

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FLAGG CREEK WATER RECLAMATION)
DISTRICT)

Complainant)

v.)

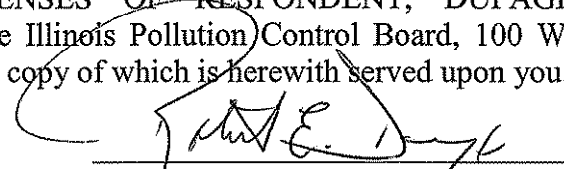
PCB 06-141

VILLAGE OF HINSDALE, METROPOLITAN)
WATER RECLAMATION DISTRICT OF)
GREATAER CHICAGO, ILLINOIS)
DEPARTMENT OF TRANSPORTATION,)
DUPAGE COUNTY)
Respondents.)

NOTICE OF FILING

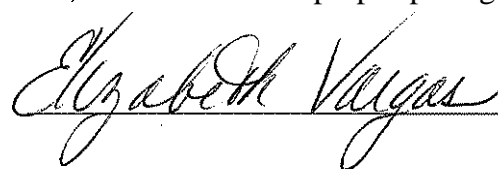
To: See attached service list.

PLEASE TAKE NOTICE that on the 15th day of August, 2006, the enclosed ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT, DUPAGE COUNTY, was filed with the Office of the Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, IL a copy of which is herewith served upon you.

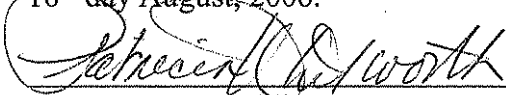

ROBERT E. DOUGLAS
Assistant State's Attorney

CERTIFICATE OF SERVICE

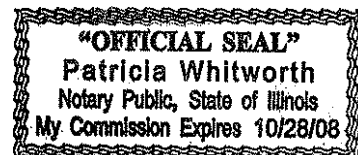
The undersigned being first duly sworn upon oath states that I served this notice on the 16th day of August, 2006, by mailing a copy to each person to whom it is directed and depositing the same in the U.S. Mail at Wheaton, Illinois with the proper postage prepaid.



Subscribed and sworn to before me this
16th day August, 2006.


Notary Public

W:RED:Flagg creek.nof-coS2



SERVICE LIST

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

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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 and therefore denies same.
3. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 3 and therefore denies same.
4. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 4 and therefore denies same.
5. DuPage admits the allegations contained in paragraph 5.
6. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 6 and therefore denies same.
7. DuPage 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 and therefore denies same.

10. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 10 and therefore denies same.

11. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 11 and therefore denies same.

12. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 12 and therefore denies same.

13. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 13 and therefore denies same.

14. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 14 and therefore denies same.

15. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 15 and therefore denies same.

16. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 16 and therefore denies same.

17. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 17 and therefore denies same.

18. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 18 and therefore denies same.

19. DuPage denies the allegation of paragraph 19 as they pertain to County of DuPage. DuPage lacks sufficient knowledge to either admit or deny the remainder of the allegations contained in Paragraph 19.

20. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 20 and therefore denies same.

Count IV: DUPAGE DEPARTMENT OF TRANSPORTATION

77. 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. To the extent any allegation is inconsistent with this statement, DuPage denies same.

78. DuPage admits that it has performed construction work on 55th Street west of County Line Road throughout the years, adding additional lanes at various times. DuPage further admits that 55th Street went from two lanes to 4lanes in various sections but lacks sufficient knowledge to either admit or deny the remaining allegations in paragraph 78 and therefore denies same.

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

80. DuPage admits that along certain sections of 55th Street stormwater enters the FCWRD's system in the same manner as it has done so historically and denies that by its doing so, DuPage has breached any duty. DuPage denies the remainder of the allegations of Paragraph 80.

81. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 81 and therefore denies same.

82. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 82 and therefore denies same.

83. DuPage lacks sufficient knowledge to either admit or deny the allegations in Paragraph 83 and therefore denies same.

84. DuPage denies that it is causing or contributing to or causing any unauthorized CSO's within the FCWRD in violation of any ordinance or statute to which it is subject. DuPage denies the remainder of the allegations in paragraph 84.

85. DuPage denies that it is causing or contributing to or causing any unauthorized CSO's within the FCWRD in violation of any ordinance or statute to which it is subject. DuPage denies the remainder of the allegations in paragraph 85.

86. DuPage denies the allegations contained in paragraph 86.

87. 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.

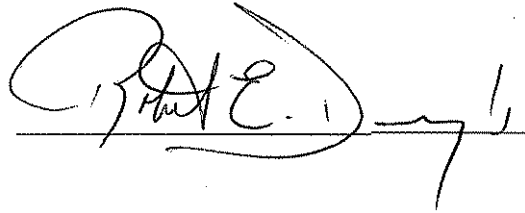
2. During its construction on 55th Street, DuPage sought and received input as to construction means and methods from the Hinsdale Sanitary District, predecessor in

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

A handwritten signature in black ink, appearing to read "Robert E. Douglas", is written over a horizontal line. The signature is stylized and cursive.

JOSEPH E. BIRKETT
DUPAGE STATE'S ATTORNEY
BY: Robert E. Douglas
ASSISTANT STATE'S ATTORNEY
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Wheaton, IL 60187
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Robert.Douglas@dupageco.org

Dated: August 9, 2006