water before they approach the water quality standards.

115. The park is a wildlife refuge, and Canada Geese, Black Capped Night Herons, Green Back herons, and ducks are present at the park. Recently a Canada Goose was found dead at the hospital grounds across from the park with a lead-impacted gizzard.

R: Please see the Response to Comment #109.

116. Sportsman's Park has a significant population of the Black Crowned Night Heron, an Illinois endangered species. Adult, immature and juvenile members have been seen and photographed. It is known that lead has killed some birds at this site, and this means these birds are at risk. The park should be cleaned up and no further lead deposited so that it may be a safe wildlife refuge.

R: Please see the Response to Comment #109.

117. Lead present in Sportsman's Park will be a threat to these birds, and other wildfowl, unless it is cleaned up, as is being done at Nahant Marsh.

R: Please see the Response to Comment #109.

118. The US Fish and Wildlife Service does not allow lead shot to enter wetlands, and in this case, migratory birds are probably using this wetland area. These birds are at risk from the lead shot.

R: Please see the Response to Comment #109.

119. I disagree with the assertion that the birds found dead of lead poisoning on the property ingested the lead elsewhere and died here. I also disagree with the statement that there are no geese on the

property.

R: Please see the Response to Comment #109.

120. There is no evidence that wildlife is being harmed by conditions at Sportsman's Park.

R: Please see the Response to Comment #109.

121. Scott Garrow, District Wildlife Habitat Biologist covering DuPage County for Illinois Department of Natural Resources (IDNR), is quoted as stating that the habitat in the channel is excellent for waterfowl, and as saying that lead "from trap ranges" is responsible for die-offs of Canada Geese he has investigated in DuPage County.

R: Please see the Response to Comment #109.

122. The nature of lead poisoning explains why no dead or dying waterfowl might have been observed at Sportsman's Park itself. It takes time for lead poisoning to kill, during which time the birds may move on from the site where they ingested the lead pellets.

R: Please see the Response to Comment #109.

123. The U.S. Fish and Wildlife Service recognizes that waterfowl overpopulation has resulted in harm to human health and the environment and thus has authorized expanded "damage management" programs to reduce bird populations.

R: Please see the Response to Comment #109.

124. It should be noted that the wetland area extends west of the channel between the two ponds, but does not lie east of the channel.

R: The Illinois EPA takes note of this fact.

125. Migratory birds, which are protected by International Treaty, Federal Statute, and State Law, and are a trust resource of the U.S. Fish and Wildlife Service, can ingest exposed lead shot while foraging for food or grit and die from lead poisoning. Secondary poisoning can also occur when lead poisoned wildlife or carcasses are fed upon by predatory migratory birds. History has shown that aquatic birds, birds which prey on waterfowl, and non aquatic birds which frequent sites with exposed shot, are most susceptible to lead ingestion and subsequent poisoning.

During site visits to the Sportsman's Club, conducted in June, October, and November, 1999, various migratory bird species were observed on the ponds, connecting channel, wetlands, and adjacent areas of the site thus, there is a strong likelihood of lead poisoning, of migratory birds, and other wildlife, at this site.

R: Please see the Response to Comment #109.

126. Migratory birds killed as a result of lead poisoning constitute a criminal violation of the federal Migratory Bird Treaty Act. Prosecution of the party(ies) responsible for depositing the lead shot can

be hindered by, or even withheld, as a result of the issuance of a permit by another government agency which authorized the depositing of lead shot in habitats utilized by migratory birds. Additionally, the agency that authorized such deposits could possibly be named as a co-defendant since their actions contributed to the unlawful killing of migratory birds.

R: The NPDES permit prohibits the use of lead shot.

127. Removal of the existing exposed lead shot, which is found throughout the Sportsman's Park site, will be indefinitely delayed if this permit is issued, resulting in a continued risk to migratory birds utilizing this site and the potential for violations of the Migratory Bird Treaty Act.

R: The NPDES permit prohibits the further use of lead shot. However, please see the Response to Comment #109.

128. The Migratory Bird Treaty Act (MBTA), *16 USC 703 et seq.* prohibits the taking (killing) of listed birds, by any means (including poisoning), unless authorized by the Secretary of the Interior. The person or persons responsible for, or one who aids or abets in (*18USC 2*) an act which results in the unlawful taking of migratory birds, whether or not such taking is intentional, is guilty of a criminal violation of the MBTA. (Note: Title 18, United States Code, Section 2, authorizes the prosecution of a person(s) that "aids or abets" another in the commission of a crime against the United States).

A list of birds protected by the MBTA is found in Title 50, Code of Federal Regulations, Part 10 (*50 CFR 10*). Birds listed in *50 CFR 10* are defined by species. Each and every individual bird of a listed species, regardless of whether or not it engages in migratory flights, or is part of an expanding and potentially injurious population, is protected by the provisions of the MBTA. These comments are meant to clarify any possible misconceptions concerning the protected status of resident or nonmigratory waterfowl that may be found on the Naperville Sportsman's Club site.

