

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 05 2006

STATE OF ILLINOIS
Pollution Control Board

**FLAGG CREEK WATER RECLAMATION
DISTRICT,**

Complainant,

v.

**VILLAGE OF HINSDALE, METROPOLITAN
WATER RECLAMATION DISTRICT OF
GREATER CHICAGO, ILLINOIS
DEPARTMENT OF TRANSPORTATION,
DUPAGE COUNTY,**

Respondents.

PCB No. 2006-141

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on **Wednesday, April 5th, 2006**, we filed the attached **Metropolitan Water Reclamation District of Greater Chicago's Motion to Strike and Dismiss Paragraphs 61 through 70 of Count II of FCWRD's Complaint or in the Alternative Motion for Leave to Serve a Bill of Particulars** with the office of the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois, a copy of which is herewith served upon you.

METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO

BY: 

Frederick M. Feldman, Its Attorney

Frederick M. Feldman/Alan J. Cook/Lisa Luhrs Draper
Metropolitan Water Reclamation District of Greater Chicago
100 East Erie Street
Chicago, IL 60611
(312) 751-6576

STATE OF ILLINOIS)
) S.
COUNTY OF COOK)

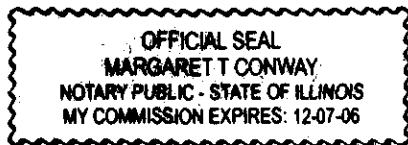
CERTIFICATE OF SERVICE

I, Cheryl Bourgeois, being duly sworn on oath, certify that I caused a copy of the attached Respondent's Metropolitan Water Reclamation District of Greater Chicago's Motion to Strike and Dismiss Paragraphs 61 through 70 of Count II of FCWRD's Complaint or in the Alternative Motion for Leave to Serve a Bill of Particulars, to be sent via first class U.S. Mail to the attached named individuals at their addresses as shown, with proper postage prepaid, from 100 E. Erie Street, Chicago, Illinois, at or near the hour of 4:00 p.m., this 5th day of April, 2006.

Cheryl Bourgeois

SUBSCRIBED and SWORN to before
me this 5th day of April, 2006.

Margaret T. Conway
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Flagg Creek Water Reclamation District v. Village of Hinsdale, et al.

For the Flagg Creek Water Reclamation District:

**Richard J. Kissel/Roy M. Harsch/John A. Simon
Gardner , Carton & Douglas, LLP
191 N. Wacker Drive – Suite 3700
Chicago, Illinois 60606**

For the DuPage County, Division of Transp.:

**Joseph E. Birkett
DuPage County States Atty.
503 N. County Farm Road
Wheaton, Illinois 60187**

Co-Counsel for the Village of Hinsdale:

**William D. Seith
Total Environmental Solutions, P.C.
635 Butterfield Rd., Suite 240
Oakbrook Terrace, Illinois 60181**

**Mark Steger, Esq.
Holland & Knight, LLC
131 S. Dearborn St.
30th Floor
Chicago, Illinois 60603**

For the Illinois Pollution Control Board:

**Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601**

For the Illinois Dept. of Transp.:

**Richard Christopher, Esq.
Special Assistant Atty. General
Ill. Dept. of Transportation
300 W. Adams St. – 2nd Fl.
Chicago, Illinois 60606**

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**RESPONDENT METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO'S MOTION TO STRIKE AND DISMISS
PARAGRAPHS 61 THROUGH 70 OF COUNT II OF FCWRD'S COMPLAINT
OR IN THE ALTERNATIVE MOTION FOR LEAVE TO SERVE A BILL OF PARTICULARS**

Now comes the Respondent, Metropolitan Water Reclamation District of Greater Chicago (hereinafter "MWRD" or "District"), through its Attorney, Frederick M. Feldman, and pursuant to 35 Ill. Adm. Code 101.506 hereby submits its Motion to Strike and Dismiss Paragraphs 61 through 70 of Count II or in the alternative moves for Leave to Serve a Bill of Particulars. In support thereof, the MWRD states as follows:

INTRODUCTION

Complainant grounds the MWRD's alleged violations of the Illinois Environmental Protection Act ("Act") and Pollution Control Board Water Pollution Control Regulations on the MWRD's alleged breach of its statutory duty to regulate stormwater in Cook County. The MWRD respectfully asserts that the Illinois Pollution Control Board ("Board") does not have the authority to decide whether the MWRD has violated its statutory duty to regulate stormwater and accordingly those allegations should be dismissed as frivolous. Additionally, the MWRD further contends that the allegations claiming a violation of MWRD's statutory duty are so lacking in details as to be impossible to answer. Finally, should this Board

find that the Complainant has not adequately identified the specific statutory provision breached by the MWRD, the District alternatively moves for leave to serve a Bill of Particulars.

