

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FLAGG CREEK WATER RECLAMATION
DISTRICT,

Complainant,
v.

VILLAGE OF HINSDALE, ILLINOIS
DEPARTMENT OF TRANSPORTATION,
DUPAGE COUNTY, *et al.*

Respondents.

PCB 06-141

NOTICE OF FILING

TO: Roy M. Harsch
Drinker, Biddle, Gardner & Carton
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1698
Roy.Harsch@dbr.com

John A. Simon
Drinker, Biddle, Gardner &
Carton
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1698
John.Simon@dbr.com

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste 11-500
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

CC: Barbara Reynolds
Assistant State's Attorney
DuPage County State's Attorney's
Office
505 N. County Farm Road
Wheaton, IL 60187
Barbara.Reynolds@dupageco.org

William D. Seith
917 Cleveland Road,
Hinsdale, IL 60521
wdseith@aol.com

PLEASE TAKE NOTICE that on August 28, 2015, we filed, electronically with the Illinois Pollution Control Board, (1) this **Notice of Filing**; and the attached (2) **Motion to Deem Facts Admitted**, copies of which are served upon you.

Dated: August 28, 2015

Respectfully submitted,

Jennifer J. Sackett Pohlenz
CLARK HILL PLC
150 N Michigan Ave | Suite 2700 |
Chicago, Illinois 60601
312.985.5912 (direct) | 312.985.5971 (fax) |
Attorney Registration No. 6225990

RESPONDENT, DUPAGE COUNTY

By:


Special Assistant State's Attorney

CERTIFICATE OF SERVICE

I, Tammy Braun, a non-attorney, certify¹ I served or caused to be served this **Notice of Filing** and the attached **Motion to Deem Facts Admitted**, to each person at the addresses listed above *via* both email and regular First Class U.S. mail addressed as identified above, by placing same in U.S. mail located at and emailing from 150 N. Michigan Ave., Chicago, Illinois 60601 at or before 5:00 p.m., on August 28, 2015.



¹ Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the above signed certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the above signed certifies as aforesaid that she verily believes the same to be true.

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.)	

MOTION TO DEEM FACTS ADMITTED

Now comes the Respondent DuPage County, by and through its State's Attorney and Special State's Attorney, and pursuant to Section 101.618 of the Illinois Pollution Control Board's (Board) Procedural Rules, hereby moves for the entry of an order deeming all facts in Respondent DuPage County's First Request to Admit Facts as admitted against Petitioner Flagg Creek Water Reclamation District (FCWRD). (35 IAC 101.618). Pursuant to Section 101.502(a) of the Board's Procedural Rules, this Motion is directed to the Hearing Officer.

1. Section 101.618(f) of the Board's Procedural Rules provides as follows:

Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission. (35 IAC 101.618(f))

2. Section 101.300(c) of the Board's Procedural Rules provides, in pertinent part, as follows: "In the case of service by U.S. Mail, service is presumed complete four days after mailing."

3. On May 22, 2015, Respondent DuPage County mailed FCWRD its First Request to Admit Facts. A true and correct copy of the Certificate of Service and First Request to Admit Facts is attached as **Exhibit A**.

4. Pursuant to the Board's Procedural Rule 101.300(c) and 101.618(f), Petitioner FCWRD's answer to the First Request to Admit Facts was due on or before June 23, 2015 (28 days + 4 days by mail). However, Respondent stated the due date on its Certificate of Service for the answers to the Request to Admit as on or before June 26, 2015, and would have considered the answer timely if filed on or before that date.

5. As of the date of filing this Motion, no answer from FCWRD to the First Request to Admit has been received by Respondent DuPage County.

6. Petitioner has been represented by attorneys since it filed the complaint in the subject action in 2006.

7. It has been 98 days since Respondent DuPage County mailed its First Request to Admit to FCWRD.

8. There are a total of 4 questions in the First Request to Admit.

9. On or about July 29 and July 30, 2015, counsel for Respondent for DuPage County and counsel for Petitioner FCWRD exchanged several emails. As part of the email exchange Petitioner FCWRD requested that Respondent DuPage County not object to Petitioner's late filing of its answers to the First Request to Admit, and Respondent DuPage County declined that

Request. It has been 29- days since that exchange and no motion from FCWRD seeking leave for a late filing of its answers has been filed.

10. No good cause has been presented for a 66-day (98 days since mailing – 28 days – 4 days) delay to answer the 4-question First Request to Admit. No good cause has been presented for why Petitioner FCWRD did not seek an extension of time, should one have been needed, prior to the date on which its answers to the First Request to Admit were due, on June 26, 2015.