R: Again, please see the Response to Comment #109.

129. Testimony presented during the public hearing alleged that migratory birds are not landing on the site and that wildlife presence on, and usage of, the site is minimal. Actual observations of migratory birds and other wildlife on the site indicate otherwise.

As previously reported, on June 30, 1999, I, accompanied by Mr. R. Turulis (sic), observed several species of migratory birds including ducks, geese, and aquatic birds (egret), as well as non aquatic upland birds (Robins, Cardinals, Finches, etc.) on the waters of, and utilizing the lands of the Sportsman's Park site. Also observed were two (2) partially predated goose carcasses.

On October 26, 1999, I again observed several species of migratory birds including eight (8) mallard ducks and (2) wood ducks, three (3) Canada geese, and several non aquatic upland birds including Robins, Cardinals, Crows, Chickadees, & Woodpeckers and several bones and feathers which appeared to be from geese. The mallards were observed on the north pond, the wood ducks were observed on the connecting channel, and the geese were observed on the south pond. The upland birds were observed throughout the site.

On November 13, 1999, I, accompanied by U.S. Fish and Wildlife Service biologist Edward Karecki, again observed several species of migratory birds including three (3) flocks of several (4-8), mallard ducks each landing on the site, one (1) Canada goose roosting on the site, two (2) Great Horned or Long Eared Owls perched on site, several non aquatic upland birds, and a fox. Several predated goose bones and feather piles were again observed at various locations throughout the site. The mallards were observed on the connecting channel and on both the north and south ponds, the Canada Goose was observed on the east shore of the south pond, the two owls were observed in a tree line immediately north of the trap houses, the fox was in the tree line immediately north of the trap houses, and the non aquatic upland birds were present throughout the site with several cardinals and robins being observed drinking and pecking the ground on the east shore of the connecting channel near the north pond fence.

Note #1: It should be noted that on November 13, 1999, the ducks and goose immediately flew from area when approached, a characteristic normally associated with non resident, or migratory populations of waterfowl.

Note #2: An absolute identification of the owls was not made, however, based upon the observed physical characteristics of long ear tufts, they were either great horned or long eared owls. The long eared owl often roosts in groups (Peterson's Field Guide, Fourth Edition) therefore there is a strong likelihood that these owls were the long eared owls, an Illinois Endangered Species, since they were roosting together.

Note #3: The habitat along the east shore of the connecting channel is very similar throughout the area. Immediately south of the area where the robins and cardinals were observed large quantities of exposed lead shot was present on the surface of the ground and can be easily ingested by non aquatic birds feeding in the area.

R: The Illinois EPA takes note of these observations. Again, however, please refer to the Response to Comment #109.

130. The use of lead shot is currently prohibited throughout the United States for the hunting of waterfowl and several National Wildlife Refuges have also prohibited the use of lead shot for the hunting of game other than waterfowl. Several states are contemplating restrictions on the use of lead shot for hunting and the use of lead fishing sinkers has been studied and elimination of their use has been suggested. Permitting the continued discharge of lead shot at the Sportsman's Club would be contrary to current trends and thinking regarding lead shot.

R: The NPDES permit prohibits the use of lead shot.

131. During the public hearing, Mr. Morrin spoke, and submitted Exhibit #16, on the expanding populations of some species of migratory waterfowl. (Afternoon Session, Page 25, Line 10-14). Although current populations of some species of waterfowl have risen over the past few years cyclical increases and decreases in wildlife populations is common. We do not feel that these statistics have a bearing on, or should be considered pertinent to, this matter. However, if consideration is given to these statistics, we would suggest that equal consideration be given to the possibility that these population increases are attributable to the positive effects of the prohibition on the use of lead shot for waterfowl hunting.

R: The NPDES permit prohibits the use of lead shot.

132. During the public hearing, Mr. McSwiggin stated, in part, that the NPDES permit looks at the issue of water quality and that ingestion of lead shot by migratory birds is the responsibility of the U.S. Fish and Wildlife Service (Evening Session, Page 62, Lines 2-16). The mission of the U.S. Fish and Wildlife Service is "working with others to conserve, protect, and enhance fish, wildlife, and plants, and their habitats for the continuing benefits of the American people" (National Policy Issuance #99-01). As reflected in the above statement, we recognize that we can not accomplish our mission without the help and cooperation of others. Although consultation with the U.S. Fish and Wildlife Service is required by the Clean Water Act, consultation over migratory bird issues is not specifically addressed. Nonetheless, we would request that our concerns with migratory bird issues be considered in this decision and ask the Illinois Environmental Protection Agency to adopt a similar position of "working with others" to assist us in this regard.

