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 04-81

ANSWER OF DEFENDANT, EMMETT UTILITIES, INC.

Defendant Emmett Utilities, Inc., by its attorney, John M. Myers, answers the complaint as follows:

COUNT I

1. This Defendant admits the allegations contained in paragraph 1.

2. This Defendant admits the allegations contained in paragraph 2.

3. This Defendant admits the allegations contained in paragraph 3.

4. This Defendant admits the allegations in the first sentence of paragraph 4 and denies the allegations contained in the second sentence in paragraph 4.

5. This Defendant admits the allegations contained in paragraph 5 except for the allegation that Defendant Thorell "owns and operates a public water supply and waste water treatment system", which it denies.

6. This Defendant admits the allegations contained in paragraph 6 except for the last sentence thereof. Further answering, this Defendant states that the 1996 action was dismissed, and that the 2001 action resulted in finding of no liability on the part of Defendant Thorell.

7. This Defendant admits the allegations contained in paragraph 7.

8. This Defendant admits the allegations contained in paragraph 8.

9. This Defendant admits the allegations contained in paragraph 9.

10. This Defendant admits the allegations contained in paragraph 10.

11. This Defendant is without sufficient knowledge to affirm a belief as to the truth of the allegations in paragraph 11, and therefore denies them.

12. This Defendant admits the allegations contained in paragraph 12. However, this Defendant states that in fact the well pump was fixed within the matter of a couple of days.

13 This Defendant admits that the malfunction of the pump resulted in a temporary total water outage, and denies the remaining allegations in paragraph 13.

14. This Defendant denies the allegations contained in paragraph 14.

15. This Defendant admits the allegations contained in paragraph 15.

16. This Defendant denies the allegations contained in paragraph 16

COUNT II

1-12 This Defendant incorporates its answers to paragraphs 1 through 12 of Count I for its answers to paragraph 1-12 of Count II.

13. This Defendant admits the allegations contained in paragraph 13.

14. This Defendant denies the allegations contained in paragraph 14.

15. This Defendant denies the allegations contained in paragraph 15.

16. This Defendant denies the allegations contained in paragraph 16.

17. This Defendant admits it was previously adjudicated in violation of Section 18 of the Act and denies the remaining allegations contained in paragraph 17.

18. This Defendant denies the allegations contained in paragraph 18.

COUNT III

1-7. This Defendant realleges its answers to paragraphs 1 through 7 of Count I for its answers to paragraphs 1-7 of this Count III.

8. This Defendant admits the allegations contained in paragraph 8.

9. This Defendant admits the allegations contained in paragraph 9.

10. This Defendant admits the allegations contained in paragraph 10.

11. This Defendant admits the allegations contained in paragraph 11.

12. This Defendant denies the allegations contained in paragraph 12.

13. This Defendant denies the allegations contained in paragraph 13.

14. This Defendant denies the allegations contained in paragraph 14.

15. This Defendant denies the allegations contained in paragraph 15.

16. This Defendant admits it was previously adjudicated in violation of Section 18 of the Act and denies the remaining allegations contained in paragraph 16.

17. This Defendant denies the allegations contained in paragraph 17.

COUNT IV

1-7. This Defendant realleges its answers to paragraphs1 through 7 of Count I for its answers to paragraphs 1-7 of this Count IV.

8-13. This Defendant realleges its answers to paragraphs 8 through 13 of Count III for its answers to paragraphs 8-13 of this Count IV.

14. This Defendant admits the allegations contained in paragraph 14.

15. This Defendant denies the allegations contained in paragraph 15.

16. This Defendant denies the allegations contained in paragraph 16.

17. This Defendant admits it was previously adjudicated in violation of Section 18 of the Act and denies the remaining allegations contained in paragraph 17.

18. This Defendant denies the allegations contained in paragraph 18.

COUNT V

1-7. This Defendant realleges its answers to paragraphs 1 through 7 of Count I for its answers to paragraphs 1through7 of this Count V.