BACKGROUND

1. On March 3, 2006, Flagg Creek Water Reclamation District (hereinafter “FCWRD”) filed a multi-count complaint against various governmental entities, including the MWRD, alleging that the respondents’ acts or omissions are causing FCWRD to be in noncompliance with the terms and conditions of its NPDES permit and with certain combined sewer overflow (“CSO”) guidelines. Count II of the complaint is directed against the MWRD. (A copy of the Complaint is attached as Exhibit “A”).¹

2. FCWRD’s complaint against the MWRD includes the allegation that the MWRD is in violation of its statutory duty to regulate stormwater in Cook County. Complaint (“Cmplt.”) Ex. A at ¶’s 61-70. FCWRD pleads that MWRD’s failure to properly manage stormwater, in turn, interferes with FCWRD’s fulfillment of its duty to provide capacity for sanitary flows. Cmplt., ¶70.

3. The allegations pertinent to MWRD’s alleged breach of its statutory duty regarding stormwater are found at paragraphs 61 through 70 of Count II. In sum, they state as follows: MWRD is authorized by statute to regulate stormwater within Cook County, Cmplt. ¶63; MWRD levies taxes on residents within Cook County pursuant to that statutory authority, Cmplt. ¶63; MWRD has allowed debris to collect in Flagg Creek causing stormwater to backup into FCWRD’s polishing ponds, Cmplt. ¶’s 64-65; MWRD has a duty by statute to maintain Flagg Creek, Cmplt. ¶66; MWRD has breached its statutory duty, Cmplt. ¶67; and, that MWRD’S breach of its statutory duty is a violation of the Act’s prohibition on causing or contributing to water pollution under 415 ILCS 5/12(a) and 35 Ill. Adm. Code 307.1101, which prohibits any person from introducing pollutants that interfere with the operation of a sewage treatment plant. Cmplt. ¶’s 68-69.

4. Notably, FCWRD does not identify the specific Illinois statutory provision regarding stormwater regulation that it claims was breached by the MWRD. However, typically, the MWRD’s statutory duty arises pursuant to its enabling statute. (70 ILCS 2605 *et seq.*) The MWRD Act was

¹ Counts I, III, and IV are directed to the other named respondents and the District therefore makes no response thereto.

recently amended by adding Section 7h giving the District additional duties for the management of stormwater, defined as the management of floods and floodwaters. See 70 ILCS 2605/7h.

DISCUSSION

A. The Board Lacks Authority to Decide a Breach of the MWRD Act.

5. An examination of the pertinent allegations leaves no room for doubt that the MWRD's alleged violations of the Act, and the Board's water pollution control regulations are premised on the MWRD's breach of its statutory duty to manage stormwater in Cook County. Thus, in order for the Board to find the MWRD in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 307.1101, it must first find that "MWRD has a duty by statute...to maintain Flagg Creek so that stormwater is not obstructed in the Creek," Cmplt. ¶66; and further that, "MWRD has breached its statutory duty." Cmplt. ¶ 67.

6. The Act confers upon the Board the power to adjudicate complaints that allege violations of the Act or of Board regulations. 415 ILCS 5/5(d) and 5/30-5/33. However, it is well established that the Board's authority is limited to the terms of its enabling statute. *Concerned Adjoining Owners v. Pollution Control Board*, 288 Ill. App. 3d 565 (5th Dist.1997). In that case, citizen groups argued that the City of Salem did not follow the statutory requirements of the Illinois Municipal Code when annexing property for proposed landfills. *Concerned Adjoining Owners*, 288 Ill. App. 3d at 577. The Board found that it did not have the authority to decide whether the annexation and purchase of the property was conducted according to the applicable statutes, as its authority is 'limited to those matters arising under the Act.' *Id.* Thus, the Board declined to decide the issue. (See *T.O.T.A.L. v. City of Salem*, PCB No. 96-79 (Consolidated) March 7, 1996 Order, at p. 5). The appellate court affirmed the Board regarding the Board's lack of authority. The court stated, "the Board was also correct in finding that it did not have any authority to decide the issue of whether Salem complied with the Municipal Code in purchasing and annexing the property. The Board's authority is limited to the terms of its enabling statute, which does not extend to matters arising under the Municipal Code." *Id.* Applying the court's reasoning to the instant matter, it follows that the Board's authority does not extend to matters arising under the MWRD's enabling statute, assuming that this is the basis of "statutory duty" alleged by Complainant.