R: The NPDES permit prohibits the use of lead shot. Please also refer to the Response to Comment #109.

133. The fact that weakened or dead migratory birds are not being found on the Sportsman's Club site does not mean that birds are not ingesting and dying from lead poisoning or that death (sic) are minimal. Dr. Milton Friend, Former Director of the National Wildlife Health Laboratory wrote, "Avian botulism, avian cholera, and lead poisoning are three of the most common waterfowl diseases. Two major differences between lead poisoning, botulism, and avian cholera, other than the specific cause for each are that lead poisoning usually requires a prolonged period between exposure and death and that exposure tends to be on an individual rather than a group basis. A common misconception by biologists is that losses from all three diseases will be equally visible; that is not true because of the differences in the disease process...lead poisoning of waterfowl is a debilitating disease requiring an average of 2 to 3 weeks between exposure and death. During this time, affected birds lose mobility, experience marked behavioral changes involving increased seclusion, and become increasingly susceptible to predation and other cause of mortality. Large scale concentration of lead-poisoned carcasses does not usually occur, nor does this perspective reflect the disease's true nature." (Fish and Wildlife Leaflet 2, 1985) (Ex. 74)

R: The Illinois EPA takes note of these facts. However, please see the Response to Comment #109.

Miscellaneous Other Issues:

134. We would like to see the park area available to the public for hiking, biking, playgrounds, a wildlife refuge, etc. Its status as a shooting range, plus the danger of lead to children, prevents this.

R: The Illinois EPA does not have the authority to deny an NPDES permit based on an alternative land use. Land use decisions are made by local authorities.

135. Sportsman's Park has hundreds of tons of lead present, and continued operation under this permit would allow about 11 tons to be deposited annually. This park is not isolated but is surrounded by residential areas, recreational areas, and schools. It is operated as if it were private land, yet it is a public park. The park is currently operating at a financial loss, and may expand operation if this permit is issued to correct this, depositing even more lead.

R: The NPDES permit prohibits the use of lead shot. For this reason, continued or expanded operation will not result in the deposition of lead at this facility.

136. Lead and PAH's have been found in sediment, soil and surface water at this park. These levels imply a cleanup is necessary.

R: Please see the Response to Comment #109.

137. Noise from this park is a nuisance to residents and exceeds NRA standards. The noises interfere with concerts, stage performances and community festivals.

A recent study by the firm of Shelmer & Associates, nationally recognized consultants in acoustics and noise control calculated that noise levels and properties immediately adjacent to this facility are 3,000 percent in excess of the allowable Illinois Pollution Control Board Rules, Section 901-104, Title 35. Noise pollution is a significant reason why this park should be closed.

R: Changes in legislation over the years have all but eliminated any control of gunfire noise by the Illinois EPA and the Illinois Pollution Control Board. In 1994 the Environmental Protection Act was modified to exempt shooting range noise from regulation. Listed below are the controlling statutes. The specific portions dealing with the above issue are underlined for emphasis.

415 ILCS 5/25 (1998):

The Board, pursuant to the procedures prescribed in Title VII of this Act, may adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.

The Board shall, by regulations under this Section, categorize the types and sources of noise emissions that unreasonably interfere with the enjoyment of life, or with any lawful business, or activity, and shall prescribe for each such category the maximum permissible limits on such noise emissions. The Board shall secure the co-operation of the Illinois Department of Energy and Natural Resources in determining the categories of noise emission and the technological and economic feasibility of such noise level limits.

In establishing such limits, the Board, in addition to considering those factors set forth in Section 27 of this Act, shall consider the adverse ecological effects on and interference with the enjoyment of natural, scenic, wilderness or other outdoor recreational areas, parks, and forests occasioned by noise emissions from automotive, mechanical, and other sources and may establish lower permissible noise levels applicable to sources in such outdoor recreational uses.

No Board standards for monitoring noise or regulations prescribing limitations on noise

emissions shall apply to any organized amateur or professional sporting activity (emphasis added) except as otherwise provided in this Section. Baseball, football or soccer sporting events played during nighttime hours, by professional athletes, in a city with more than 1,000,000 inhabitants, in a stadium at which such nighttime events were not played prior to July 1, 1982, shall be subject to nighttime noise emission regulations promulgated by the Illinois Pollution Control Board; however, the following events shall not be subject to such regulations:

1. baseball World Series games, league championship series games and other playoff games played after the conclusion of the regular season, and baseball All Star games; and
2. sporting events or other events held in a stadium which replaces a stadium not subject to such regulations and constructed within 1500 yards of the original stadium by the Illinois Sports Facilities Authority.

For purposes of this Section and Section 24, "beyond the boundaries of his property" or "beyond the boundaries of the property of any person" includes personal property as well as real property.

