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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

PCB04-81

Lisa Madigan
ATTORNEY GENERAL

November 6, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Emmett Utilities and Russell D. Thorell***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, APPEARANCE and COMPLAINT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Thomas Davis', is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 10 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)

Complainant,)

vs.)

EMMETT UTILITIES, INC., an Illinois)
corporation, and RUSSELL D.)
THORELL, individually and as)
president of EMMETT UTILITIES, INC.,)

Respondent.)

PLB No. 04-81

NOTICE OF FILING

To: EMMETT UTILITIES, INC.
RUSSELL D. THORELL
President
RR2, Box 58N
Oquawka, IL 61469

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

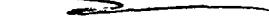
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 6, 2003


CERTIFICATE OF SERVICE

I hereby certify that I did on November 6, 2003, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: EMMETT UTILITIES, INC.
RUSSELL D. THORELL
President
RR2, Box 58N
Oquawka, IL 61469

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)

Complainant,)

vs.)

EMMETT UTILITIES, INC., an Illinois)
corporation, and RUSSELL D.)
THORELL, individually and as)
president of EMMETT UTILITIES, INC.,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-81


ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, THOMAS DAVIS, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 6, 2003

NOV 10 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 EMMETT UTILITIES, INC.,)
 an Illinois corporation, and)
 RUSSELL D. THORELL, individually and)
 as president of EMMETT UTILITIES, INC.)
)
 Respondents.)

PCB NO. 04-81
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, EMMETT UTILITIES, INC., and RUSSELL THORELL, as follows:

COUNT I
NOTIFICATION VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion, pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois Environmental Protection Agency ("Illinois EPA") is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. Respondent, EMMETT UTILITIES, INC., an Illinois corporation, is a "public water supply" as that term is defined under Section 3.365 of the Act, 415 ILCS 5/3.365 (2002), as follows:

"Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures,

intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year.

4. At all times relevant to this Complaint, Respondent, RUSSELL THORELL, has owned EMMETT UTILITIES, INC., and has served as its corporate president. RUSSELL THORELL is individually liable for the violations alleged herein as a responsible corporate officer because of his direct and personal involvement in the acts and omissions causing or resulting in the violations.

5. At all times relevant to this Complaint, the Respondents have owned and operated a public water supply and wastewater treatment system at Stratford West, a townhouse subdivision, near Macomb in McDonough County, Illinois. The water supply serves approximately 22 direct service connections from one drilled well. The wastewater treatment system consists of a lagoon divided into four cells by wooden walls.

6. On May 9, 2003, the Circuit Court of McDonough County entered an Order in *People of the State of Illinois v. Emmett Utilities, Inc., and Russell Thorell*, No. 01 CH 2, following a trial conducted on July 22, 2002, thereby adjudicating violations of the Act, the Board's Public Water Supply and Water Pollution Regulations, and the NPDES Permit. The Attorney General's Office has been involved with enforcement actions against these parties since at least 1996. In her involvement with this case, the Attorney General has identified additional violations which are being pursued in this Complaint.

7. The Respondents are each a "person" as that term is defined under Section 3.26 of the Act, 415 ILCS 5/3.26 (2002), as follows:

"Person" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

8. Section 18(a) of the Act, 415 ILCS 5/18(a) (2002), provides, in pertinent part:

(a) No person shall:

- (1) Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or
- (2) Violate regulations or standards adopted by the Agency pursuant to Section 15(b) of this Act or by the Board under this Act; or
- (3) Construct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such a permit.

9. Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm.

Code 601.101, provides that:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act (Act), the Pollution Control Board (Board) Regulations, the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

10. Section 607.103(c) of the Board's Public Water Supplies Regulations, 35 Ill.

Adm. Code 607.103(c), provides that:

Whenever the safety of a supply is endangered for any reason, including but not limited to spillage of hazardous substances, the Agency shall be notified immediately by the owner, official custodian or his authorized representative, and the supply officials shall take appropriate action to protect the supply. The owner, official custodian or his authorized representative shall notify all consumers of appropriate action to protect themselves against any waterborne hazards. If the owner or official custodian of the supply fails to take such action on his own or at the recommendation of the Agency, the Agency shall notify directly the consumers affected.

11. On August 28, 2003, the Illinois EPA was informed of a total water outage by customers of the public water supply. The Illinois EPA then contacted the certified water

operator for the public water supply and a contract employee of the Respondents, who stated that the well pump, which was twenty years old, had failed and attempts to repair it were unsuccessful.

12. On August 28, 2003, the Illinois EPA contacted RUSSELL THORELL and directed the Respondents to replace the well pump and to restore service. RUSSELL THORELL stated that the Respondents would not replace the well pump and restore service until a pending rate increase might be granted by the Illinois Commerce Commission.

13. The malfunction of the pump to the sole well of this public water supply resulted in the total water outage and thereby endangered the safety of the supply. The Respondents failed to immediately notify the Illinois EPA and to take appropriate action to protect the supply as required by Section 607.103(c) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 607.103(c).