See also, *Material Service Corporation v. J.W. Peters & Sons, Inc.*, PCB No. 98-97 where the Board dismissed a complaint as frivolous. In *Material Service Corp.*, the Board held that it did not have jurisdiction to determine whether the respondent was in violation of the Act, when, in order to do so, it first had to find violations of the Gasoline Storage Act and regulations promulgated thereunder. The Board, finding that it did not have jurisdiction to adjudicate violations of the Gasoline Storage Act, dismissed the complaint. See April 2, 1998 Order, at p. 6. Similarly, in the case at hand, the Board does not have jurisdiction to determine whether the MWRD is in violation of the recently-enacted Stormwater Management Act. Accordingly, paragraphs 61-70 of the complaint, which appear to allege violations of the MWRD Act, must be stricken for lack of jurisdiction.

B. The Allegations are not Sufficiently Pled.

7. Additionally, paragraphs 61 through 70 of the Complaint are so wanting in details that the District cannot adequately prepare a response to them. The Illinois Environmental Protection Act clearly provides that any person who files a complaint must plead with specificity the manner and extent of any alleged violations. 415 ILCS 5/31 (c)(1) and (d)(1). The Board's procedural rules further require that the complaint contain the dates, location, events, extent, duration and strength of discharges or emissions and consequences thereof that constitute a violation. 35 Ill. Adm. Code 103.204 (c) (2). Moreover, Illinois case law affirms the necessary pleading requirements. *City of DesPlaines v. Metropolitan Sanitary District of Greater Chicago*, 60 Ill. App. 3d 995, 1000 (1st Dist. 1978)(allegations must state dates, events, the nature and extent and duration of the threats to the environment to satisfy the Act and Board's procedural rules).

8. Here, the challenged allegations are entirely lacking in the basic details of the alleged violations. The allegations fail to identify a single date of occurrence (or even a year!), or provide a description of the extent and nature of the accumulation of debris, the location in Flagg Creek where said accumulation occurred, or the dates, extent and duration of the claimed backup into FCWRD's polishing ponds. Without describing the dates, location, events, extent or duration of any purported occurrences, the Complaint does not provide adequate information to allow the MWRD to respond to these allegations.

This general pleading fails to satisfy the aforestated statutory and administrative regulations and in consequence the MWRD submits that the allegations are fatally flawed and should be stricken.

C. Alternatively FCWRD Should Provide a Bill of Particulars.

9. In the alternative, should this Board find that it cannot rule on the jurisdiction question without identification by FCWRD of the specific Illinois statute breached by MWRD, the MWRD moves for leave to serve a Bill of Particulars. Though the Board's procedural rules do not contain a provision for a motion for a Bill of Particulars, both the Board's procedural rules and Board decisions have recognized the applicability of Section 5/2-607 of the Illinois Code of Civil Procedure regarding the purposes of a Bill of Particulars. See 35 Ill. Adm. Code 101.100 (b); *E.g., T.O.T.A.L. v. City of Salem*, PCB No. 96-79, Dec. 7, 1995 Order, at p. 2. FCWRD should be required to articulate the specific statutory provisions regarding the regulation of stormwater in Cook County that affect MWRD to aid the Board in its examination of the jurisdictional question and to allow the MWRD to adequately respond to the complaint.

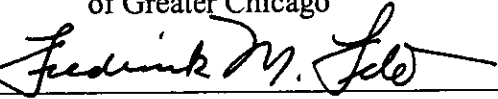
CONCLUSION

The District respectfully requests the Board strike and dismiss paragraphs 61 through 70 of Count II. The Board cannot grant the relief Complainant seeks under these paragraphs without first making a determination that the District has a statutory duty under Illinois law to maintain Flagg Creek and has violated that statutory duty. The District respectfully asserts that the Board does not have authority to make these determinations and accordingly it moves that Paragraphs 61 through 70 of Count II of FCWRD's complaint be dismissed as frivolous. Additionally, the District moves that these paragraphs be stricken as they are so wanting in details as to be impossible to answer.

Alternatively, if FCWRD's failure to cite the specific statutory provision allegedly breached by the District precludes the Board from entering a finding that it lacks authority, the District moves for leave to serve a Bill of Particulars requesting that Complainant identify the particular Illinois statute regarding stormwater regulation, under which FCWRD claims the District has committed a statutory violation.

