

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FLAGG CREEK WATER RECLAMATION)	
DISTRICT,)	
Complainant,)	PCB 06-141
v.)	
VILLAGE OF HINSDALE, ILLINOIS)	
DEPARTMENT OF TRANSPORTATION,)	
DUPAGE COUNTY, <i>et al.</i>)	
Respondents.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 15, 2015, I filed, electronically with the Office of the Clerk of the Illinois Pollution Control Board, **Flagg Creek Water Reclamation District Reply to Motion to Deem Facts Admitted**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

Flagg Creek Water Reclamation District

BY: _____



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THIS FILING BEING SUBMITTED ELECTRONICALLY

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)	

FLAGG CREEK WATER RECLAMATION
REPLY TO MOTION TO DEEM FACTS ADMITTED

NOW COMES Complainant, Flagg Creek Water Reclamation District, (hereinafter, the "District"), by and through its attorneys, in response to Motion to Deem Facts Admitted filed by Respondent DuPage County ("Motion"). In support thereof, the District states as follows:

1. Respondent DuPage County mailed its Motion by First Class Mail on August 28, 2015. Accordingly, pursuant Section 101.300 c) of the Pollution Control Board rules the District reply is due on or before September 15, 2015.

2. Pursuant to Section 101.618 (b) of the Board Rules, the District is filing a Motion Requesting an Extension to Answer or in the Alternative Objet to the Request to Admit today ("District Motion"). The District requests that this District Motion be incorporated by reference into this Reply. The District also has served Respondent DuPage its Response to the Request to Admit today which is conditioned upon entry of the requested relief set forth in the District Motion.

3. In Paragraph 2 of the District Motion the District explains that it became aware that the Respondent DuPage County's Request to Admit does not fulfil the mandated requirements of Section 101.601 (c) while preparing this Reply. In raising this objection the

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District is not arguing that Respondent is not entitled to a response to its Request to Admit and the District has in fact prepared such a response and has proceeded to serve it. However, the requirements of Section 101.601 (c) appear to be mandatory and the original Request to Admit clearly does not comply. Accordingly, the Motion should be denied because of this failure.

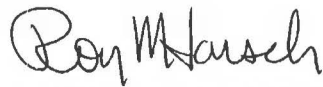
4. Respondent DuPage sets forth the long time period that went by with no response or request for an extension from the District. The District cannot deny that this delay occurred. In the District Motion, the undersigned clearly understands that this occurred, that he takes full responsibility for the delay and presents the reasons that gave rise to this situation. Apart from the delay, Respondent DuPage County has not set forth any reason to support any claim that will be adversely impacted by the delay that has occurred. As the Hearing Officer is aware the parties to this case have been engaged in trying to settle this matter rather than proceeding with litigation. It is clear that the parties have been engaged in settlement discussions in an attempt to find a means to resolve this matter without the need for litigation. This is clearly evidenced in the Hearing Officer Order dated on July 28, 2015. The parties have a settlement meeting scheduled on September 23, 2015 which was the earliest that they could meet due to conflicting schedules. The District is hopeful that settlement can occur and a means can be reached to allow this to happen. The District is very appreciative that this has been the course that the parties have here to fore taken and one that the Hearing Officer has condoned and allowed to take place. There is no pending discovery cut off and no hearing date set. Clearly, Respondent DuPage County was and is owed a response by the District to their request. Because there is no discovery cutoff and no hearing has been set for this case, Respondent DuPage County cannot show that the delay has caused it to be prejudiced. The District is hopeful that the Hearing Officer will see his way to grant the District Motion and provide it an extension Pursuant to

Section 101.618 (b) to allow its Response to the Request to Admit which has been served today to become effective. The undersigned on behalf of the District respectfully requests that the Hearing Officer accept the reasons set forth in the District Motion as sufficient ground and grant the District Motion.

5. In summary, the undersigned is responsible for the District not having filed a timely response or request for an extension earlier and but believes that sufficient cause has been stated to allow the Hearing Officer to grant the District Motion and grant an extension of time notwithstanding the passage of the deadline for responding to a proper Requests to Admit. The Hearing Officer has authority to grant extensions before or after the deadline. Granting such an extension will in no way prejudice Respondent DuPage County. Alternatively, the District requests that the Hearing Officer accept the District Motion as an objection to the newly recognized failure to comply with the requirement of Section 101.618 (c), direct that the Request to Admit be revised accordingly and reserved upon the District and accordingly deny the Motion. In so doing, the District is hopeful that the efforts continue to be directed toward attempting to resolve this matter and not litigation and has accordingly proceeded to send Respondent DuPage County its response pending ruling by the Hearing Officer on the pending motions.

WHEREFORE, for all the foregoing reasons, the District respectfully requests that the Hearing Officer deny Respondent DuPage County's Motion.

Respectfully submitted,
Flagg Creek Water Reclamation District

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Flagg Creek Water Reclamation District Reply to Motion to Deem Facts Admitted** was filed electronically with the Clerk of the Illinois Pollution Control Board and served upon the parties below by U.S. First Class Mail and Electronic Mail on Tuesday, September 15, 2015.

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