14. By failing to immediately notify the Illinois EPA and to take appropriate action to protect the supply in violation of Section 607.103(c) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 607.103(c), the Respondents thereby violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

15. EMMETT UTILITIES, INC., has been previously adjudicated in violation of Section 18 of the Act, 415 ILCS 5/18 (2002), and these presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

16. The presently alleged violations as to RUSSELL THORELL constitute wilful or knowing violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondents, EMMETT UTILITIES, INC., and RUSSELL THORELL:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that EMMETT UTILITIES, INC., has violated the Act and regulations as alleged herein;
- C. Finding that RUSSELL THORELL is personally liable as a responsible corporate officer for the violations of the Act and regulations as alleged herein;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondents a monetary penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT II
FAILURE TO PROVIDE CONTINUOUS MAINTENANCE

1-12. Complainant realleges and incorporates herein paragraphs 1 through 12 of Count I as paragraphs 1 through 12 of this Count II.

13. The well pump at the public water supply was repaired or replaced on August 30, 2003.

14. By allowing the well pump to fail on August 27, 2003, the Respondents failed to provide continuous operation and maintenance of public water supply facilities so that the water

shall be assuredly safe in quality and adequate in quantity for ordinary domestic consumption in violation of Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101.

15. By subsequently failing or refusing to repair or replace the well pump, the Respondents failed to provide continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality and adequate in quantity for ordinary domestic consumption in violation of Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101.

16. By violating Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101, the Respondents thereby violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

17. EMMETT UTILITIES, INC., has been previously adjudicated in violation of Section 18 of the Act, 415 ILCS 5/18 (2002), and these presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

18. The presently alleged violations as to RUSSELL THORELL constitute wilful or knowing violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondents, EMMETT UTILITIES, INC., and RUSSELL THORELL:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that EMMETT UTILITIES, INC., has violated the Act and regulations as alleged herein;
- C. Finding that RUSSELL THORELL is personally liable as a responsible corporate officer for the violations of the Act and regulations as alleged herein;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondents a monetary penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT III
WATER POLLUTION VIOLATIONS

1-7. Complainant realleges and incorporates herein paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count III.

8. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

9. Section 12 of the Act, 415 ILCS 5/12 (2002), provides, in pertinent part, as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

10. Overflows from sanitary sewers are expressly prohibited by Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304.

11. EMMETT UTILITIES, INC., is authorized, pursuant to NPDES Permit No. IL0071030, to discharge treated effluent to a receiving stream from the lagoon wastewater treatment system. This unnamed stream is a tributary to the LaMoine River, both of which are "waters" of the State as defined at Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

12. On numerous occasions, including November and December, 2002, and March and August, 2003, EMMETT UTILITIES, INC. and RUSSELL THORELL have allowed discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers.

13. These discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers likely created a nuisance or rendered such waters

harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

14. By causing or allowing the discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers as to create a nuisance or to detrimentally affect the receiving stream, the Respondents have caused or tended to cause water pollution in Illinois.

15. By so causing or tending to cause water pollution, the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

16. EMMETT UTILITIES, INC., has been previously adjudicated in violation of Section 12 of the Act, 415 ILCS 5/12 (2002), and these presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

17. The presently alleged violations as to RUSSELL THORELL constitute wilful or knowing violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondents, EMMETT UTILITIES, INC., and RUSSELL THORELL:

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B. Finding that EMMETT UTILITIES, INC., has violated the Act and regulations as alleged herein;

C. Finding that RUSSELL THORELL is personally liable as a responsible corporate officer for the violations of the Act and regulations as alleged herein;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondents a monetary penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

F. Grant such other and further relief as the Board deems appropriate.

COUNT IV
WATER QUALITY VIOLATIONS

1-7. Complainant realleges and incorporates herein paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count IV.

8-13. Complainant realleges and incorporates herein by reference paragraphs 8-13 of Count III as paragraphs 8-13 of this Count IV.

14. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, prohibits offensive conditions in waters of the State:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal, color or turbidity of other than natural origin. . . .

15. The discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers have caused offensive conditions, including unnatural color, odor, sludge, and turbidity, in the receiving stream in violation of the water quality standard of 35 Ill. Adm. Code 302.203.

16. By causing or allowing the discharge of contaminants so as to violate regulations or standards adopted by the Pollution Control Board under the Act, the Defendants have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

17. EMMETT UTILITIES, INC., has been previously adjudicated in violation of Section 12 of the Act, 415 ILCS 5/12 (2002), and these presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

18. The presently alleged violations as to RUSSELL THORELL constitute wilful or knowing violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000); therefore, Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondents, EMMETT UTILITIES, INC., and RUSSELL THORELL:

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B. Finding that EMMETT UTILITIES, INC., has violated the Act and regulations as alleged herein;

C. Finding that RUSSELL THORELL is personally liable as a responsible corporate officer for the violations of the Act and regulations as alleged herein;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondents a monetary penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

F. Grant such other and further relief as the Board deems appropriate.

COUNT V
NPDES PERMIT VIOLATIONS

1-7. Complainant realleges and incorporates herein paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count V.

8-13. Complainant realleges and incorporates herein by reference paragraphs 8-13 of Count III as paragraphs 8-13 of this Count V.

14. By causing or allowing the discharge of discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers, the Respondents have violated the NPDES permit and Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondents, EMMETT UTILITIES, INC., and RUSSELL THORELL:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

B. Finding that EMMETT UTILITIES, INC., has violated the Act and regulations as alleged herein;

C. Finding that RUSSELL THORELL is personally liable as a responsible corporate officer for the violations of the Act and regulations as alleged herein;


D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondents a monetary penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

F. Grant such other and further relief as the Board deems appropriate.

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN,
Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 11/05/03