

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE, )  
Complainant, ) PCB # 2015-139  
v. ) (Citizens - Water Enforcement)  
HIGHLAND HILLS SANITARY )  
DISTRICT, )  
Respondent. )

NOTICE OF FILING

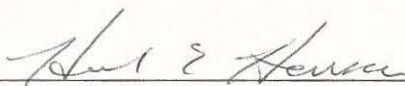
To: Lawrence A. Stein  
Aronberg Goldgehn Davis & Garmisa  
330 N. Wabash Avenue  
Suite 1700  
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document:

HIGHLAND HILLS SANITARY DISTRICT'S  
OBJECTION TO COMPLAINANT'S THREE MOTIONS FOR EXTENSION OF TIME TO  
RESPOND TO RESPONDENT'S REQUEST TO ADMIT

a copy of which is hereby served upon you.

Respectfully submitted,

  
\_\_\_\_\_  
Heidi E. Hanson

Dated: June 9, 2016

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

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**HIGHLAND HILLS SANITARY DISTRICT'S**  
**OBJECTION TO COMPLAINANT'S THREE MOTIONS FOR EXTENSION OF TIME**  
**TO RESPOND TO RESPONDENT'S REQUEST TO ADMIT**

Respondent, HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys PODLEWSKI & HANSON P.C., hereby objects to Complainant, Susan M. Bruce's ("Bruce") three motions for extension of time to respond to Respondent's request to admit ("Objection").

In support of its Objection, the District states as follows:

1. On February 12, 2016, Highland Hills Sanitary District, ("District") served Complainant with Highland Hills Sanitary District's First Request to Admit Facts (attached) consisting of 19 questions. As required by Board rule 101.618(c) (35 Ill Adm. Code 101.618(c)), that request contained the Board's warning that "Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding."

2. Discovery was stayed by sequential Hearing Officer orders beginning March 10, 2016 until the Hearing Officer order of May 4, 2016. The May 4<sup>th</sup> order provided that, by agreement, the Complainant's responses to the District's request to admit would be due on May 25, 2016. (All other discovery remained stayed.)

3. Complainant failed to comply with the Hearing Officer's May 4, 2016 Order.

4. The day after the responses were due, Complainant emailed the District a Motion for Extension of Time (Motion for Extension #1) requesting an extension until May 31, 2016 and alleging that she did not respond timely "due to a docketing error". On May 31, 2016 it emailed a Motion for a Further Extension of Time (Motion for Extension #2) until June 1, 2016. A Hearing Officer conference was held on June 1, 2016, but at no time during that conference did Complainant's counsel indicate that he would be unable to comply with the June 1, 2016 deadline that he had proposed. However, later that same day and less than 5 hours after the

conference, Complainant emailed a Motion for Another Further Extension of Time (Motion for Extension #3) requesting an extension until June 8, 2016. (Of the three motions only Motion for Extension #2 appears on the Board's COOL database.) As of June 9, 2016 Complainant has not responded to the request to admit.

5. Complainant has not offered to provide partial answers and has not contacted Respondent with any questions on the requests to admit.

6. Complainant has not shown good cause for her proposed extensions. Her Motion for Extension #1 references a docket error. This is the second time her attorney has experienced a docket problem within the last 3 months on this matter. (He also gave the excuse of docketing problems as the reason he was late to, and had apparently forgotten, the Hearing Officer status conference on March 10, 2016, which had been rescheduled from the day before.)

7. Bruce's Motion for Extension #1 apparently asks us to believe that as a result of the docket error her attorney simply forgot when the response to the requests to admit was due. But the second and third motions weaken this excuse. It would appear that Complainant had not been working on the request to admit at all because she has asked for a total of 14 days beyond the due date. Also, her attorney had not gotten far enough along in the response to accurately estimate, in Motions for Extension #1, #2, or #3, how much more time it would take to finish. A docketing error might explain why Complainant missed the deadline her attorney agreed to even though it was memorialized in the Hearing Officer's May 4, 2016 order, but it does not explain why Complainant has seemingly made no progress at all since last February. Furthermore, Motions for Extension #2 and #3 did not explain what, if any, good causes there were for the additional extensions.

8. In summary, the Board's rules provide 28 days to respond to a request to admit. The Complainant had 23 days between the receipt of the request to admit and the first time discovery was stayed. She was given another 21 days to respond by the Hearing Officer's order of May 4, 2016 but did not timely respond. She has filed requests for an additional total of 14 days. She is now later than even her last motion for extension proposed date. The amount of time she has had to answer so far (excluding the time during which discovery was stayed) is 59 days - more than double the amount of time provided by Board rule and more than 3 days per question for each of the 19 questions. She has been warned of the consequences of an untimely answer and she has given no reason for delay other than the docket error referenced in Motion for Extension #1.

