

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FLAGG CREEK WATER)	
RECLAMATION DISTRICT,)	
)	
Complainant,)	
)	
vs.)	PCB 06-141
)	
VILLAGE OF HINSDALE, METROPOLITAN)	
WATER RECLAMATION DISTRICT OF)	
GREATER CHICAGO, ILLINOIS)	
DEPARTMENT OF TRANSPORTATION,)	
DUPAGE COUNTY,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Persons on the attached service list

PLEASE TAKE NOTICE that I have filed today with the Office of the Clerk of the Illinois Pollution Control Board, 100 W. Randolph St., Suite 11-500, Chicago, IL, the ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT, VILLAGE OF HINSDALE TO COMPLAINANT'S AMENDED COMPLAINT, a copy of which is herewith served upon you.

Respectfully Submitted,



William D. Seith

CERTIFICATE OF SERVICE

I, William D. Seith, an attorney, certify that I sent a copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT, VILLAGE OF HINSDALE TO COMPLAINANT'S AMENDED COMPLAINT to the parties on the attached Service List on this 28th of August, 2006.



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Dated: August 28, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST***Flagg Creek Water Reclamation District vs. Village of Hindale, et al.***

<p>For the Flagg Creek Water Reclamation District: Richard J. Kissel Roy M. Harsch John A. Simon Gardner Carton & Douglas, LLP 191 N. Wacker Dr., Suite 3700 Chicago, IL 60606 rkissel@gcd.com rharsch@gcd.com jsimon@gcd.com</p>	<p>For the Illinois Department of Transportation: Richard Christopher Special Assistant Attorney General Illinois Department of Transportation 300 W. Adams, 2nd Floor Chicago, IL 60606 christopherra@dot.il.gov</p>
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<p>For the Illinois Pollution Control Board: Bradley Halloran Hearing Officer Illinois Pollution Control Board 100 W. Randolph St., Suite 11-500 Chicago, IL 60601 312-814-8917 hallorab@ipcb.state.il.us</p>	<p>Co-Counsel For the Village of Hinsdale: Kenneth M. Florey Robbins Schwartz Nicholas Lifton & Taylor, Ltd. 20 N. Clark St., Suite 900 Chicago, IL 60602 312-332-7760 kflorey@rsnlt.com</p>

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VILLAGE OF HINSDALE, METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, ILLINOIS DEPARTMENT OF TRANSPORTATION, DUPAGE COUNTY,)	
)	
Respondents.)	

**Answer and Affirmative Defenses
of Respondent, Village of Hinsdale to
Complainant's Amended Complaint**

Jurisdiction

1. Complainant Flagg Creek Water Reclamation District (FCWRD), by and through its counsel Gardner Carton & Douglas LLP, brings this complaint before the Illinois Pollution Control Board ("Board") pursuant to Section 31(d)(1) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(d), which allows enforcement proceedings to be initiated against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

Answer: The Village of Hinsdale ("Hinsdale") admits that this action has been filed by FCWRD. The remainder of this paragraph submits a legal conclusion which Hinsdale neither admits nor denies. Hinsdale submits that Section 31 of the Act speaks for itself.

The Parties

2. FCWRD, formerly known as the Hinsdale Sanitary District, is a municipal government agency organized in 1926 under the Sanitary District Act of 1917, 70 ILCS 2405, *et seq.* FCWRD is responsible for wastewater treatment within a designated service area of approximately 24 square miles, which includes the Village of Hinsdale, the Village of Clarendon Hills, and the Village of Oak Brook, as well as portions of Burr Ridge, Oak Brook Terrace, Westmont, Villa Park, Lombard, Darien and Willowbrook.

Answer: Hinsdale admits that FCWRD serves Hinsdale. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 2.

3. The Village of Hinsdale (Hinsdale) is a municipality governed by the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.* Hinsdale owns and operates a combined sewer system that conveys wastewater to both the Metropolitan Water Reclamation District of Greater Chicago (MWRD) and the FCWRD.

Answer: Hinsdale admits that it is a municipality and that it owns and operates a sewer system. Hinsdale admits that a portion of its system is a combined sewer system. Hinsdale also admits that a portion of its system conveys wastewater to MWRD. Hinsdale admits that most of its system conveys wastewater to FCWRD.

4. The Illinois Department of Transportation (IDOT) is a state agency created by the Department of Transportation Law, 20 ILCS 2705/2705-1 *et seq.* IDOT has responsibility for planning, construction and maintenance of Illinois' extensive transportation network, which encompasses highways and bridges, airports, public transit, rail freight and rail passenger systems, and includes roadways within the boundaries of FCWRD's service area.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 4.

5. DuPage County is a body corporate and politic established by the Illinois Counties Code. The DuPage County Division of Transportation (DDOT) is an agency of DuPage County, and is responsible for the construction and maintenance of the County Highway system which serves the over 900,000 residents of DuPage County. DDOT maintains approximately 220 miles of arterial highway and 50 miles of recreational trails in DuPage County.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 5.

6. MWRD is a municipal government agency created by the Illinois Legislature in 1889. MWRD has a combined sewer overflow equivalent of 0.5-million people. The District serves an area of 872 square miles which includes the City of Chicago and 124 suburban communities. MWRD is also the designated stormwater management agency for Cook County.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 6.

7. The way in which Hinsdale, IDOT, DDOT, and MWRD implement their statutory duties contributes excess flow during rainfall events to FCWRD, which has a disproportionate effect on FCWRD's system.

Answer: Hinsdale denies that it contributes excess flow to FCWRD at any time. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 7.

8. As a result of these excess flows within FCWRD's sewer system, Sanitary Sewer Overflows ("SSO") and Combined Sewer Overflows ("CSO") events occur during wet weather.

Answer: Hinsdale denies allegations of paragraph 8.

The Flagg Creek Water Reclamation District System

9. The FCWRD wastewater treatment plant (WWTP) is located at 6975 Commonwealth Avenue in the Village of Burr Ridge, Illinois. It is designed to take dry weather flow and limited wet weather flow. See Figure 1.

Answer: Hinsdale admits the allegations of paragraph 9.

10. The FCWRD has an interceptor system that serves the Village of Clarendon Hills, the Village of Hinsdale, and portions of the Village of Westmont, traveling east along the BNSF railroad from Illinois Route 83 to County Line Road, and then south toward Interstate 294 (I-294), to the FCWRD WWTP. This interceptor is known as the "Mainline Interceptor." See Figure 1.

Answer: Hinsdale admits that FCWRD has an interceptor that serves Hinsdale. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 10.

11. FCWRD also has a 60-inch interceptor ("West 60-Inch Interceptor") that runs south along I-294 and collects flows from three other interceptors: the 55th Street Interceptor, running west along 55th Street; the 59th Street Interceptor, running south along 59th Street; and the 63rd Street Interceptor, running south along 63rd Street. See Figure 1.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 11.

12. FCWRD's other main interceptor is the Spinning Wheel Interceptor formerly known as the Storm Water Pollution Control Interceptor which runs from its Spinning Wheel Pumping Station south along I-294.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 12.

13. Historically, bypasses from the FCWRD sewer system as well as the Hinsdale sewer system overflowed to Flagg Creek. On information and belief, in the

1970s, FCWRD was directed by the Sanitary Water Board to close its CSOs and accept Hinsdale's CSOs until Hinsdale separated its sewers, which Hinsdale was also ordered by the Sanitary Water Board in 1968 to separate by 1978.

Answer: Hinsdale admits that it has an NPDES permit for four CSO discharge points to Flagg Creek. Hinsdale denies that the Sanitary Water Board has ever issued an order to Hinsdale. Further, Hinsdale submits that any such order would have been of no force and effect following the passage in 1970 of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, the creation, thereby, of the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Pollution Control Board ("Illinois PCB"), and the adoption of rules and regulations relating to CSO discharges. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 13.

14. To comply with the order directed to it, FCWRD constructed the Spinning Wheel Pumping Station and installed a new sixty inch interceptor, the Spinning Wheel Interceptor, along Interstate 294. See Figure 1.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 14.

