

**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,

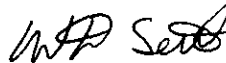
Respondents.

**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, a copy of which is herewith served upon you.

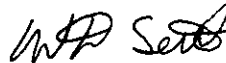
Respectfully Submitted,



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 the parties on the attached Service List on this 4<sup>th</sup> of May, 2006.



William D. Seith

William D. Seith  
Total Environmental Solutions, P.C.  
635 Butterfield Rd., Suite 240  
Oakbrook Terrace, IL 60181  
Main: 630-620-9100  
Fax: 630-620-9108  
[wdseith@tespc.com](mailto:wdseith@tespc.com)  
Dated: May 4, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

**SERVICE LIST**

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

<b>For the Flagg Creek Water Reclamation District:</b> Richard J. Kissel Roy M. Harsch John A. Simon Gardner Carton & Douglas, LLP 191 N. Wacker Dr., Suite 3700 Chicago, IL 60606 <a href="mailto:rkissel@gcd.com">rkissel@gcd.com</a> <a href="mailto:rharsch@gcd.com">rharsch@gcd.com</a> <a href="mailto:jsimon@gcd.com">jsimon@gcd.com</a>	<b>For the Illinois Department of Transportation:</b> Richard Christopher Special Assistant Attorney General Illinois Department of Transportation 300 W. Adams, 2 <sup>nd</sup> Floor Chicago, IL 60606 <a href="mailto:christopherra@dot.il.gov">christopherra@dot.il.gov</a>
<b>For the DuPage County, Division of Transportation:</b> Robert E. Douglas Assistant State's Attorney DuPage County State's Attorney's Office 505 N. County Farm Rd. Wheaton, IL 60187 630-407-8205	<b>For the Metropolitan Water Reclamation District of Greater Chicago:</b> Frederick M. Feldman Lisa Luhrs Draper Metropolitan Water Reclamation District of Greater Chicago 100 E. Erie St. Chicago, IL 60611-3154 312-751-6576
<b>For the Illinois Pollution Control Board:</b> Bradley Halloran Hearing Officer Illinois Pollution Control Board 100 W. Randolph St., Suite 11-500 Chicago, IL 60601 312-814-8917 <a href="mailto:hallorab@ipcb.state.il.us">hallorab@ipcb.state.il.us</a>	<b>Co-Counsel For the Village of Hinsdale:</b> Kenneth M. Florey Robbins Schwartz Nicholas Lifton & Taylor, Ltd. 20 N. Clark St., Suite 900 Chicago, IL 60602 312-332-7760 <a href="mailto:kflorey@rsnlt.com">kflorey@rsnlt.com</a>

**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.	)	

**Answer and Affirmative Defenses  
of Respondent, Village of Hinsdale**

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.

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 both wet weather and dry weather.

**Answer:** Hinsdale denies allegations of paragraph 8.

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 55<sup>th</sup> Street Interceptor, running west along 55<sup>th</sup> Street; the 59<sup>th</sup> Street Interceptor, running south along 59<sup>th</sup> Street; and the 63<sup>rd</sup> Street Interceptor, running south along 63<sup>rd</sup> 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 Storm Water Pollution Control ("SWPC") 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.*, and the creation, thereby, of the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Pollution Control Board ("Illinois PCB"). 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 Storm Water Pollution Control Interceptor along Interstate 294 (SWPC Interceptor). 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 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.

**Answer:** Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 15.

**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.

**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 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.

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

**Answer:** Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 18. Further stating, Hinsdale submits that FCWRD's ordinance speaks for itself. Further stating, Hinsdale submits that the Illinois PCB lacks jurisdiction

to enforce FCWRD's ordinances. Further stating, Hinsdale submits that any such ordinance is of no force and effect since Illinois EPA is the exclusive permitting authority for combined sewer systems.

**19.** The un-permitted 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 Ill. Adm. Code Part 306, Subpart C.

**Answer:** Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraph 19. 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 Illinois EPA.

**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.

**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 20.

**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.

**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 21.

#### **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.

**Answer:** Hinsdale admits that a portion of its sewer system is combined. Hinsdale admits the remaining allegations of paragraph 22.

**23.** 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 23. Hinsdale denies the remaining allegations of paragraph 23.

**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.

**Answer:** Hinsdale admits some portions of its system were constructed prior to 1900. Hinsdale denies the remaining allegations of paragraph 24.

**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.

**Answer:** Hinsdale admits the admits the allegations in paragraph 25.

**26.** 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 26.

**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.

**Answer:** Hinsdale admits the allegations of paragraph 27.

**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 SWPC 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.* and the creation, thereby, of the Illinois EPA and the Illinois PCB. 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 is in violation of FCWRD's ordinance prohibiting combined sewers to discharge to the FCWRD sewer system.

**Answer:** Hinsdale denies the allegations of paragraph 36. Further stating, Hinsdale submits that FCWRD's ordinance speaks for itself. Further stating, Hinsdale submits that the Illinois PCB lacks jurisdiction to enforce FCWRD's ordinances. Further stating, Hinsdale submits that any such ordinance is of no force and effect since Illinois EPA is the exclusive permitting authority for combined sewer systems.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 37.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 38.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 39.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 40. 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.* and the creation, thereby, of the Illinois EPA and the Illinois PCB. Further stating, Hinsdale submits that FCWRD's ordinance speaks for itself. Further stating, Hinsdale submits that the Illinois PCB lacks jurisdiction to enforce FCWRD's ordinances. Further stating, Hinsdale submits that any such ordinance is of no force and effect since Illinois EPA is the exclusive permitting authority for combined sewers. 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.

**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).

**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 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 42.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 43.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 44.

**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.

**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 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 46.

**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.

**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 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 48.

**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.

**Answer:** Hinsdale denies the allegations of paragraph 49.

**50. – 91.**

**Answer:** Hinsdale lacks knowledge sufficient to form a belief as to the allegations contained in paragraphs 50 through 91, 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.** In 1970, the Illinois General Assembly passed the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, *et seq.*, into law.

**3.** 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))

**4.** 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))

**5.** 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."

6. 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.

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

8. 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 Sanitary Water Board that may have been issued in 1968 is of no force and effect and has been superceded by passage of the Illinois Environmental Protection Act and the creation of the Illinois EPA and the Illinois PCB;

B. Issue an order finding that the Illinois PCB has no jurisdiction or authority to enforce ordinances issued by the FCWRD;

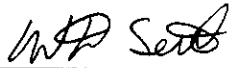
C. Issue an order finding that Illinois EPA has exclusive authority for permitting combined sewer systems and finding that FCWRD's ordinance prohibiting combined sewers is therefore of no force and effect;

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: May 5, 2006

Total Environmental Solutions, P.C.  
635 Butterfield Road, Suite 240  
Oakbrook Terrace, IL 60181  
630-620-9100  
[wdseith@tespc.com](mailto:wdseith@tespc.com)