8-13. This Defendant realleges its answers to paragraphs 8 through 13 of Count III for its answers to paragraphs 8 through 13 of this Count V.

14. This Defendant denies the allegations contained in paragraph 14.

WHEREFORE, Defendant demands judgment in its favor.

Respectfully Submitted,
Emmett Utilities, Inc., Defendant

By: _____
Its Attorney

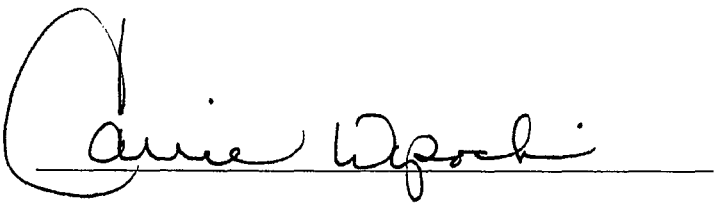
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **ANSWER OF DEFENDANT, EMMETT UTILITIES, INC.** was served upon all counsel of record by placing same in the United States Post Office mail box, postage prepaid in Springfield, Illinois on February 6, 2004 and addressed to:

Thomas Davis, Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

and that the original was filed with the Clerk of the Court in which said cause is pending.



ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 04-81
	)	
	)	
	)	
EMMETT UTILITIES, INC. an Illinois Corporation, and RUSSELL D. THORELL, individually and as president of EMMETT UTILITIES, INC.,	)	
	)	
	)	
Respondents.	)	

MOTION FOR STAY OF PROCEEDINGS

Now comes, Defendants, Emmett Utilities and Russell D. Thorell, by their attorney, John M. Myers and move the Board to stay all further proceedings in this matter pending resolution of Illinois Commerce Commission proceedings, in re: Emmett Utilities, number 04-0065. In support of this motion Defendants states as follows:

1. On February 2, 2004, Defendant Emmett Utilities, Inc filed a Petition to Abandon and Discontinue Service with the Illinois Commerce Commission, pursuant to Section 8-508 of the Public Utilities Act. A copy of the petition is attached hereto as Exhibit A.

2. If the Commerce Commission allows the Petition to Discontinue or Abandon Service, then the instant proceedings become moot.

WHEREFORE, Defendants move the Pollution Control Board for an order staying further proceedings in this matter pending the outcome of the Illinois Commerce Commission proceedings.

Respectfully Submitted,
Emmett Utilities and Russell D. Thorell,
Defendants,

By: _____
Their Attorney

John M. Myers
RABIN, MYERS, HANKEN & DURR, P.C.
1300 South Eighth Street
Springfield, IL 62703
217.544.5000
fax: 217.544.5017
email: jmyers@springfieldlaw.com

IN THE ILLINOIS COMMERCE COMMISSION

In Re: Emmett Utilities, Inc.	)	
	)	
	)	No.
Petition to Abandon and Discontinue Service	)	
	)	

PETITION TO ABANDON AND DISCONTINUE SERVICE

Emmett Utilities, Inc., by its attorneys, Rabin, Myers, Hanken & Durr, P.C., hereby petitions the Illinois Commerce Commission pursuant to Section 8-508 of the Public Utilities Act for authority to abandon and discontinue service, and in support thereof, states as follows:

1. Petitioner operates a water and sewer utility in McDonough County, Illinois, serving 22 customers. Petitioner is one of the smallest public utilities, if not *the* smallest public utility, in the entire State of Illinois.

2. Petitioner is operating at a loss, and has been for several years. The 2003 annual report submitted to the Commission, a copy of which is attached as Exhibit A, showed a loss of $12,893 from the water operation and $8,117 from the sewer operation. Prior years also showed losses.