15. The Spinning Wheel Pumping Station and Spinning Wheel Interceptor were generally intended to serve two purposes: to serve a new northern service area and to catch overflows from the FCWRD's existing forty two inch interceptor. It has also temporarily provided relief to Hinsdale's CSOs until Hinsdale could separate its sewers in accordance with the Sanitary Water Board's order.

Answer: Hinsdale denies that the Sanitary Water Board ever issued an order to Hinsdale. Further, Hinsdale submits that any such order would have been of no force and effect following the passage in 1970 of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, the creation, thereby, of the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Pollution Control Board ("Illinois PCB"), and the adoption of rules and regulations relating to CSO discharges. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 15.

16. The pumping capacity of the Spinning Wheel Pumping Station is greater than the capacity of the Spinning Wheel Interceptor so long as that interceptor receives wastewater from Hinsdale's combined sewer system, so that during rain events, surcharges and overflows occur in the Spinning Wheel Interceptor and create hydraulic obstructions and overflows in other interceptors.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 16.

17. FCWRD has an NPDES Permit, No. IL0022586, which allows one discharge point for excess wet weather flows from its WWTP. Standard Condition Number 26 of the District's NPDES permit prohibits CSOs at any other points.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 17. Further stating, Hinsdale submits that FCWRD's NPDES Permit speaks for itself.

18. The unpermitted CSO events that occur in the FCWRD system do not comply with state regulations governing CSOs found at 35 Il. Adm. Code Part 306, Subpart C.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 18. Further stating, Hinsdale submits that Hinsdale's system is in full compliance with the U.S. EPA's CSO Control Policy and with the CSO NPDES permit issued to Hinsdale by the Illinois EPA.

19. The actions by Hinsdale, MWRD, IDOT and DDOT that cause stormwater to enter the FCWRD sewer system cause or contribute to the unauthorized CSO events.

Answer: Hinsdale denies that it causes unauthorized CSO events. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 19.

20. FCWRD cannot comply with the terms and conditions of its NPDES permit without the cooperation and corrective actions of Hinsdale, MWRD, IDOT and DDOT in eliminating wet weather flows from the FCWRD system.

Answer: Hinsdale denies that any corrective action by Hinsdale is required. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 20.

Count I: The Village of Hinsdale

21. Hinsdale owns and operates a combined sewer system, and collects fees from certain residents for its ownership and operation of the combined sewer system.

Answer: Hinsdale admits that a portion of its sewer system is combined. Hinsdale admits the remaining allegations of paragraph 21.

22. Hinsdale's combined sewer system allows storm water drainage from streets and public and private property during storm events to combine directly with sanitary waste flows.

Answer: With respect to the portion of Hinsdale's system that is combined, Hinsdale admits the allegations of paragraph 22. Hinsdale denies the remaining allegations of paragraph 22.

23. The combined sewer system serving Hinsdale was constructed prior to 1900 and is constructed primarily of brick and clay tile piping. On information and belief, it is in poor repair.

Answer: Hinsdale admits some portions of its system were constructed prior to 1900. Hinsdale denies the remaining allegations of paragraph 23.

24. The primary flows from Hinsdale to the FCWRD system occur through the Mainline Interceptor at two main locations: County Line Road and Highland Avenue, and Third Avenue and Princeton Road.

Answer: Hinsdale admits the allegations in paragraph 24.

25. On information and belief, there is at least one additional unknown sewer connection along FCWRD's Mainline Interceptor from Hinsdale.

Answer: Hinsdale denies the allegations of paragraph 25.

26. Hinsdale holds an NPDES permit, No. IL0066818, granted by the Illinois Environmental Protection Agency (Illinois EPA), which authorizes discharges to Flagg Creek from four Combined Sewer Overflow (CSO) points. On September, 6, 2005, Illinois EPA issued a public notice proposing to renew that permit.

Answer: Hinsdale admits the allegations of paragraph 26.

27. Special Condition No. 6 of Hinsdale's NPDES Permit expressly requires that: "Permitter shall comply with the nine minimum controls contained in the National CSO Control Policy published in the Federal Register on April 19, 1994."

Answer: Hinsdale submits that Hinsdale's NPDES Permit speaks for itself.

28. Consistent with the Illinois Pollution Control Board (Board) regulations, Hinsdale's NPDES permit requires first flush and ten times average dry weather flows to be treated before Hinsdale discharges from any of its permitted CSOs.

Answer: Hinsdale denies that its NPDES permit requires that only ten times average dry weather flows be treated. Further stating, Hinsdale submits that its NPDES permit speaks for itself and requires in relevant part:

All dry weather flows, the first flush of storm flows, and additional flows, but not less than ten times the average dry weather flow for the design year, shall be

conveyed to the Hinsdale Sanitary District and MWRDGC – Stickney STP for treatment. (NPDES Permit IL0066818, page 2, par. 2, emphasis added.)

Hinsdale admits the remaining allegations of paragraph 28.

29. On information and belief, Hinsdale does not utilize its authorized CSO points frequently because of these restrictions, instead diverting a large volume of wet weather flows far in excess of ten times the average dry weather flow to FCWRD.

Answer: Hinsdale admits that during some storm events it conveys more than ten times the average dry weather flow to FCWRD. Further stating, Hinsdale submits that it is in full compliance with its NPDES permit. Hinsdale denies the remaining allegations of paragraph 29.

30. Because the MWRD sewer system has flow restrictors in its junction chambers where flows from Hinsdale are directed to the MWRD's sewer system, FCWRD receives all of the wet weather flows from Hinsdale.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 30.

31. The large volume of wet weather flows from Hinsdale, combined with the short travel time, surcharges FCWRD interceptors. The Mainline Interceptor and its Spinning Wheel Interceptor are most affected, which in turn results in overflows upstream and downstream of where Hinsdale sewers discharge to the FCWRD's interceptor.

Answer: Hinsdale denies that it contributes excess flows to FCWRD and that it causes unauthorized CSO events. Hinsdale lacks knowledge sufficient to form a belief as to the remaining allegations contained in paragraph 31.

32. The large volume of wet weather flows from Hinsdale cause both Hinsdale and the FCWRD to experience unauthorized CSOs within their respective systems.

Answer: Hinsdale denies the allegations of paragraph 32.

33. The large volume of wet weather flows from Hinsdale disrupts the flow to the FCWRD's wastewater treatment facility and interferes with its effective operation.

Answer: Hinsdale denies the allegations of paragraph 33.

34. The large volume of wet weather flows from Hinsdale interferes with FCWRD's ability to allow capacity for other municipalities that have separate sewers.

Answer: Hinsdale denies the allegations of paragraph 34.

35. On information and belief, Hinsdale has never fully complied with the direction of the Illinois Sanitary Water Board issued in 1968 directing Hinsdale to separate its sewers.

Answer: Hinsdale denies that the Sanitary Water Board ever issued an order directing Hinsdale to separate its sewers. Further stating, Hinsdale submits that any such order would have been of no force and effect following the passage in 1970 of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, the creation, thereby, of the Illinois EPA and the Illinois PCB, and the adoption of rules and regulations relating to CSO discharges. Further stating, Hinsdale submits that it is in full compliance with its NPDES permit, which permit authorizes Hinsdale's utilization of a combined sewer system.

36. Hinsdale also directs a leaf collection program. On information and belief, the program operates by directing Hinsdale residents to place leaves in the parkway on the day of leaf collection, but Hinsdale does not address those leaves that are not properly placed in the parkway or that are placed in the street and allowed to wash into the street drains.

Answer: Hinsdale admits that it directs a leaf collection program. Hinsdale denies the remaining allegations of paragraph 36.

37. During the times in which the leaf collection program is active, a significant residual leaf load from Hinsdale's leaf collection program enters street drains and is conveyed to FCWRD along with stormwater, plugging its influent screening equipment and compromising the wastewater treatment system.

Answer: Hinsdale denies the allegations of paragraph 37.

38. The leaf load is conveyed to FCWRD as a result of leaves and yard waste from Hinsdale's roadways washing into the combined sewer system.

Answer: Hinsdale denies the allegations of paragraph 38.

