BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Answer and Affirmative Defenses
Of Respondent, DuPage County

1. DuPage County admits that this action has been filed by the Flagg Creek Water Reclamation District (FCWRD). The remainder of this paragraph is not fact but legal conclusion which DuPage neither admits nor denies.

2. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 2.

3. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph **3.**

4. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 4.

5. DuPage admits the allegations contained in paragraph 5.

6. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 6.

7. DuPage denies that DDOT denies that it contributes excess flow to the FCWRD at any time. As to the actions of other respondents, DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 7.

8. DuPage denies the allegations of paragraph 8.

9. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 9.

10. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 10.

11. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 11.

12. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 12.

13. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 13.

14. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 14.

15. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 15.

16. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 16.

17. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 17.

18. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 18.

19. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 19.

20. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 20.

21. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 21.

Count IV: DUPAGE DEPARTNMENT OF TRANSPORTATION

81. DuPage admits that it has jurisdiction over portions of 55th Street within DuPage County and is responsible for operation, repair and maintenance for those sections under its jurisdiction.

82. DuPage admits that it has performed construction work on 55th Street west of County Line Road throughout the years.

83. DuPage admits that it installed storm sewers on some sections of 55th street and fiirther admits that it has not install storm sewers to accept the runoff from the entire length of 55th Street.

84. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 84.

85. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 85.

86. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 86.

87. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 87.

88. DuPage denies that it is causing or contributing to or causing unauthorized CSO's within the FCWRD in violation of any ordinance or statute to which it is subject.

89. DuPage denies that it is causing or contributing to or causing unauthorized CSO's within the FCWRD in violation of any ordinance or statute to which it is subject.

90. DuPage denies that it in violation of any ordinance or statute to which it is subject.

91. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 91.

AFFIRMATIVE DEFENSES

1. The right to drain water from County Highway is a property right which may only be adjudicated in a court of law.

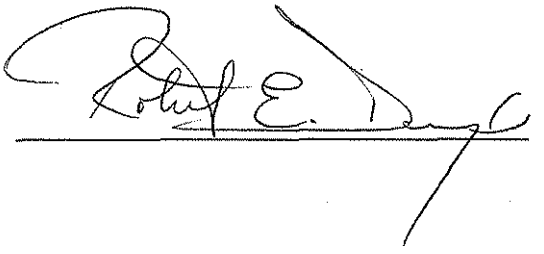
2. During its construction on 55th Street, DuPage sought and received input as to construction means and methods from the Hinsdale Sanitary District, predecessor in interest to the FCWRD. The input and requirements imposed by the Hinsdale Sanitary District were complied with in good faith by DuPage during the construction. FCWRD is now equitably estopped from asserting that the restrictions imposed by its predecessor were inadequate.

3 At all times prior to and during construction of 55th Street, the Hinsdale Sanitary District, predecessor in interest to the FCWRD was aware and had input into the plans

for the improvement, including storm water drainage, and no objection to the improvements as planned and constructed was made. FCWRD is now barred by the doctrine of laches from asserting any claim resulting from that construction.

4. FCWRD and its predecessor in interest failed to mitigate any damage resulting from the actions of DuPage.

DUPAGE COUNTY



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