3. Petitioner is subject to an order from the Circuit Court of McDonough County in People v. Emmet Utilities et al, No. 01-CH-2 to perform certain repairs to its water and sewer system to bring the system into compliance with Illinois EPA regulations. A copy of the order is attached as Exhibit B. The repairs will cost well in excess of $350,000—or $16,000 per customer. Petitioner lacks the funds, and has no

realistic prospect of obtaining credit, to perform the repairs. The Attorney General continues to pursue certain findings adverse to the State of Illinois by the trial court in the Appellate Court, at huge expense to Petitioner.

4. Petitioner's president and sole shareholder, Russell D. Thorell, is elderly, nearly indigent, and in poor health, and is unable adequately to supervise the day-to-day operations of Petitioner. Mr. Thorell has no prospect of selling his shares in Petitioner to a third party who would be willing to oversee the daily operations of Petitioner and undertake the repairs to the system set forth above.

5. Petitioner has recently been sued by the Attorney General in the Pollution Control Board, which sits in Chicago, *People v. Emmet Utilities, Inc., et al.,* No. PCB 04-81. Petitioner lacks the funds to defend a lawsuit in Chicago, or to hire the engineers to develop the technical data necessary to defend the suit, which seeks substantial fines against Petitioner.

6. Under these circumstances, it is physically and financially impossible for Petitioner to continue service.

WHEREFORE, Petitioner requests the Commission to enter an order:

a. Allowing it to discontinue service;

b. Allowing it to abandon service;

c. And for such other and further relief as the Commission deems appropriate.

Respectfully Submitted,
EMMETT UTILITIES, INC.

By: _____
One of its attorneys

John M. Myers
RABIN, MYERS, HANKEN & DURR, P.C.
1300 South Eighth Street
Springfield, IL 62703
217.544.5000
fax: 217.544.5017
email: jmyers@springfieldlaw.com

FORM 22 ILCC

ANNUAL REPORT OF WATER AND/OR SEWER UTILITIES

TO THE ILLINOIS COMMERCE COMMISSION

Exact Legal Name of Respondent (Company)	Year of Report
EMMETT UTILITIES, INC.	December 31, 2003

This agency is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined in Section 5-109 of the Public Utilities Act [220 ILCS 5/5-109] (Ill. Rev. Stat. 1991, Chapt 111 2/3, Par. 5-109). Disclosure of this information is REQUIRED. Failure to provide any information could result in a fine of $100 per day under Section 5-109 of the Public Utilities Act.

Printed by authority of the State of Illinois
65 copies – December 2003 – 414r

EXHIBIT
A

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

CERTIFICATION

STATE OF ____ ILLINOIS

COUNTY OF ____ HENDERSON

(Name of Affiant) _____ makes oath and says that he is RUSSELL D. THORILL

(Official Title of Affiant) ____ PRESIDENT

of *(Exact Legal Title or Name of Respondent)* ____ EMMETT UTILITIES, INC.

that he/she has examined the following report; that to the best of his/her knowledge, information, and belief, all statements of fact contained in the said report is a correct statement of the business affairs of the above named respondent in respect to each and every matter set forth therein during the

period from and including January 1, 2003 to and including December 31, ~~2003~~

Russell D Thorill

(Signature of Affiant)

Subscribed and sworn to before me, a Notary

in and for the State and County named, this 26th day of JAN., 2004

My Commission expires 9/5/05.

Molly M Jones

(Signature of Oath Administer)

"OFFICIAL SEAL"
MOLLY M. JONES
Notary Public, State of Illinois
My Commission Exp. 09/05/2005

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

Name and address of person to whom correspondence concerning this report should be addressed:

RUSSELL D. THORELL
RR#2 BOX 58N
OQUAWKA, IL 61469

Telephone 309-867-2387

List below the address of where the utility's books and records are located:

RR#2 BOX 58N
OQUAWKA, IL 61469

Date of original organization of the utility: 02 / 17 / 1983

List below the names, titles and compensation/salary of each:

OFFICERS

	Name	Title	Salary
1.	RUSSELL D. THORELL	PRESIDENT	NONE
2.	RUSSELL D. THORELL	SECRETARY	NONE
3.			
4.			
5.			