39. By failing to separate its sewers and allowing substantial wet weather flows to enter its combined sewer system and travel to and inundate the FCWRD system, Hinsdale is in violation of the Sanitary Water Board's direction to Hinsdale to separate its sewers, Hinsdale's NPDES Permit, and Illinois regulations governing CSOs, found at 35 IL. Adm. Code Part 306, Subpart C.

Answer: Hinsdale denies the allegations of paragraph 39. Hinsdale denies that the Sanitary Water Board ever issued an order directing Hinsdale to separate its sewers. Further stating, Hinsdale submits that any such order would have been of no force and effect following the passage in 1970 of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, the creation, thereby, of the Illinois EPA and the Illinois PCB, and the adoption of rules and regulations relating to CSO discharges. Further stating, Hinsdale

submits that it is in full compliance with U.S. EPA's CSO Policy and its NPDES permit, which permit authorizes Hinsdale's utilization of a combined sewer system.

40. By failing to separate its sewers and sending substantial wet weather flows to the FCWRD system, Hinsdale is violating the Act's prohibition on causing or contributing to water pollution and violating regulations and standards adopted by the Board under the Act, 415 ILCS 5/12(a).

Answer: Hinsdale denies the allegations of paragraph 40.

41. By failing to separate its sewers and sending substantial wet weather flows to the FCWRD system, Hinsdale is in violation of the conditions of its NPDES Permit from Illinois EPA, and in violation of Act, 415 ILCS 5/12(b).

Answer: Hinsdale denies the allegations of paragraph 41.

42. By failing to separate its sewers and sending substantial wet weather flows to the FCWRD system, Hinsdale is in violation of the Board rule at 35 IL. Adm. Code 307.1101, prohibiting any person from introducing pollutants that interfere with the operation and performance of FCWRD.

Answer: Hinsdale denies the allegations of paragraph 42.

43. By failing to separate its sewers and sending substantial wet weather flows to the FCWRD system, Hinsdale is interfering with FCWRD's fulfillment of its statutory duty to provide capacity for sanitary flows from existing and new residents within its service area.

Answer: Hinsdale denies the allegations of paragraph 43.

44. By failing to operate its leaf collection program to prevent leaves and stormwater from entering the FCWRD system, Hinsdale is in violation of Hinsdale's NPDES Permit.

Answer: Hinsdale denies the allegations of paragraph 44.

45. By failing to operate its leaf collection program to prevent leaves from entering the FCWRD system, Hinsdale is in violation of the Act's prohibition on causing or contributing to water pollution and violating regulations and standards adopted by the Board under the Act, 415 ILCS 512/(a).

Answer: Hinsdale denies the allegations of paragraph 45.

46. By failing to operate its leaf collection program to prevent leaves from entering the FCWRD system, Hinsdale is in violation of its NPDES Permit and Illinois regulations governing CSOs, found at 35 IL. Adm. Code Part 306, Subpart C.

Answer: Hinsdale denies the allegations of paragraph 46.

47. By failing to operate its leaf collection program to prevent leaves from entering the FCWRD system, Hinsdale is in violation of the conditions of its NPDES Permit from Illinois EPA, and in violation of the Act, 415 ILCS 5/12(b).

Answer: Hinsdale denies the allegations of paragraph 47.

48. By failing to operate its leaf collection program to prevent leaves from entering the FCWRD system, Hinsdale is in violation of the Board rule at 35 IL. Adm. Code 307.1101, prohibiting any person from introducing pollutants that interfere with the operation and performance of FCWRD.

Answer: Hinsdale denies the allegations of paragraph 48.

49. – 87.

Answer: Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraphs 49 through 87, all of which are directed to other parties.

Affirmative Defenses

1. Numerous allegations in FCWRD's Complaint are based on the supposed issuance of a 1968 order by the now defunct Illinois Sanitary Water Board.

2. When it existed, the Sanitary Water Board was a creature of statute. (See 19 Ill. Rev. Stat. 145.1 , *et seq.* (1969)) Under its statutory authority, the Sanitary Water Board had the ability to issue orders after a full due process hearing to abate violations of the Sanitary Water Board Act or regulations thereunder. (See 19 Ill. Rev. Stat. 145.7, 145.8 and 145.9 (1969)) The Sanitary Water Board Act also provided for enforcement of orders issued by the Sanitary Water Board. However, the authority to enforce a Sanitary Water Board order rested exclusively with the State's Attorney of the county where the violation occurred or with the Illinois Attorney General. Such actions could only be brought in Circuit Court. (See 19 Ill. Rev. Stat. 145.13(c) and 145.14. (1969)) The Sanitary Water Board Act did not authorize the enforcement of a Sanitary Water Board order by a private party or by the Illinois Pollution Control Board. (Copies of all of the cited provisions are attached hereto and incorporated herein by reference.)

3. In 1970, the Illinois General Assembly passed the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, *et seq.*, into law. Upon the passage of the Illinois Environmental Protection Act, the Sanitary Water Board Act was repealed, thereby abolishing the Sanitary Water Board.

4. Section 4 of the Act, 415 ILCS 5/4, establishes the Illinois EPA and provides, *inter alia*, that: "The Agency is hereby designated as water pollution agency for the state for all purposes of the Federal Water Pollution Control Act, as amended" (415 ILCS 5/4(l))

5. Section 5 of the Act, 415 ILCS 5/5, establishes the Illinois PCB and provides, *inter alia*, that: "The Board shall have authority to conduct proceedings upon complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order" (415 ILCS 5/5(d))

6. Prior to 2002, Section 49 of the Act, 415 ILCS 5/49, provided, in relevant part:

(a) Until the Board and the Agency established by this Act have been appointed and taken office, the functions assigned to the Board and to the Agency shall be performed by the members of the existing Air Pollution Control Board and Sanitary Water Board and by the Department of Public Health.

* * *

(d) All orders entered, permits or certifications granted, and pending proceedings instituted by the Air Pollution Control Board, the Sanitary Water Board, or the Department of Public Health relating to subjects embraced within this Act shall remain in full force and effect until superseded by actions taken under this Act.

In 2002, these portions of Section 49 of the Act were repealed.

7. Members of the Illinois PCB and Illinois EPA were appointed in 1970 shortly after the passage of the Act, thereby eliminating any further role for former members of the Sanitary Water Board pursuant to Section 49(a) of the Act, 415 ILCS 5/49(a).

8. Section 39(b) of the Act, 415 ILCS 5/39(b), grants authority to the Illinois EPA to issue NPDES permits and provides, *inter alia*, that "All NPDES permits shall contain those terms and conditions, including by not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act."

9. Pursuant to its authority, the Illinois PCB has adopted rules and regulations regarding CSO discharges sometime between 1970 and 1975. See 35 Ill. Adm. Code Part 306.

10. On or about August 22, 2000, Hinsdale received NPDES Permit IL 0066818 from Illinois EPA authorizing CSO discharges at four discharge points. The NPDES permit contains numerous conditions. Absent from the NPDES permit is any condition that requires Hinsdale to fully separate its combined sewer system. NPDES Permit IL 0066818 is an explicit authorization for Hinsdale to own and operate a combined sewer system.

11. The adoption by the Illinois PCB of 35 Ill. Adm. Code Part 306 and Illinois EPA's issuance of an NPDES Permit to Hinsdale authorizing CSO discharges, are actions taken under the Act which supersede any Sanitary Water Board orders which may have been issued prior to passage of the Act in 1970.

12. No provision of the Act gives a private party the authority to seek enforcement of a Sanitary Water Board order. Nor does any provision of the Act give the Board the authority to enforce a Sanitary Water Board order.

13. Hinsdale is in full compliance with the terms and conditions set forth in NPDES Permit IL 0066818.

14. Hinsdale is in full compliance with the requirements of the Act and the rules and regulations of the Illinois PCB relating to combined sewer systems.

