

BEFORE THE 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.

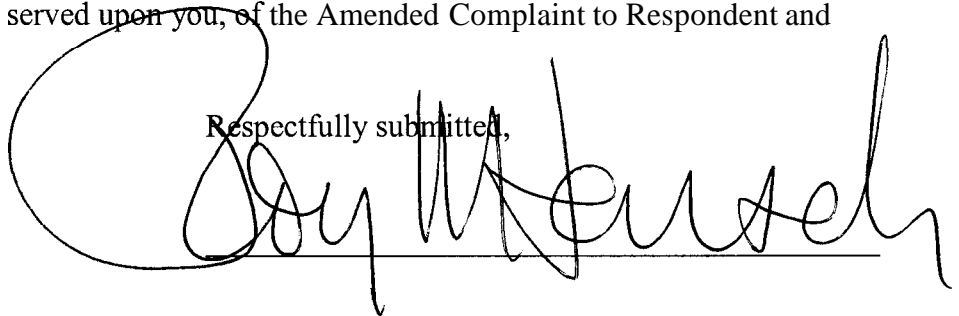
PCB 06-141

NOTICE OF FILING

To: PERSONS ON ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Office of the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois, copies of which are herewith served upon you, of the Amended Complaint to Respondent and Notice of Filing.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Roy M. Harsch", is written over a horizontal line.

GARDNER CARTON & DOUGLAS LLP
Richard J. Kissel
Roy M. Harsch
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Dated: June 29, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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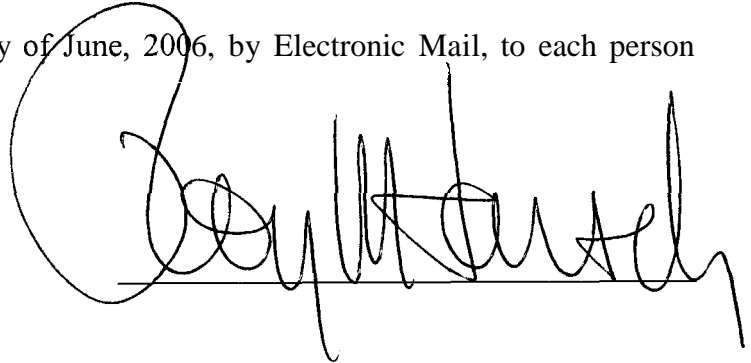
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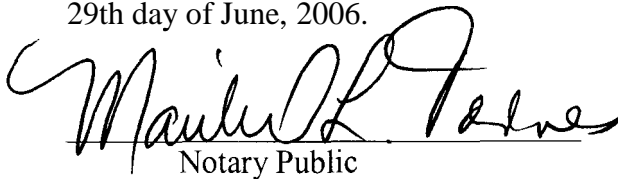
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CERTIFICATE OF SERVICE

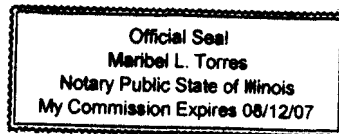
The undersigned being first duly sworn upon oath states that I served a Notice of Filing and Amended Complaint, on the 29th day of June, 2006, by Electronic Mail, to each person listed on the attached service list.



Subscribed and sworn to before me this
29th day of June, 2006.


Notary Public

CH02/ 22454377.1



SERVICE LIST

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For the Village of Hinsdale

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Amended Complaint

Jurisdiction

1. Complainant Flagg Creek Water Reclamation District (FCWRD), by and through its counsel Gardner Carton & Douglas LLP, brings this Amended 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

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 wet 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 Spinning Wheel Interceptor formerly known as the Storm Water Pollution Control 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 Spinning Wheel Interceptor, along Interstate 294. See Figure 1.

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.

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.

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.

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.

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.

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.

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.

22. 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.

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.

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.

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

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.

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."

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 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.

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 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.

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.

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.

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.

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).

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).

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.

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.

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.

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 5/12(a).

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

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).

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.

Count II: Metropolitan Water Reclamation District

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

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

51. 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").

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

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

54. 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.

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

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

57. 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, and Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

58. 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).

59. 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.

60. 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.

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

62. 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.

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

64. 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.

65. MWRD's failure to remove the dead trees and other detritus from Flagg Creek so that stormwater is not obstructed in the Creek, is a violation of the Act's prohibition on causing or contributing to water pollution, and a violation of regulations and standards adopted by the Board under the Act, 415 ILCS 5/12(a) as well as a 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.

66. MWRD interferes with FCWRD's fulfillment of its statutory duty to provide capacity for sanitary flows from existing and new residents within its service area by MWRD's failure to remove detritus from Flagg Creek downstream from FCWRD's WWIP.

Count III: Illinois Department of Transportation

67. 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.

68. 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.

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

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

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

72. 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.

73. 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 Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

74. 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).

75. 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.

76. 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

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

78. 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.

79. 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

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

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

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

83. 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.

84. 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 Illinois regulations governing CSOs, found at 35 Il. Adm. Code Part 306, Subpart C.

85. 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).

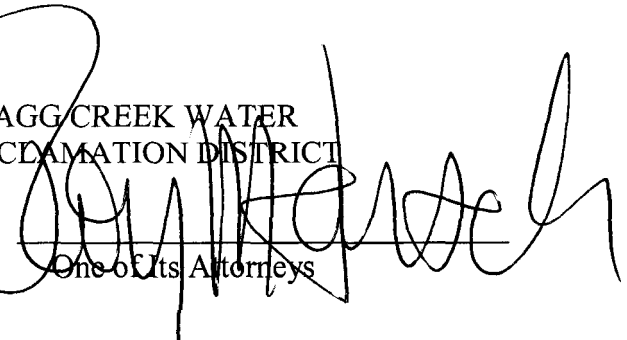
86. By failing to provide for wet weather flows from 55th street, DDOT is in violation of the Board rule at 35 Il. Adm. Code 307.1101, prohibiting any person from introducing pollutants that interfere with the operation and performance of FCWRD.

87. 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 Act, Board regulations, and stop the storm water flows and large leaf load from entering FCWRD's sewers;
- C. 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
- D. 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

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