9. The Hearing Officer in his March 8, 2016 Order (page 3), in reference to another late filing by Bruce, wrote "while I am persuaded that in this instance the delay in complying with my order setting discovery deadlines was reasonable that finding does not license future noncompliance. Counsel is expected to comply with the deadlines in my orders."

10. Twice since the Hearing Officer's March 8, 2016 order Bruce has failed to comply with the deadlines in his orders. In addition to failing to respond to the request to admit by May 25, 2016 (or even to request an extension before that date), Bruce violated a deadline in the Hearing Officer's June 1, 2016 order. In that order Complainant was ordered to provide copies of specific documents (which her attorney represented to the Hearing Officer to be about 6 pages). These documents were due to the District pursuant to agreement on April 25, 2016. Complainant did not provide them. Complainant represented to the Hearing Officer on May 4, 2016 that they would be sent that day. They were not. In its June 1<sup>st</sup> order the Hearing Officer ordered that they be provided within 48 hours. Respondent has not, as of the date of filing this motion, received the copies.


11. Admittedly, failing to file her response to the request to admit by June 8 is not a third violation of a Hearing Officer order because the Hearing Officer has not yet ruled on the Motion for Extension #3. However, it does represent another milestone in Bruce's ongoing failure to mitigate the violation of the May 25, 2016 deadline in the Hearing Officer's May 4, 2016 order. Bruce has once again demonstrated her disdain for deadlines in the Board's rules and the Hearing Officer orders. These practices should not be allowed to continue.

12. Respondent sanitary district is a small unit of local government, serving only a fraction of a single village. It has been frustrated and prejudiced by Complainant's repeated refusals to comply with deadlines in Board rules and Hearing Officer orders in that it incurs additional expense and it has been prevented from moving this matter forward to resolution.

WHEREFORE the District respectfully requests that the Complainant's three motions for extension be denied and that the requests to admit be deemed to be admitted, or that it be granted such other relief as the Hearing Officer deems to be just and proper.

Respectfully submitted,

Highland Hills Sanitary District  
by its attorneys,  
Podlewski & Hanson

  
Heidi E. Hanson

Dated: June 9, 2016

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

HIGHLAND HILLS SANITARY DISTRICT'S OBJECTION  
TO COMPLAINANT'S THREE MOTIONS FOR EXTENSION  
OF TIME TO RESPOND TO RESPONDENT'S REQUEST TO ADMIT

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	)	
Respondent.	)	

**HIGHLAND HILLS SANITARY DISTRICT'S FIRST REQUEST TO ADMIT FACTS**

Respondent, Highland Hills Sanitary District ("District"), by and through its attorneys PODLEWSKI & HANSON P.C., pursuant to 35 Ill. Adm. Code Section 101.618, hereby serves the following Highland Hill Sanitary District's First Request to Admit Facts upon Complainant, Susan M. Bruce, to be answered in writing by a sworn statement, within 28 days of receipt. Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney.

**DEFINITIONS AND INSTRUCTIONS**

The following definitions and instructions shall apply to each of the requests below, unless specifically indicated, or otherwise required, by the context of the request:

A. "Susan M. Bruce" "Bruce" "Complainant" "You" and "Your" all mean Complainant Susan M. Bruce, regardless of any name that she may have used to identify herself during the time period covered by these requests.

B. "Property" means the parcel of real property commonly known as 115 East 14<sup>th</sup> Place, Lombard, Illinois, as alleged by Bruce in Paragraph 1 of the Amended Formal Complaint.

C. **"Amended Complaint"** shall mean the Amended Formal Complaint filed by Bruce in the Lawsuit.

D. For any term used herein which is not otherwise specifically defined, the applicable definition in the Illinois Environmental Protection Act or Illinois Pollution Control Board Regulations shall apply. If those sources do not provide an applicable definition, the common and usual meaning of such term is intended.

E. Any ambiguity in these requests shall be resolved so as to construe these requests as broadly as possible. Whenever appropriate, the singular form of a word should be interpreted to include the plural. "And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these requests information which might otherwise be construed to be outside their scope.

F. Unless otherwise specified, the time period covered by these requests is from and including January 1, 1979 to the date of filing of the responses thereto. If in order to provide complete and accurate responses to these requests it is necessary to provide information relating to events in an earlier time period, You should do so.