DIRECTORS/MANAGERS

	Name	Title	Salary
1.	RUSSELL D. THORELL	PRESIDENT	NONE
2.			
3.			
4.			
5.			

Utility Name	Year of Report
EMMETT, UTILITIES, INC.	Dec. 31, 2003

GENERAL INSTRUCTIONS

1. Utilities with annual revenues of $1,000,000 or more shall complete all schedules including those marked with a star. Those utilities that have annual revenues less than $1,000,000 need not complete the schedules marked with a star.

2. Prepare this report in conformity with the Uniform System of Accounts for Water and/or Sewer Utilities.

3. Complete each question fully and accurately, even if it has been answered in a previous annual report. Enter the word *"None"* where it truly and completely states the fact.

4. For any question, section or pages that is not applicable to the respondent enter the words *"Not Applicable."* Do not omit any pages.

5. Where dates are called for, the month and day should be stated as well as the year.

6. All schedules requiring dollar entries should be rounded to the nearest dollar.

7. Complete this report by means, which result in a permanent record, such as by typewriter. Money items *(except averages, percentages and statistics)* throughout the report should be shown in units of dollars adjusted to accord with footings.

8. If there is not enough room on any schedule, an additional page or pages may be added provided the format of the added schedule matches the format of the schedule with not enough room. Such a schedule should reference the appropriate schedules, state the name of the utility, and state the year of the report.

9. The form of annual report is to be completed in triplicate. The original and one conformed copy *(which may be a carbon copy)*, properly completed and verified, are to be filed with the ILLINOIS COMMERCE COMMISSION, 527 East Capitol Avenue, Springfield, Illinois 62701, on or before March 31 of the year following the year for which the report is made. One copy is to be retained by respondent.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

FINANCIAL SECTION

WATER OPERATION SECTION

SEWER OPERATION SECTION

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

COMPOSITE OF STATISTICS FOR ALL PRIVATELY OWNED WATER & SEWER UTILITIES UNDER ILLINOIS COMMERCE COMMISSION JURISDICTION

	WATER	SEWER
UTILITY PLANT	41,118	116,031
Plant in Service		
Construction Work in Progress		
Plant Acquisition Adjustment		
Plant Held for Future Use		
Materials and Supplies		
Less:		
Accumulated Depreciation and Accumulated Amortization	12,010	50,386
Contributions in Aid of Construction		
Net Book Cost	29,108	65,645
REVENUES AND EXPENSES		
Operating Revenues	8,423	12,248
Depreciation and Amortization Expenses	674	1,840
Income Tax Expenses	-----	-----
Taxes Other Than Income	1,108	------
Other Operating Expenses	18,334	17,325
Total Operating Expenses	-----	------
Net Operating Income		
Other Income		
Other Income Deductions	(1,200)	(1,200)
Net Income (LOSS)	(12,893)	(8,117)
OTHER STATISTICS		
Average Annual Residential Use Per 1,000 Gallons	3.6	
Average Annual Residential Cost Per 1,000 Gallons	5.85	NA
Average Residential Monthly Bill	$25.00	$48.85
Gross Plant Investment Per Customer	$15.23	5,274