Respectfully submitted,

Metropolitan Water Reclamation District
of Greater Chicago

By: 
Frederick M. Feldman, Attorney

Frederick M. Feldman/Lisa Luhrs Draper
Metropolitan Water Reclamation District
100 East Erie Street
Chicago, Illinois 60611
(312)751-6576

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PCB 06-

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 ILCD 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.

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.

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

EXHIBIT

A

that conveys wastewater to both the Metropolitan Water Reclamation District of Greater Chicago (MWRD) and the 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.

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.

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.

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.

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 both wet weather and dry weather.

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.

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.

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.

12. FCWRD's other main interceptor is the Storm Water Pollution Control ("SWPC") Interceptor which runs from its Spinning Wheel Pumping station south along I-294.

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.

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

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

16. The pumping capacity of the Spinning Wheel Pumping Station is greater than the capacity of the SWPC 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 SWPC Interceptor and create hydraulic obstructions and overflows in other interceptors.

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

18. FCWRD's Ordinance, which has been in place since 1931, revised in 1961 and 1980, prohibits combined sewer systems within its service area.

19. The unpermitted CSO events that occur in the FCWRD system do not comply with the CSO Control Policy, issued by the United States Environmental Protection Agency on April 19, 1994 (59 FR 18688), or state regulations governing CSOs found at 35 Il. Adm. Code Part 306, Subpart C.

20. 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.

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

Count I: The Village of Hinsdale

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

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

24. 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.

25. 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.

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

27. 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.

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.

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.

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.

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

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

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.

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.

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.

36. Hinsdale is in violation of FCWRD's ordinance prohibiting combined sewers to discharge to the FCWRD sewer system

37. 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.

38. 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.

39. 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.

40. 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, FCWRD's ordinance prohibiting wet weather flows, the Combined Sewer Overflow Control Policy issued by U.S. EPA, and Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

41. 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).

42. 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).

43. 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.

44. 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.

45. By failing to operate its leaf collection program to prevent leaves and stormwater from entering the FCWRD system, Hinsdale is in violation of the nine minimum controls required by the U.S. EPA's Combined Sewer Overflow Policy, and the FCWRD's ordinance.

46. 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 5/12(a).

47. By failing to operate its leaf collection program to prevent leaves from entering the FCWRD system, the Combined Sewer Overflow Control Policy issued by U.S. EPA, and Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

48. 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).

49. 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.

Count II: Metropolitan Water Reclamation District

50. FCWRD has historically served an area in Cook County that was placed under the jurisdiction of the MWRD in the 1970s.

51. Service to these areas in Cook County continues to be provided by FCWRD ("FCWRD-served area").

52. FCWRD has a draft agreement with MWRD that has not been executed, which requires MWRD to provide service to a roughly equivalent area in DuPage County that is within the FCWRD's statutory authority ("MWRD-served area").

53. FCWRD's sewer system accepts the dry weather and wet weather flows from the FCWRD-served area.

54. The MWRD sewer system has flow restrictors in its junction chambers where flows from Hinsdale are directed to the MWRD's sewer system.

55. On information and belief, the diversion structures cause a substantial amount of flow from the MWRD-served area to be blocked from entering the MWRD's sewer system.

56. On information and belief, those flows then make their way to the FCWRD sewer system.

57. On information and belief, the MWRD interceptor that receives the flows from the MWRD-served area has capacity that is not being used.

58. MWRD's diversion of flows from the MWRD-served area, combined with wet weather flows from the FCWRD-served area, cause or contribute to unauthorized CSOs within FCWRD's system, in violation of MWRD's NPDES permit, FCWRD's ordinance prohibiting wet weather flows, the Combined Sewer Overflow Control Policy issued by U.S. EPA, and Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

59. By diverting flows from the MWRD-served area to FCWRD, MWRD 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 5/12(a).

60. By diverting flows from the MWRD-served area to FCWRD, MWRD 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.

61. MWRD's diversion of flows from the MWRD-served area, combined with wet weather flows from the FCWRD-served area, interfere with FCWRD's fulfillment of its statutory duty to provide capacity for sanitary flows from existing and new residents within its service area.

62. MWRD is also authorized by statute to regulate stormwater within Cook County.

63. Pursuant to that authority, MWRD levies taxes on residents within Cook County, including residents within FCWRD, to ensure stormwater is appropriately managed and does not obstruct sewers and streams.

64. Stormwater that flows into Flagg Creek is obstructed by dead trees and other detritus and does not flow downstream.

65. During high flow events, the stormwater backs up into FCWRD's polishing pond, interfering with the pond's ability to polish the effluent from FCWRD and acting as a pollutant to FCWRD's pond.