G. If You object to any part of these requests You shall state specifically the basis of Your objection and shall respond fully to any parts, time periods, or segments of the requests that are not within the scope of Your objection.

H. Any estimates or assumptions used in answering these requests are to be labeled as such.

I. In accordance with 35 Ill. Adm. Code 101.618(f), each of the matters of fact of which admission is requested is admitted unless, within 28 days after service thereof, You serve upon Respondent requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why You cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission.

J. In accordance with 35 Ill. Adm. Code 101.616(h), You must amend any prior responses to these requests for admission if You learn that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

K. In accordance with 35 Ill. Adm. Code 101.618(g), if good faith requires that You deny a part of a matter for which an admission is requested, or if a part requires qualification, You must specify the part which is denied or qualified and admit only the remainder.

**REQUESTS TO ADMIT FACTS**

FACT #1

Susan M. Bruce resided at the Property during the period beginning on January 1, 1989 and through January 1, 2015.

FACT #2

There was a valve (hereinafter referred to as "check valve") located on the private sewer pipe at the Property (which pipe connects the plumbing in the house to the public sewer) during the period from January 1, 1989 through July 1, 2010.

FACT #3

The check valve could be closed in order to prevent any sewage from flowing into the house.

FACT #4

The check valve ceased to function in July of 2010.

FACT #5

There was no maintenance performed on the check valve between January 1, 1989 and July 6, 2015.

FACT #6

During the period from July 1, 2010 to July 6, 2015 the check valve was not either repaired or replaced.

FACT #7

When the check valve was closed there were no sewer backups inside the house on the Property during the period from January 1, 1989 to July 1, 2010.

FACT #8

There is a pipe (hereinafter "cleanout pipe") located on the Property which can be used for cleaning out or rodding out the pipe(s) on the Property.

FACT #9

During the time she resided at the Property, Susan M. Bruce or one or more of her husbands have opened the cleanout pipe which resulted in sewage flowing onto the ground outside of the house on the Property.

FACT #10

One of the three sewer backups that complainant alleged in her Amended Complaint occurred in 2010, occurred either on or within 36 hours of July 24, 2010.

FACT #11

One of the three sewer backups that complainant alleged in her Amended Complaint occurred in 2010, occurred either on or within 48 hours of August 4, 2010.



FACT #12

One of the three sewer backups that complainant alleged in her Amended Complaint occurred in 2010, occurred either on or within 48 hours of one of the other two backups alleged in 2010.

FACT #13

All of the backups alleged in the Amended Complaint have happened during rain events.

FACT #14

The Property did not experience sewer backups in 2011 or 2012.

FACT #15

The Property only experienced sewer backups on days when it experienced flooding in the back yard.

FACT #16

The "respondent's equipment or structure" located in the back yard of the Property and referred to in paragraph 6 of the Amended Complaint, is a storm sewer manhole.

FACT #17

Sewage did not enter Complainant's home when the check valve was shut.

FACT #18

Complainant has not observed sewage discharging from any structure in her back yard, other than the cleanout pipe.

FACT #19

Complainant has not observed sewage being spilled into any river, body of water or stream from the cleanout pipe on the Property.

Respectfully submitted,



Joseph R. Podlewski

Dated: February 12, 2016

Joseph R. Podlewski  
Heidi Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave., Suite 1500  
Western Springs, Illinois 60558  
(708) 784-0624

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on this date the attached:

HIGHLAND HILLS SANITARY DISTRICT'S  
OBJECTION TO COMPLAINANT'S THREE MOTIONS FOR EXTENSION OF TIME TO  
RESPOND TO RESPONDENT'S REQUEST TO ADMIT

upon the Clerk's Office On-Line, Illinois Pollution Control Board by electronic filing this day before 4:30, and

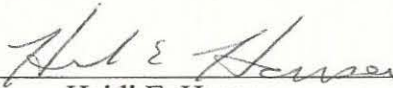
upon the following, by email transmission before 4:30:

Bradley Halloran, Hearing Officer at the email address of [Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov).  
(pursuant to 35 Ill Adm. Code 101.1060(d)),

Lawrence A. Stein at the email address of [lstein@agdglaw.com](mailto:lstein@agdglaw.com)  
(pursuant to April 5, 2016 consent).

The number of pages in the email equals eleven (11) pages (including this Certificate).

My email address is [heh70@hotmail.com](mailto:heh70@hotmail.com).

  
Heidi E. Hanson

Dated: June 9, 2016

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624