WHEREFORE, for all of the foregoing reasons, Hinsdale requests that the Illinois Pollution Control Board:

A. Issue an order finding that any order of the Sanitary Water Board that may have been issued in 1968 is of no force and effect and has been superseded by the passage of the Illinois Environmental Protection Act, the creation of the Illinois EPA and the Illinois PCB, the adoption of 35 Ill. Adm. Code Part 306 and the issuance of an NPDES Permit by Illinois EPA to Hinsdale;

B. Issue an order finding that the Illinois PCB has no authority to enforce Sanitary Water Board orders;

C. Issue an order finding that private parties have no authority to seek enforcement of Sanitary Water Board orders;

D. Issue an order finding that Hinsdale is in full compliance with NPDES Permit IL 0066818;

E. Issue an order finding that Hinsdale is in full compliance with the Act and the Illinois PCB rules and regulations relating to combined sewer systems; and

F. Issue an order dismissing FCWRD's complaint against Hinsdale with prejudice.

VILLAGE OF HINSDALE

By: 
William D. Seith, its Attorney

Dated: August 28, 2006

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ATTACHMENTS

paired or damaged by flood. Provided, that if there be an approved report of survey, as provided for in Section 5 of this Act,¹ for the river or water, including the watershed thereof, on which the impaired or damaged flood control work is situated, no expenditures for the reconstruction, repair or maintenance of said damaged flood control work shall be lawful unless the plans for reconstruction, repair or maintenance of the said damaged flood control works be in conformity with the approved plans for flood control works on the river or water in question as contained in the report of survey. Provided further, that if there be no approved report of survey as provided for in Section 5 of this Act, then the reconstruction, repair or maintenance of damaged or impaired flood control works shall be limited to that necessary to restore the damaged or impaired flood control works to their original sections or designs and no change of location or alignment shall be made other than that necessary to protect the said flood control works from caving banks, to avoid unsatisfactory foundation conditions, and to afford the area the same protection as existed prior to the damage.

¹ Section 126e of this chapter.

[§ 9. Repeal.]

[§ 10. Effective date: Jan. 1, 1947.]

127, 128. §§ 1, 2 (L.1929, p. 99). Repealed by Act filed July 13, 1939. L.1939, p. 1175.

AN ACT in relation to the planning, construction and maintenance of watershed protection and flood prevention works of improvement and making an appropriation therefor. Approved July 10, 1957. L.1957, p. 2445.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

128.1 Public policy.] § 1. The General Assembly of the State of Illinois finds that watershed protection offers a sound approach to flood prevention, provides proper management for surface water resources and for the maximum development of surface water storage for municipal, industrial, agricultural and recreational uses for all citizens of the state, reduces the siltation of streams and lakes and helps to maintain stable normal water levels in our streams for navigation and other uses.

128.2 Definitions.] § 2. When used in this Act:

"Department" means the Department of Agriculture of the State of Illinois.

"Local Watershed Organization" means and includes soil conservation districts, subdistricts of soil conservation districts, river conservancy districts, drainage districts, counties and other local governmental agencies of the state of Illinois.

"Watershed Works of Improvement" or "Works of Improvement" means and includes farm terraces, diversion terraces, grassed waterways, gully control and grade stabilization structures, farm ponds, flood detention reservoirs and such other soil and water management practices as meet the technical standards of the Soil Conservation Service of the United States Department of Agriculture.

"Approved Watershed" means any watershed which has been approved by the Governor of Illinois and the United States Department of Agriculture as qualifying for assistance under the Watershed Protection and Flood Prevention Act

of 1954 enacted by the Congress of the United States.¹

¹ 16 U.S.C.A. § 1001 et seq.

128.3 Powers of department.] § 3. The Department of Agriculture is authorized to enter into agreements with any agency of the United States or with any local watershed organization or organizations as may be necessary to furnish surveys, engineering and assistance in planning for works of improvement in any approved watershed in this State and for maintaining watershed works of improvement which are constructed primarily for retaining surplus rainfall. The Department may request the State Soil Conservation Districts Advisory Board to review the plans for improvement and maintenance of each watershed and to advise the Department concerning the feasibility of the respective plans and projects.

[§§ 4, 5. Appropriation.]

128a-128c. (L.1937, p. 1147.) Repealed by act approved June 22, 1951. L.1951, p. 447.

SANITARY WATER BOARD

129-145. (L.1929, p. 386.) Repealed by act approved July 12, 1951. L.1951, p. 1462.

AN ACT to establish a Sanitary Water Board and to control, prevent, and abate pollution of the streams, lakes, ponds, and other surface and underground waters in the State, and to repeal an Act named therein. Approved July 12, 1951. L.1951, p. 1462.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

145.1 Statement of policy.] § 1. Whereas the pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this State is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this State to maintain reasonable standards of purity of the waters of the State consistent with their use for domestic and industrial water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate uses including their use in the final distribution of the water borne wastes of our economy; to provide that no waste be discharged into any waters of the State without first being given the degree of treatment necessary to prevent the pollution of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; and to cooperate with other public or private agencies of the State, and the Federal Government in carrying out these objectives.

145.2 Definitions.] § 2. When used in this Act:

(a) "Pollution" means such alteration of the physical, chemical or biological properties of any waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

(b) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage as

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above defined of industrial wastes or other wastes as hereafter defined, shall also be considered "sewage."

(c) "Industrial waste" means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing trade or business or from the development, processing or recovery of any natural resources.

(d) "Other wastes" means garbage, refuse, wood residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dye stuffs, acids, chemicals, and all other substances not sewage or industrial waste which may cause, or tend to cause pollution, or contribute to the pollution of the waters of the State.

(e) "Sewer system" or "sewerage system" means pipe lines or conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all other constructions, devices, and appliances appurtenant thereto, used for collecting or conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

(f) "Treatment works" means any method, construction, device or appliance appurtenant thereto, installed for the purpose of treating, neutralizing, stabilizing, disinfecting, or disposing of sewage, industrial waste or other wastes, or for the recovery of by-products from such sewage, industrial waste or other wastes.

(g) "Sewage works" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of sewage, industrial waste or other wastes, or for the recovery of by-products from such sewage, industrial waste or other wastes.

(h) "Outlet" means the terminus of a sewage works or point of emergence into the waters of the State of any sewage, industrial wastes or other wastes.

(i) "Waters of the State" means all accumulations of water, surface and underground, natural or artificial, public or private or parts thereof, which are wholly or partially within, flow through, or border upon this State or within its jurisdiction.

(j) "Person" or "persons" means any individual, public or private corporation, political subdivision, sanitary district, government agency, municipality, public or private institution, industry, co-partnership, association, firm, trust, estate, or any other entity whatsoever.

(k) "Stream standard" or "stream standards" means such measure of purity or quality for any waters in relation to their reasonable and necessary use.

(l) "Board" means the Sanitary Water Board created by this Act.

¹ Sections 145.1-145.13 of this chapter.

145.3 Creation—Membership—Compensation and expenses—Water pollution control advisory council.] § 3. (a) There is hereby created and established the "Sanitary Water Board" of the State of Illinois, with its office in Springfield.

(b) The members of such Board shall be the Director of the Department of Public Health, the Director of the Department of Agriculture, the Director of the Department of Conservation, the Director of the Department of Public Works and Buildings, and two members appointed by the Governor for terms of four years or until their respective successors shall have been appointed and qualified. One of the members shall be a representative of the industrial interests of the State and the other shall be a representative of municipal government.

Upon the death, resignation or removal of any appointive member the Governor shall appoint some qualified person to fill the vacancy for the unexpired term of said member, subject to all provisions of this Act.¹

(c) The Directors of Health, Agriculture, Conservation, and Public Works and Buildings each may file an official order in the office of the Sanitary Water Board, designating a deputy, who may be an assistant or other subordinate in his Department. The deputy shall have the powers and be subject to the duties and responsibilities of the Director appointing him, including the power to vote in decisions of the Board. Such designations shall be made for a specific meeting only, and shall not affect the civil service or retirement rights of any person so designated.

(d) The members of this Board shall receive no compensation for their services, but they shall receive necessary travel expenses incurred in discharge of duties of the Board.

(e) There is created a Water Pollution Control Advisory Council consisting of nine members. The Council shall consist of the Chairman of the Sanitary Water Board, who shall serve as chairman, ex-officio; one member of the Senate appointed by the President pro tempore; one member of the House of Representatives appointed by the Speaker; and six additional members appointed by the Governor, of which one member shall represent each of the following: industry, agriculture, public health, wildlife interest, municipal government, and public interest. As amended by act approved Aug. 2, 1965. L.1965, p. 2147.