WHEREFORE, Respondent DuPage County respectfully requests that the Hearing Officer enter an order:

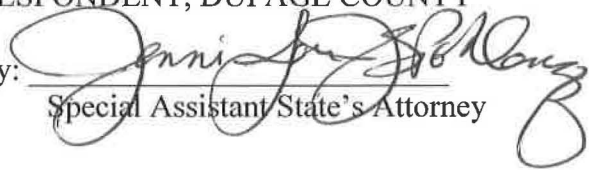
- A. Finding that pursuant to Section 101.618 of the Board's Procedural Rules, Petitioner FCWRD has admitted all facts contained in the Respondent DuPage County's First Request to Admit Facts; and
- B. Ordering such other and further relief as is appropriate under the circumstances.

Dated: August 28, 2015

Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Avenue, Suite 2700
Chicago, IL 60601
Direct Dial: 312-985-5912
Email: jpohlenz@clarkhill.com

Respectfully submitted,

RESPONDENT, DUPAGE COUNTY

By: 
Special Assistant State's Attorney

THE ILLINOIS POLLUTION CONTROL BOARD

FLAGG CREEK WATER RECLAMATION
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VILLAGE OF HINSDALE, ILLINOIS
DEPARTMENT OF TRANSPORTATION, DUPAGE
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DUPAGE COUNTY'S FIRST RULE 216 REQUEST TO ADMIT TO COMPLAINANT

TO: Roy M. Harsch
John A. Simon
Drinker, Biddle, Gardner & Carton
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1698

CC: Barbara Reynolds
DuPage County State's Attorney Office
505 N. County Farm Road
Wheaton, IL 60187


CC: William D. Seith
917 Cleveland Road
Hinsdale, IL 60521

YOU ARE HEREBY REQUESTED to answer the following requests to Admit within twenty-eight (28) days, on or before June 26, 2015, unless an extension is otherwise agreed to between the parties, and provide a certification as to your answers:

DEFENDANT, DUPAGE COUNTY

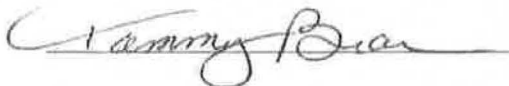
Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Avenue, Suite 2700
Chicago, IL 60601
Direct Dial: 312-985-5912
Email: jpohlenz@clarkhill.com

By:


Special Assistant State's Attorney

Certificate of Service

I, Tammy Braun, a non-attorney, certify¹ that I served this Request to Admit by depositing the same in the U.S. mail located at 150 N. Michigan Ave., Chicago, Illinois, with First Class postage affixed, before 5:00 p.m. on May 22, 2015.



¹ Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the above-signed certifies as aforesaid that she verily believes the same to be true.

THE ILLINOIS POLLUTION CONTROL BOARD

FLAGG CREEK WATER RECLAMATION DISTRICT,)	
)	
Complainant,)	PCB 06-141
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REQUEST TO ADMIT TO COMPLAINANT

DEFINITIONS

For purposes of this Request to Admit to Complainant, the following terms have the definitions specified below:

- A. "DuPage County" means the Respondent DuPage County, incorrectly named as "Department of Transportation, DuPage County" in the Amended Complaint.
- B. "55th Street Interceptor" has the meaning of the term as used in Paragraph 80 of the Amended Complaint.
- C. "55th Street storm water flows" means the storm water from that portion of 55th Street under the jurisdiction of DuPage County and that is the subject of Count IV of the Amended Complaint.

REQUESTS TO ADMIT

1. The Complainant's allegation against DuPage County of water pollution is that the 55th Street storm water flows enter the 55th Street Interceptor.

ANSWER:

2. The 55th Street storm water flows are waters of the State of Illinois.

ANSWER:

3. DuPage County does not alter the physical, thermal, chemical, biological or radioactive properties of the 55th Street storm water flows.

ANSWER:

4. The Complainant permitted DuPage County's connection of the 55th Street storm water flows to the 55th Street Interceptor.

ANSWER:

Dated: May 22, 2015

Jennifer J. Sackett Pohlenz
Clark Hill PLC
150 N. Michigan Avenue, Suite 2700
Chicago, IL 60601
Direct Dial: 312-985-5912
Email: jpohlenz@clarkhill.com

Respectfully submitted,
DUPAGE COUNTY

By:


Special Assistant State's Attorney