

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.	)	
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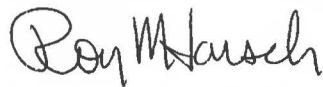
**NOTICE OF FILING**

**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 Motion Requesting an Extension to Answer or in the Alternative Object to the Request to Admit**, 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 IS BEING SUBMITTED ELECTRONICALLY**

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DISTRICT,	)	
Complainant,	)	PCB 06-141
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**FLAGG CREEK WATER RECLAMATION  
MOTION REQUESTING AN EXTENSION  
TO ANSWER OR IN THE ALTERNATIVE OBJECT TO THE REQUEST TO ADMIT**

NOW COMES Complainant, Flagg Creek Water Reclamation District, (hereinafter, the “District”), by and through its attorneys, and respectfully requests that the Hearing Officer grant this motion requesting an extension of time to submit its answer or alternatively object to Respondent DuPage County’s Request to Admit to Complaint (“Request to Admit”). In support thereof, the District states as follows:

1. Respondent DuPage County mailed its Request to Admit by First Class Mail on May 22, 2015. The Request to Admit which set forth a presumed due date of June 26, 2015.
2. While preparing a response to the Respondent DuPage County Motion to Deem Facts Admitted, the undersigned first became aware that The Request to Admit is improper in that it fails to comply with the mandatory requirement found in Section 101.618 (c) which states as follows:

Request to Admit. Any party serving a request to admit in accordance with subsection (d) or (e) must include the following language in the first paragraph of the request. “Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this

proceeding or an attorney.”

3. Respondent DuPage County sought an admission of four statements of facts pursuant to Section 101.601 (d) but did not set forth the required text in the first paragraph as evidenced by their inclusion of the actual Request to Admit as Exhibit A to their Motion To Deem Facts Admitted filed on August 28, 2015 notwithstanding, the prohibition set forth in Section 101.302 (i) to filing any such requests for admission with the Clerk of the Board without leave or direction to do so.

4. The undersigned counsel for the District became aware of the Request to Admit and forwarded it to the District on June 10, 2015. However, the requirements of other matters coupled with the absence of key people at the District prevented completion of the review of the Request to Admit and preparation of a response by June 28, 2015. However, the failure to timely respond and the subsequent failure to request an extension of time to respond is the responsibility of the undersigned. Substantially impacting the delay was the absence of the undersigned from the office while he was engaged in preparing for his son's wedding on June 28, 2015 at the family residence in Door County, Wisconsin. At the beginning of the following week the undersigned was also not available because of a family medical emergency. The undersigned's return to work was further delayed when he suffered in excess of 65 insect bites resulting in the need for emergency medical attention to address his reaction to the bites which kept him from returning to work for an additional period of time. When the undersigned was able to return to work he was faced with a considerable back log of work and did not proceed to seek an extension of time to respond. This was discussed with Council for Respondent DuPage County who did not agree to an extension as stated in their Motion to Deem Facts Admitted. The undersigned completed review of the responses to the Request to Admit and obtained the

signature from the necessary individual at the District and completed a Request for Extension pleading to be filed for ruling by the Hearing Officer.

5. The undersigned believed that it had been filed during the first week of September shortly after the discussions with the counsel for Respondent DuPage County. Unfortunately, the undersigned was mistaken and the document did not get filed. On August 30, 2015 a severe storm occurred in Door County which resulted in trees being knocked down onto the undersigned cottage and the loss of power throughout the area. The undersigned had to remain in Door County to address the damage. While the power was restored the second day, internet and cell phone service was not completely restored until the end of the week.

6. While this was happening the undersigned's computer apparently had issues that resulted in a number of messages not being actually sent and no indication that they had not been sent and received. Thus, emails regarding the completion of the Motion for Extension and the Response to the Request to Admit were not received and the documents were in fact not completed as requested. In hindsight the reason these documents did not get filed was entirely the fault of the undersigned in providing conflicting direction, failure to follow up on his directions and the assumption that the directions were received and acted upon. The first time the undersigned became aware that the Motion for Extension and the District's response had not been filed was upon reading the Motion For Deeming Facts Admitted.

7. 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. 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.

8. This response has been prepared and is being served upon Respondent DuPage County today. The District understands that this response will not be effective unless the Hearing Officer issues an Order granting the District additional time to answer or otherwise respond to the Request to Admit and denies Respondent DuPage County's Motion to Deem Facts Admitted. The Board's Procedural Rules at Section 101.618 (2) provide that the Hearing Officer may extend the time for filing any request, answer, or objection either before or the filing deadline. The District is hopeful that it will be afforded an opportunity to respond and that the Motion to Deem Facts Admitted is not granted due to the inaction of the undersigned as set forth above.

9. By responding to the Request to Admit today, the District is not relying upon the technicality that the Request to Admit does not comply with the Board mandate as set forth in Paragraph 2 above provided the requested extension of time to respond is granted. However, in the event that the Hearing Officer is unwilling to grant the requested extension, the District requests that the Hearing Officer enter an Order directing Respondent DuPage County to amend its Request to Admit and reserve it upon the District given that it has failed to comply with Section 101.618 c). The Request to Admit is improper on its face and the District requests that the Hearing Officer so order.

10. 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 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 this Motion as an objection to the newly recognized failure to comply with the requirement of Section 101.618 (c) and direct that the Request to Admit be revised accordingly and reserved upon the District. 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 grant its Motion Requesting an Extension to respond to Respondent DuPage County's Request to Admit or in the alternative accept this objection and order that the Request to Admit be revised to conform with the mandated requirements and be reserved upon the District.

Respectfully submitted,  
Flagg Creek Water Reclamation District

BY:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **Flagg Creek Water Reclamation District Motion Requesting an Extension to Answer or in the Alternative Object to the Request to Admit** 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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