¹ Section 145.1 et seq. of this chapter.

145.3—1 Appointment of representative.] § 3.1. The Metropolitan Sanitary District of Greater Chicago shall appoint a representative who may attend, and participate in, meetings of the Sanitary Water Board, but who shall have no vote at such meetings. Such representative shall be the Superintendent, Assistant Superintendent, or a trustee of the Metropolitan Sanitary District of Greater Chicago. Added by act approved July 11, 1967. L.1967, p. 1338.

145.4 Organization of Board; officers; cooperation with other agencies; receiving of moneys.] § 4. (a) The Board shall select at its first meeting following the passage and approval of this Act, one of its members to serve as chairman, and at the first regular meeting in each calendar year thereafter the chairman for the ensuing year shall be selected.

(b) The Technical Secretary of the Board shall be the Chief Sanitary Engineer of the Department of Public Health, and he shall be the active administrator of all water pollution control activities.

(c) The Technical Secretary, or his authorized representative, shall attend all meetings of the Board, and take part in its decisions, but shall not be entitled to a vote.

(d) The Technical Secretary, or his authorized representative, shall, during the interim between meetings of the Board, handle such correspondence, make or arrange for such inspections and investigations, and obtain, assemble or prepare such reports and data as the Board may direct or authorize.

(e) The Board shall provide such technical, scientific or other services, including the necessary laboratory and other facilities as may be required for the purpose of carrying out the provisions of this Act,¹ from funds appropriated and available for purposes of this Act. The basic personnel necessary to carry out the provisions of this Act shall be sanitary engineers employed by

the Department of Public Health; however, the Board may by agreement secure such services as it may deem necessary from any other Department of the State Government and may arrange for the compensation for such services. The Board may also employ and compensate, within appropriations available therefor, such consultant and other assistants on a full or part time basis as may be necessary to carry out the provisions of this Act and may prescribe their powers and duties.

(f) The Board may request and shall receive the assistance of any state educational institution, experiment station, board, department, and officials and employees thereof, or other state agency when it is deemed necessary or beneficial by the Board to carry out the provision of this Act.

(g) The Board may conduct scientific experiments, investigations and research to discover economical and practical methods for preventing pollution. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may accept, receive, and receipt for federal moneys, for and in behalf of the State, given by the Federal Government under any federal law to the State for water pollution control activities, surveys or programs; and may also accept, receive, and receipt for moneys for and in behalf of the State, given by any other public or private agency for water pollution control activities, surveys or programs. Such funds received by the Board pursuant to this section shall be deposited with the State Treasurer and held and disbursed by him in accordance with "An Act in relation to the receipt, custody, and disbursement of money allotted by the United States of America or any agency thereof for use in this State," approved July 3, 1939, as amended.² Provided, that such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of experiments, investigations and research, shall be returned to the contributors. The Board is authorized to promulgate such rules and regulations or enter into contracts as it may deem necessary for carrying out the provisions of this section.

¹ Sections 145.1-145.18 of this chapter.

² Chapter 130, §§ 19a-19cl.

145.5 Meetings—Quorum.] § 5. (a) The Board shall meet as often as is necessary to administer the provisions of this Act¹ at times and places to be fixed by the Board, and shall keep a complete and accurate record of all its meetings, which shall be kept on file in the office of the Technical Secretary, and shall determine the rules of its own proceedings.

(b) Meetings may be called by the chairman upon his own initiative, and must be called by him upon receipt of a written request therefor signed by two or more members of the Board. Written notice of the time and place of such meeting shall be delivered to the office of each member of the Board and the Technical Secretary.

(c) Three members of the Board, or two members and one deputy, shall constitute a quorum to transact the business of the Board. As amended by act approved Aug. 2, 1965. L.1965, p. 2147.

¹ Sections 145.1-145.18 of this chapter.

145.6 Powers and duties.] § 6. (a) The Sanitary Water Board shall have the power to determine if pollution exists in any of the waters of this State. Any such determination made by the said Sanitary Water Board as above provided, shall be filed of record in the office of the Board.

(b) The Board may adopt, prescribe, and promulgate reasonable rules and regulations governing

the procedure of the Board with respect to hearings; the method and manner under which plans, specifications, or other data relative thereto shall be submitted for sewage works or for additions or changes to or extensions of such works; the design of sewage works; the preparation and submission of reports of operations of sewage works; the filing of reports; the issuance of permits; the definition of and certification of the technical competency of operation personnel of sewage works, and to ascertain that such sewage works shall be under the supervision of trained individuals whose qualifications to perform the duties desired shall have been approved by the Board; the filling or sealing of abandoned water wells and holes, and holes for disposal of drainage in order to protect ground water against contamination; and such other reasonable rules and regulations as may be necessary from time to time in the proper administration and enforcement of this Act.¹

(c) The Board is hereby authorized to:

(1) hold public hearings, receive pertinent and relevant proof from any party in interest who appears before the Board, make findings of facts and determinations, all with respect to the violations of the provisions of this Act or the orders issued by the Board;

(2) make, alter or modify orders requiring the discontinuance of pollution of the waters of the State due to the discharge of sewage, industrial waste or other wastes and specifying the conditions and the time within which such discontinuance must be accomplished;

(3) institute or cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with the provisions of this Act.

(4) issue, continue in effect, or deny permits, under such conditions as it may determine to be reasonable for the prevention and abatement of pollution, for the discharge of sewage, industrial waste or other wastes, or for the installation or operation of sewage works or parts thereof, except that no permits shall be required for any new sewage works or changes or additions to or extensions of existing works that receive or may receive only domestic or sanitary sewage from a building housing or occupied by fifteen persons or less;

(5) revoke or modify any permit issued under this Act, or under the authority of laws previously enacted, whenever, after hearing thereon, the Board determines that such revocation or modification is necessary to prevent or abate pollution of any waters of the State;

(6) cause such investigation to be made as it may deem advisable and necessary for the discharge of its duties under this Act;

(7) settle or compromise in its discretion any order under this Act as it may deem advantageous to the public interest;

(8) perform such other and further acts as may be necessary to carry out effectively the duties and responsibilities of the Board prescribed in this Act.

(9) to adopt, modify or repeal and promulgate standards of quality of the waters of the State under such conditions as the Board may prescribe for the prevention, control and abatement of pollution.

(d) It shall be the duty and responsibility of the Board to:

(1) encourage voluntary cooperation by the people, municipalities, industries, associations, agriculture and representatives of other pursuits, in restoring and preserving the waters of the State for their use in the public interest;

(2) encourage the formation and organization of cooperative groups or associations of municipalities,

industries, and generally or jointly in the same be to provide a plan for the pollution;

(3) to advise, enter into agreement with the State, the Federal Government, political groups, political organizations, and other persons for the furtherance of the prevention of the waters of the State;

(4) prepare a comprehensive plan for the prevention of the waters of the State;

(5) require the State to take such actions for sewage works in accordance with the provisions of this Act and to inspect the construction of the works with the approval of the Board;

(6) serve as a receipt of moneys from the State or private agency provided for in this Act;

(7) to collect and abatement of the waters of the State;

(e) The Board shall have the right to take such action upon any property damaged, for the prevention of the waters of the State, or for the abatement of the waters of the State.

(f) The Board shall have the right to take such action upon any property damaged, for the prevention of the waters of the State, or for the abatement of the waters of the State.

¹ Chapter 19, § 1

145.7 Enforcement.] Information concerning the cause of an investment found to exist, the rules and regulations or are being violated, action as may be taken under the provisions of this Act.

¹ Sections 145.1-

145.8 Nightly hearings.] The Board shall have the right to take such action upon any property damaged, for the prevention of the waters of the State, or for the abatement of the waters of the State.

(1) an order requiring the State to take such action upon any property damaged, for the prevention of the waters of the State, or for the abatement of the waters of the State;

(2) an order requiring the State to take such action upon any property damaged, for the prevention of the waters of the State, or for the abatement of the waters of the State;

(b) The Board shall have the right to take such action upon any property damaged, for the prevention of the waters of the State, or for the abatement of the waters of the State.