66. MWRD has a duty by statute and its collection of taxes within the FCWRD service area to maintain Flagg Creek so that stormwater is not obstructed in the Creek.

67. MWRD has breached its statutory duty.

68. MWRD's breach of its statutory duty is a 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 5/12(a).

69. MWRD's breach of its statutory duty 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.

70. MWRD's breach of its statutory duty interferes with FCWRD's fulfillment of its statutory duty to provide capacity for sanitary flows from existing and new residents within its service area.

Count III: Illinois Department of Transportation

71. The Illinois Department of Transportation (IDOT) has jurisdiction over a part of 55th Street east of County Line Road, and is responsible for its operation, repair and maintenance.

72. 55th Street was originally constructed as a two-lane roadway, but IDOT expanded 55th Street east of County Line Road to a four-lane roadway and added curbs.

73. By expanding 55th Street and adding curbs, IDOT has substantially increased the amount of stormwater that is conveyed to the FCWRD.

74. The wet weather flows from 55th Street contribute to the unauthorized CSOs within FCWRD's system.

75. The wet weather flows from 55th Street interfere with the effective operation of FCWRD's wastewater treatment facility.

76. The wet weather flows from 55th Street interfere with FCWRD's ability to allow capacity for wastewater from existing and new residents within its service area.

77. By failing to provide for wet weather flows from 55th Street, IDOT is causing or contributing to unauthorized CSOs within FCWRD's system, in violation of FCWRD's ordinance prohibiting wet weather flows and Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

78. By failing to provide for wet weather flows from 55th Street, IDOT 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 5/12(a).

79. By failing to provide for wet weather flows from 55th Street, IDOT 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.

80. IDOT's wet weather flows from 55th Street interfere with FCWRD's fulfillment of its statutory duty to provide capacity for sanitary flows from existing and new residents within its service area.

Count IV: DuPage Department of Transportation

81. DDOT has jurisdiction over part of 55th Street west of County Line Road, and is responsible for its operation, repair and maintenance.

82. 55th Street was originally constructed as a two-lane roadway, but DDOT expanded 55th Street west of County Line Road to a four-lane roadway and added curbs.

83. DDOT has installed storm sewers on certain segments of 55th Street, but has not installed storm sewers to accept the runoff from all of 55th Street

84. In segments of 55th Street where no storm sewers are present, stormwater runoff enters the FCWRD's system through the 55th Street Interceptor.

85. The wet weather flows from 55th Street contribute to the unauthorized CSOs within FCWRD's system.

86. The wet weather flows from 55th Street interfere with the effective operation of FCWRD's wastewater treatment facility.

87. The wet weather flows from 55th Street interfere with FCWRD's ability to allow capacity for wastewater from existing and new residents within its service area.

88. By failing to provide for wet weather flows from 55th Street, DDOT is causing or contributing to unauthorized CSOs within FCWRD's system, in violation of FCWRD's ordinance prohibiting wet weather flows and Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

89. By failing to provide for wet weather flows from 55th Street, DDOT is causing or contributing to unauthorized CSOs within FCWRD's system, 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 5/12(a).

90. By failing to provide for wet weather flows from 55th Street, DDOT 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.

91. DDOT's wet weather flows from 55th Street interfere with FCWRD's fulfillment of its statutory duty to provide capacity for sanitary flows from existing and new residents within its service area.

Relief Requested

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

- A. Issue an order directing Hinsdale to comply with the direction of the Sanitary Water Board requiring Hinsdale to separate its combined sewer;
- B. Issue an order directing Hinsdale to comply with the FCWRD's ordinance prohibiting combined sewers;
- C. Issue an order directing Hinsdale to comply with the Act, Board regulations and the CSO Control Policy, and stop the storm water flows and large leaf load from entering FCWRD's sewers;
- D. Issue an order directing Hinsdale, MWRD, IDOT and DDOT to address their wet weather flows, and stop the storm water flows from entering FCWRD's sewers; and
- E. Grant any other additional relief which fully and completely rectifies the violations complained of herein.

FLAGG CREEK WATER
RECLAMATION DISTRICT

By: _____



One of Its Attorneys

Dated: March 3, 2006

GARDNER CARTON & DOUGLAS LLP

Richard J. Kissel

Roy M. Harsch

John A. Simon

Gardner Carton & Douglas LLP

191 North Wacker Drive

Suite 3700

Chicago, Illinois 60606

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