415 ILCS 5/3.25:

Sec. 3.25. "Organized amateur or professional sporting activity" means an activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public, including all necessary actions and activities associated with such an activity. This definition includes, but is not limited to, (I) rifle and pistol ranges, licensed shooting preserves, and skeet, trap or shooting sports clubs in existence prior to January 1, 1994, (ii) public hunting areas operated by a governmental entity, (iii) organized motor sports, and (iv) sporting events organized or controlled by school districts, units of local government, state agencies, colleges, universities, or professional sports clubs offering exhibitions to the public. (Source: P.A. 88-598, eff. 8-31-94.) (emphasis added)

138. Depositing lead into the environment does not serve the interest of the public or the mandate of the IEPA.

R: The NPDES permit prohibits the use of lead shot.

139. The club is prime, city-owned property that could be used for other recreational purposes. There is a large demand for some recreational activities in Naperville that this land could be used for, while this club is not heavily used and most residents consider it private

R: Please see the Response to Comment #134.

140. The continued operation of this park may be prohibitively expensive, with any cleanup costs, other modifications from this permit, and talk of expanding the facilities there.

R: The Illinois EPA does not have the authority to deny an NPDES permit based on a facility's operating costs.

141. The park has been tested repeatedly over the years and always been deemed safe. This current issue is only one of many that have been raised over the years. I believe that the opponents of this park have tried to shut it down simply because they don't want it, and this permit process is just another way to accomplish this.

R: The Illinois EPA and U.S. District Court have both determined the need for an NPDES permit for this facility. The permitting process has proceeded in accordance with state and federal regulations.

142. I have some comments for the opponents of the park. Opponents have cited surveys saying only 9% of Naperville residents are interested in shooting sports. I am only aware of a survey that says 22% are interested, but even 9% of Naperville residents is over 10,000 people with an interest in shooting.

R: The final NPDES permit for this facility was developed based on all appropriate rules and regulations.

143. There are complaints that this park takes up too much space. But this park is only 27 acres, compared to 2,115 total acres of Naperville parks.

R: Please see the Response to Comment #134.

144. Roger Stone and the League of Women Voters have a vendetta against this park and have spent over \$800,000 trying to close it, and will cost the park two million for a cleanup if they succeed.

R: The final NPDES permit for this facility was developed based on all appropriate rules and regulations.

145. The park has been a great resource for training Boy Scouts in gun safety.

R: The final NPDES permit for this facility was developed based on all appropriate rules and regulations.

146. Closing this park will have an economic impact in the community, as will a cleanup.

R: The final NPDES permit for this facility was developed based on all appropriate rules and regulations.

147. The park has been used as a training ground for police officers.
I have used the park to train hunting dogs and teach my children to fish.
I have seen signs of camping in the park.
I have never observed any ill animals at the park.
The concern over this park is not environmental, but instead an anti-firearm agenda.

R: The final NPDES permit for this facility was developed based on all appropriate rules

and regulations.

148. I would like to suggest that this process is mostly nonsense, but perhaps in the end it could allow us to build a state of the art modern shooting facility on the Knock Knoll Park District property south of Naperville where shooting used to be practiced before it was moved to Sportsman's Park.

R: The final NPDES permit for this facility was developed based on all appropriate rules and regulations. (Also see the Response to Comment #134).

149. Why has the fence around the property not been made childproof?

R: The Agency has no information on this issue. This question would be better directed to a Naperville Park District representative.

150. If this permit is issued, Naperville will be putting the burden of cleaning this park up on the shoulders of later generations.

R: The permit does not allow further use of lead shot in the Park. Please see the Response to Comment #109.

* * * * *

Distribution of Responsiveness Summary

Copies of this responsiveness summary were mailed in October 2000 to all who registered at the hearing, to all who sent in written comments, and to anyone who requested a copy. Additional copies of this responsiveness summary are available from Stan Black, Illinois EPA Office of Community Relations, P.O. Box 19276, Springfield, Illinois, 62794-9276, e-mail: <epa4127@epa.state.il.us>, phone (217) 785-1427 or fax (217) 785-7725.

For those with Internet access, the permit and responsiveness summary can be found on the Illinois EPA's web site at: <<http://www.epa.state.il.us/water/permits/npdes>>.

Bureau of Water Staff Who Can Answer Your Questions

Agency decisionsSteve Nightingale(217)782-0610
Legal questionsCharles Gunnarson(217)782-5544

The following items are available from the Illinois EPA for examination and review:

1. Public hearing notice.
2. Transcript of the October 21, 1999, public hearing.
3. Public hearing attendance and source of exhibits (mailing list).
4. Hearing record exhibit list of letters, documents and notices.
5. Letters, documents and notices contained in the hearing record.

Signed: Kurt Neibergall
 Acting Manager
 Office of Community Relations

Date: October 13, 2000

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