(c) A full and complete record of the proceedings and filed with the Board, the Technical Secretary,

(d) In any case where the Board, the Technical Secretary,

industries, and other users of the waters who severally or jointly are/or may be the source of pollution in the same waters, the purpose of which shall be to provide a medium to discuss and formulate plans for the prevention and abatement of pollution;

(3) to advise, consult, participate, cooperate and enter into agreements with other agencies of the State, the Federal Government, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this Act;

(4) prepare and develop a general comprehensive plan for the abatement of existing pollution and the prevention of new and/or imminent pollution of the waters of the State;

(5) require to be submitted to it plans and specifications for sewage works, and to issue permits in accordance with the provisions of this Act, and to inspect the construction thereof for compliance with the approved plans;

(6) serve as the agency of the State for the receipt of moneys provided for water pollution activities from the Federal Government, or other public or private agencies, and to expend the same as provided for in this Act;

(7) to collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof.

(e) The Board or its duly appointed agent shall have the right to enter at all reasonable times in or upon any property, public or private, without doing damage, for the purpose of inspecting and investigating conditions relating to pollution or the possible or imminent pollution of any waters of the State.

(f) The Board, or any employee or agent thereof, when authorized by it, may examine or require the submission of any records, memoranda or reports pertaining to the operation of a sewage works as the Board may determine to be reasonable. As amended by act approved Aug. 26, 1967. L.1967, p. 3329.

¹ Chapter 19, § 145.1 et seq.

145.7 Enforcement.] § 7. Upon receipt of information concerning a violation, the Board shall cause an investigation to be made. If pollution is found to exist, or if it appears that this Act¹ or the rules and regulations of the Board have been or are being violated, the Board shall take such action as may be necessary to enforce the provisions of this Act.

¹ Sections 145.1-145.13 of this chapter.

145.8 Right to public hearing.] § 8. (a) Public hearings may be conducted by the Board in connection with and prior to action by the Board in the following cases:

(1) an order or determination of the Board requiring the discontinuance of discharge of sewage, industrial waste or other wastes into the waters of the State as provided in this Act.¹

(2) an order denying, revoking or modifying a permit as provided in this Act.

(b) The hearings herein provided may be conducted by the Board itself at a meeting of the Board, or the Board may delegate to any member, or to the Technical Secretary, or to any employee or agent of the Board, the power and authority to conduct such hearings in the name of the Board at any time and place.

(c) A full stenographic transcript thereof, of the proceedings of said hearing, shall be taken and filed with the Board.

(d) In any such hearing, any member of the Board, the Technical Secretary or any employee or

agent thereof authorized by the Board, may issue in the name of the Board, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involving² in any such hearing, and may examine such witnesses.

¹ Sections 145.1-145.13 of this chapter.

² Probably should read "involved".

145.9 Proceedings before the Board.] § 9.

(a) The Board may, of its own notion,¹ investigate or make inquiry, in a manner to be determined by it, as to any alleged act of pollution or the omission or failure to comply with any provisions of this Act² or any order of the Board.

(b) Whenever it shall appear to the Board, after investigation, that there has been a violation of any of the provisions of this Act or any order of the Board, the Sanitary Water Board may order whomever³ causes such discharge to show cause before said Board why such discharge should not be discontinued. A notice shall be served on the offending party directing him or it to show cause before the said Sanitary Water Board, on a date specified in such notice, why an order should not be made directing the discontinuance of such discharge. Such notice shall specify the time when and the place where a public hearing will be held by the Sanitary Water Board or its authorized representative, and notice of such hearing shall be served personally or by registered mail at least ten (10) days before said hearing; and in the case of a municipality or a corporation such service shall be upon an officer thereof. The Sanitary Water Board shall take evidence with reference to said matter and may issue an order to the party responsible for such discharge, directing that within a specified period of time thereafter, such discharge be discontinued unless adequate sewage works shall have been installed or existing adequate sewage works be properly operated.

(c) The provisions of the Administrative Review Act, approved May 8, 1945, as amended,⁴ and the rules adopted pursuant thereto, shall apply to and govern all proceedings for judicial review of final administrative decisions of the Board hereunder. The term "administrative decision," is defined as in Section 1 of the Administrative Review Act.⁵

¹ Probably should read "motion".

² Sections 145.1-145.13 of this chapter.

³ Probably should read "whoever".

⁴ Chapter 110, § 264 et seq.

⁵ Chapter 110, § 264.

145.10 Pollution of waters.] § 10. No person shall throw, run, drain, or otherwise dispose into any of the waters of this State, or cause, permit, suffer to be thrown, run, drained, allow to seep or otherwise dispose into such waters, any organic or inorganic matter that shall cause pollution of such waters.

145.11 Permit for disposal of wastes.] § 11. No person shall carry on any of the following activities without first securing a permit from the Board, as is required by it, for the disposal of all wastes which are or may be discharged thereby into the waters of the State which could cause pollution thereof: (1) the construction, installation, modification or operation of any sewage works or any extension or addition thereto; (2) the increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit; (3) the construction, installation, or operation of any industrial or commercial establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes

directly into the waters of the State or would otherwise alter the physical, chemical or biological properties of any waters of the State in any manner not already lawfully authorized; (4) the construction or use of any new outlet for the discharge of any wastes directly into the waters of the State.

The Board may require the submission of such plans, specifications, and other information as it deems relevant in connection with the issuance of such permits, except that no permit shall be required for any new sewage works or changes or additions to or extensions of existing works that receive or may receive only domestic or sanitary sewage from a building housing or occupied by fifteen persons or less.

The Board may require that sewage works shall be under the supervision of trained individuals who are qualified to operate such sewage works, and the Board may define and certify as to the technical competency of such operation personnel.

145.12 Municipal financing of pollution abatement.] § 12. Any municipality or sanitary district upon whom an order of the Board is served to abate its discharge of untreated or inadequately treated sewage, shall, unless said order to abate said discharge be reversed on appeal, take steps for the acquisition or construction of a sewage works or for the repair, alteration, extension or completion of an existing sewage works, as may be necessary for the treatment of its sewage, in compliance with the order of the Board. The cost of the acquisition, construction, repair, alteration, completion or extension of the sewage works, as may be necessary to comply with said order, shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipality or sanitary district not otherwise appropriated. If funds on hand or unappropriated are insufficient, then the necessary funds shall be raised by the issuance of bonds. If the estimated cost of the steps necessary to be taken by such municipality or sanitary district to comply with such order is such that the bond issue, necessary to finance such project, would not raise the total outstanding bonded indebtedness of such municipality or sanitary district in excess of the constitutional limit imposed upon such indebtedness by the Constitution of the State of Illinois, then, and in that event, the necessary bonds may be issued as a direct obligation of such municipality or sanitary district and retired pursuant to general law governing the issue of such bonds, if the electors of the municipality or sanitary district shall vote in favor of the increase in indebtedness where the consent of the electors is required.

The funds made available by the issuance of direct obligation bonds as herein provided, shall constitute a sanitary fund, and shall be used for no other purpose than for carrying out such order or orders of the Board.

The Attorney General, at the request of the Board, shall enforce this provision of the act by action of mandamus.

145.13 Violations.] § 13. (a) Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by this Act, or who violates any determination or order of the Board, promulgated pursuant to this Act, shall be liable to a penalty of not to exceed the sum of \$5,000 for said violation and an additional penalty of not to exceed \$200 for each day during which violation continues, or by imprisonment in the county jail for a period not to exceed 6 months, or by both such fine and imprisonment; and, in addi-

tion thereto, such person may be enjoined from continuing such violation as hereinafter provided.

(b) Any person who violates any of the provisions of, or fails to perform any duty imposed by this Act, or who violates an order or other determination of the Board promulgated pursuant to this Act, and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional amount of money for fish or aquatic life destroyed; the Board after consultation with the Department of Conservation shall, through the Attorney General, bring an action against such person and recover the reasonable value of the fish or aquatic life destroyed by such pollution. Any money so recovered shall be placed in the Game and Fish Fund in the State Treasury.

(c) The penalties provided by subdivisions (a) and (b) shall be recoverable in an action brought in the name of the people of the State of Illinois by the Attorney General.

Amended by P.A. 76-207, § 1, eff. July 1, 1969.

*Amendment by P.A. 76-1902, § 1,
see § 145.13, post.*

Final legislative action, 1969 General Assembly:
P.A. 76-1902—June 25, 1969.
P.A. 76-207—June 20, 1969.

As to the effect of more than one amendment of a section at the same session of the General Assembly, see *People ex rel. Hines v. Baltimore & O. S. W. R. Co.*, 366 Ill. 318, 8 N.E.2d 655; *S. Buchsbaum & Co. v. Gordon*, 389 Ill. 493, 59 N.E.2d 832; *People ex rel. Brenza v. Fleetwood*, 413 Ill. 513, 109 N.E.2d 741; *People ex rel. Dickey v. Southern Railway Company*, 17 Ill.2d 550, 162 N.E.2d 417; *Apex Motor Fuel Company v. Barrett*, 20 Ill.2d 395, 169 N.E.2d 769.

145.13 Violations.] § 13. (a) Any person who violates this Act, or who fails to perform any duty imposed by this Act, or who violates any determination or order of the Board, promulgated under this Act, shall be liable to a penalty of not to exceed \$500 for said violation and an additional penalty of not to exceed \$100 for each day during which violation continues, or by imprisonment in the county jail for 30 days, or both; and, in addition thereto, such person may be enjoined from continuing such violation.

(b) Any person who violates this Act, or fails to perform any duty imposed by this Act, or who violates an order or other determination of the Board promulgated under this Act, and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional amount of money for fish or aquatic life destroyed; the Board after consultation with the Department of Conservation shall, through the State's Attorney of the county wherein the violation occurred or through the Attorney General, as requested by the Board, bring an action against such person and recover the reasonable value of the fish or aquatic life destroyed by such pollution. Any money so recovered shall be placed in the Game and Fish Fund in the State Treasury.

(c) The penalties provided by subdivisions (a) and (b) are recoverable in an action brought in the name of the people of the State of Illinois by the State's Attorney of the county wherein the violation occurred or by the Attorney General.

Amended by P.A. 76-1902, § 1, eff. Oct. 10, 1968.

*Amendment by P.A. 76-207, § 1,
see § 145.13, ante.*

145.14 Injunctions.] § 14. It is the duty of the State's Attorney of the county in which the violation occurred or of the Attorney General upon the request of the Board to bring an action for an

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injunction against any person violating this Act, or violating any order or determination of the Board. Amended by P.A. 76-1902, § 1, eff. Oct. 10, 1969.

145.15 Prospective operation.] § 15. This Act¹ or any amendments thereto shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before this Act or any amendments thereto takes effect; but such actions or proceedings may be prosecuted and continued by the Board, having jurisdiction, under this Act or any amendments thereto, of the subject matter to which such litigation or proceeding pertains.

¹ Sections 145.1-145.18 of this chapter.

145.16 Oil, gas and coal resources, etc.—Application of act.] § 15-A. Nothing in this Act¹ shall be construed to limit or supersede the provisions of "An Act in relation to oil, gas, coal and other surface and underground resources and to repeal an Act herein named", filed July 29, 1941, as amended,² and the powers therein granted to prevent the intrusion of water into oil, gas or coal strata and to prevent the pollution of fresh water supplies by oil, gas or salt water or oil field wastes, except that water quality standards may be adopted and enforced by the Sanitary Water Board with respect to fresh water within the areas covered by and affected by permits issued by the Department of Mines and Minerals. As amended by act approved Aug. 26, 1967. L.1967, p. 3331. Effective Aug. 26, 1967.

¹ Chapter 19, § 145.1 et seq.
² Chapter 104, § 62.

145.17 Existing sanitary districts.] § 16. Nothing in this Act contained applies to or is effective within the territorial limits of or is construed in any manner to affect the property, real, personal or mixed, wherever situated, or the channels, adjuncts and additions, drains, ditches and outlets, and their use, operation and maintenance and the right to the flow of water therein, and in rivers, streams and navigable waters connected thereto, for sewage, dilution, nor affects the jurisdiction, rights, powers, duties and obligations of any existing sanitary district which now has a population of 1,000,000 or more within its territorial limits, except that water quality standards shall be adopted and enforced by the Sanitary Water Board within such sanitary district, and except that the Attorney General has the power and authority to commence actions and proceedings to prevent water pollution pursuant to the provisions of "An Act in relation to the prevention and abatement of air and water pollution", enacted by the Seventy-sixth General Assembly;¹ such power and authority of the Attorney General is not limited by, and may be exercised concurrently with, any power and authority vested in any other person or public body to prevent the pollution of any waters or to commence any action or proceeding in any appropriate court or before any agency to prevent or stop such pollution.

Amended by P.A. 76-206, § 1, eff. July 1, 1969.

¹ Chapter 14, §§ 11, 12.

145.18 Partial invalidity.] § 17. If any section, subdivision, clause, sentence or paragraph in this Act¹ shall be held to be unconstitutional, the unconstitutionality thereof shall not affect the remaining parts of this Act.

¹ Sections 145.1-145.18 of this chapter.
[§ 18. Repeal.]

¹ Ill.Rev.Stat. '69-30

FEDERAL WATER POLLUTION CONTROL

AN ACT designating the Sanitary Water Board to act as the state water pollution agency for purposes of the Federal Water Pollution Control Act and giving it powers therefor. Approved July 12, 1951. L.1951, p. 1471.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

145.19 Definitions.] § 1. As used in this Act:¹

(a) "Federal Act" means the Water Pollution Control Act, Public Law 845, approved June 30, 1948, by the 80th Congress.²

(b) "Surgeon General" means the Surgeon General of the Public Health Service of the United States.

(c) "Federal Security Administrator" means the Administrator of the Federal Security Agency.

(d) "Interstate Agency" means an agency of two or more states having powers or duties pertaining to the abatement of pollution of water.

¹ Sections 145.19-145.22 of this chapter.
² 33 U.S.C.A. §§ 466-466j.

145.20 State water pollution agency.] § 2. The Sanitary Water Board is hereby designated as water pollution agency for this state for all purposes of the federal act and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the federal act.

145.21 Powers and duties of Sanitary Water Board.] § 3. In carrying out the purposes of Section 2 of this act¹ the Sanitary Water Board, in addition to any other action which may be necessary or appropriate to carry out the purpose of Section 2, is authorized;

(a) To cooperate with the Surgeon General and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and improving the sanitary conditions of waters;

(b) On behalf of this state to apply for and receive funds made available to the board under the federal act by any agency of the federal government; provided, that all moneys received from any federal agency as herein provided shall be received and held by the state treasurer in accordance with the provisions of "An Act in relation to the receipt, custody and disbursement of money allotted by the United States of America or any agency thereof for use in this State", approved July 3, 1939, as amended,² and shall be expended, under the direction of the board, solely for the purpose or purposes for which the grant or grants shall have been made;

(c) To approve projects for which application for loans or grants under the federal act is made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over disposal of sewage, industrial wastes or other wastes) or agency of this state or by an interstate agency; and

(d) To participate through its authorized representatives in proceedings under the federal act; to give consent on behalf of this state to requests by the Federal Security Administrator to the Attorney General of the United States for the bringing of suit for abatement of such pollution; and to consent to the joinder as a defendant in such suit of any person who is alleged to be discharging matter

contributing to the pollution, abatement of which is sought in such suit.

¹ Section 145.20 of this chapter.
² Chapter 130, §§ 19a-19c1.

145.22 Savings clause.] § 4. This act shall not be construed to amend, alter, or repeal any provisions of "An Act to establish a Sanitary Water Board and to control, prevent, and abate pollution of the streams, lakes, ponds, and other surface and underground water in the State, and to repeal an Act named therein", approved July 12, 1951, as amended,¹ but shall be construed to be supplemental thereto.

Amended by P.A. 76-818, § 1, eff. Aug. 19, 1969.

¹ Sections 145.1 et seq. of this chapter.
 [§ 5. Emergency.]

WATERWAYS, DRAINAGE, FLOOD CONTROL, WATER POLLUTION AND WATER RESOURCES STUDY COMMISSION

AN ACT to create a commission to survey and study problems pertaining to waterways, drainage, flood control, water pollution and water resources, to define its powers and duties, and to make an appropriation therefor. Approved Aug. 17, 1965. L.1965, p. 3086.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

145.31 Creation — Composition — Appointments — Tenure — Vacancies — Chairman — Secretary and employees.] § 1. There is created a commission consisting of 3 members of the Senate to be appointed 2 by the President pro tempore, and 1 by the Minority Leader thereof, 3 members of the House of Representatives to be appointed 2 by the Speaker and 1 by the Minority Leader thereof, and 4 members of the public to be appointed, 1 each, by the President pro tempore and the Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. General Assembly members shall serve until their successors in office are selected and have qualified, or until the termination of their legislative service, whichever first occurs, and the public members shall serve 2 year terms terminating on June 30 of the succeeding odd numbered year after their appointment, or until their successors in office are appointed and have qualified. The members shall receive only actual and necessary expenses incurred in the performance of their duties. Vacancies occurring in the membership of the Commission shall be filled by the original appointing authority from the group in which the vacancy occurred. The commission shall organize by selecting from its membership a chairman and may employ a secretary and other necessary employees. Amended by P.A. 76-771, § 1, eff. Aug. 15, 1969.

145.32 Study—Cooperation with technical advisory committee on water resources.] § 2. The commission shall study:

(1) The progress and problems of the State government and of counties, municipalities and other political subdivisions of the State in regard to waterways, drainage, flood control, water pollution and water resources.

(2) The interrelationship between the various units of government in the administration of their respective programs and projects concerning waterways, drainage, flood control, water pollution and water resources, and the necessity and feasibility of developing general comprehensive plans among such units of government to more effectively deal with problems of flood control, water pollution and water resources.

(3) The cost of administering the various projects and programs in regard to waterways, drainage, flood control, water pollution and water resources, and the financial structure and sources of revenue of the various units of government with such programs or projects.

(4) The desirability and feasibility of the State government establishing grants in aid to such counties, municipalities and other political subdivisions for such programs and projects, or establishing State programs in regard to waterways, drainage and flood control, water pollution and water resources.

(5) The laws of this State in relation to waterways, drainage, flood control, water pollution and water resources to determine the need for revision or further codification in these areas.

The commission shall consult and cooperate with the Technical Advisory Committee on Water Resources in the course of such studies.

145.33 Assistance from political subdivisions.] § 3. The commission may request and shall receive from any State officer, department or agency, and from the officers of any county, municipality or other political subdivision of this State such data and such reasonable assistance or may help the commission in its study.

145.33—1. Gifts or grants.] § 3.1. The Commission may receive or participate in any gift or grant of funds, services or facilities from any Federal, State or private agency or corporation made for the purposes of assisting the Commission in carrying out its duties. Added by act approved Aug. 26, 1967. L.1967, p. 3328.

145.34 Reports and recommendations.] § 4. The commission shall make a detailed report of its findings and conclusions to the General Assembly not later than the third Monday in January of each odd numbered year and shall submit recommendations for such legislation as it deems necessary.

[§ 5. Appropriation.]

WATER TERMINALS

AN ACT to provide for the construction, use and maintenance of certain water terminal facilities. [Filed July 13, 1933. L.1933, p. 120. Title as amended by act approved July 9, 1937. L.1937, p. 514.]

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

146. Improvement of water terminal facilities.] § 1. The Department of Public Works and Buildings as successor to the Department of Purchases and Construction is authorized and directed to improve for water terminal purposes, the water terminal premises now owned by the State of Illinois in Section Thirty (30), Township Thirty-nine (39) North, Range Fourteen (14) East of the Third Principal Meridian in Cook County, Illinois (conveyed by the Atchison, Topeka and Santa Fé Railway Company to the State of Illinois by deed, under date of September 15, A. D. 1928), and any adjoining premises which have been or may be acquired by the State of Illinois for water terminal purposes. Plans and specifications may be prepared by the Department of Public Works and Buildings and contracts for said improvement may be let by said department. Any of the contracts which shall exceed the estimated value of one thousand dollars (\$1,000), shall be let in accordance with the provisions of section 28 of the Civil Administrative Code, as amended. Whenever any contract has been awarded, the Department of Public Works and Buildings shall make a written request

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Amended by P.A. 77-164, § 1, eff. Jan. 1, 1972.

¹ Chapter 19, § 126e.

[§ 9. Repeal.]

[§ 10. Effective date: Jan. 1, 1947.]

127, 128. §§ 1, 2 (L.1929, p. 99). Repealed by Act filed July 13, 1939. L.1939, p. 1175.

AN ACT in relation to the planning, construction and maintenance of watershed protection and flood prevention works of improvement and making an appropriation therefor. Approved July 10, 1957. L.1957, p. 2445.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

128.1 Public policy.] § 1. The General Assembly of the State of Illinois finds that watershed protection offers a sound approach to flood prevention, provides proper management for surface water resources and for the maximum development of surface water storage for municipal, industrial, agricultural and recreational uses for all citizens of the state, reduces the siltation of streams and lakes and helps to maintain stable normal water levels in our streams for navigation and other uses.

128.2 Definitions.] § 2. When used in this Act:

"Department" means the Department of Agriculture of the State of Illinois.

"Local Watershed Organization" means and includes soil conservation districts, subdistricts of soil conservation districts, river conservancy districts, drainage districts, counties and other local governmental agencies of the state of Illinois.

"Watershed Works of Improvement" or "Works of Improvement" means and includes farm terraces, diversion terraces, grassed waterways, gully con-

trol and grade stabilization structures, farm ponds, flood detention reservoirs and such other soil and water management practices as meet the technical standards of the Soil Conservation Service of the United States Department of Agriculture.

"Approved Watershed" means any watershed which has been approved by the Governor of Illinois and the United States Department of Agriculture as qualifying for assistance under the Watershed Protection and Flood Prevention Act of 1954 enacted by the Congress of the United States.¹

¹ 16 U.S.C.A. § 1001 et seq.

128.3 Powers of department.] § 3. The Department of Agriculture is authorized to enter into agreements with any agency of the United States or with any local watershed organization or organizations as may be necessary to furnish surveys, engineering and assistance in planning for works of improvement in any approved watershed in this State and for maintaining watershed works of improvement which are constructed primarily for retaining surplus rainfall. The Department may request the State Soil Conservation Districts Advisory Board to review the plans for improvement and maintenance of each watershed and to advise the Department concerning the feasibility of the respective plans and projects.

[§§ 4, 5. Appropriation.]

128a-128c. (L.1937, p. 1147.) Repealed by act approved June 22, 1951. L.1951, p. 447.

129-145. (L.1929, p. 386.) Repealed by act approved July 12, 1951. L.1951, p. 1462.

145.1 to 145.18 §§ 1 to 17. Repealed by P.A. 76-2429, § 50, eff. July 1, 1970.

145.19 to 145.22 §§ 1 to 4. Repealed by P.A. 76-2429, § 50, eff. July 1, 1970.

WATERWAYS, DRAINAGE, FLOOD CONTROL, WATER POLLUTION AND WATER RESOUR- CES STUDY COMMISSION

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Be it enacted by the People of the State of Illinois, represented in the General Assembly:

145.31 Creation — Composition — Appointments — Tenure — Vacancies — Chairman — Secretary and employees.] § 1. There is created a commission consisting of 3 members of the Senate to be appointed 2 by the President pro tempore, and 1 by the Minority Leader thereof, 3 members of the House of Representatives to be appointed 2 by the Speaker and 1 by the Minority Leader thereof, and 4 members of the public to be appointed, 1 each, by the President pro tempore and the Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. General Assembly members shall serve until their successors in office are selected and have qualified, or until the termination of their legislative service, whichever first occurs, and the public members shall serve 2 year terms terminating on June 30 of the succeeding odd numbered year after