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

COMPARATIVE BALANCE SHEET

Acct. No. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	Current Year (d)	Previous Year (e)
	UTILITY PLANT			
101-106	Utility Plant	11F	157,149	149,526
108-110	Less: Accumulated Depreciation and Amortization	11F	62,396	62,662
	Net Plant		94,753	86,864
114-115	Utility Plant Acquisition Adjustments *(Net)*	11F		
116	Other Utility Plant Adjustment			
	OTHER PROPERTY AND INVESTMENTS			
121	Nonutility Property			
122	Less: Accumulated Depreciation and Amortization			
	Net Nonutility Plant			
123	Investment in Associated Companies			
124	Utility Investments			
125	Other Investments			
126-127	Special Funds			
	Total Other Property & Investments			
	CURRENT AND ACCRUED ASSETS			
131	Cash		3,543	2,354
132	Special Deposits			
133	Other Special Deposits			
134	Working Funds			
135	Temporary Cash Investments			
141-144	Accounts & Notes Receivable, Less Accumulated Provision For Uncollectible Accounts		4,590	1,505
145	Accounts Receivable from Associated Companies	12F		
146	Notes Receivable from Associated Companies	12F		
151-153	Materials and Supplies	12F		
161	Stores Expenses			
162	Prepayments	12F		
171	Accrued Utility Revenues			
172	Rents Receivable			
173	Accrued Utility Revenues			
174	Miscellaneous Current and accrued Assets			
	Total Current and Accrued Assets		8,133	3,859
	DEFERRED DEBITS			
181	Unamortized Debt Discount & Expense	13F		
182	Extraordinary Property Losses	13F		
183	Preliminary Survey & Investigation Charges			
184	Clearing Accounts			
185	Temporary Facilities			
186	Miscellaneous Deferred Debits	12F		
187	Research & Development Expenditures			
190	Accumulated Deferred Income Taxes			
	Total Deferred Debits			
	TOTAL ASSETS AND OTHER DEBTS		102,886	90,723

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

COMPARATIVE BALANCE SHEET

Acct. No. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	Current Year (d)	Previous Year (e)
	EQUITY CAPITAL			
201	Common Stock Issued	14F	1,000	1,000
204	Preferred Stock Issued	14F		
202, 205	Capital Stock Subscribed			
203, 206	Capital Stock Liability for Conversion			
207	Premium on Capital Stock		158,563	77,245
209	Reduction in Par or Stated Value of Capital Stock			
210	Gain on Resale or Cancellation of Reacquired Capital Stock			
211	Other Paid-In Capital			
212	Discount on Capital Stock			
213	Capital Stock Expense			
214, 215	Retained Earnings	14F	(101,013)	(80,003)
216	Reacquired Capital Stock			
218	Proprietary Capital *(Proprietorship & Partnership Only)*			
	Total Equity Capital		58,550	(1,708)
	LONG-TERM DEBT			
221	Bonds			
222	Reacquired Bonds			
223	Advances from Associated Companies			
224	Long-Term Debt			
	Total Long-Term Debt			
	CURRENT AND ACCRUED LIABILITIES			
231	Accounts Payable		1,173	
232	Notes Payable	13F		
233	Accounts Payable to Associated Companies	14F		
234	Notes Payable to Associated Companies	13F	40,000	91,268
235	Customer Deposits			
236	Accrued Taxes		1,163	1,163
237	Accrued Interest		2,000	
238	Accrued Dividends			
239	Matured Long-Term Debt			
240	Matured Interest			
241	Miscellaneous Current and Accrued Liabilities			
	Total Current and Accrued Liabilities		44,336	92,431
	DEFERRED CREDITS			
251	Unamortized Premium on Debt	13F		
252	Advances for Construction	15F		
253	Other Deferred Credits			
255	Accumulated Deferred Investment Tax Credits			
	Total Deferred Credits			

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

COMPARATIVE BALANCE SHEET

Acct. No. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	Current Year (d)	Previous Year (e)
	OPERATING RESERVES			
261	Property Insurance Reserve			
262	Injuries and Damages Reserve			
263	Pensions and Benefits Reserve			
265	Miscellaneous Operating Reserves			
	Total Operating Reserves			
	CONTRIBUTIONS IN AID OF CONSTRUCTION			
271	Contributions in Aid of Construction	16F		
272	Accumulated Amortization of Contributions in Aid of Construction			
	Total Net C.I.A.C.			
	ACCUMULATED DEFERRED INCOME TAXES			
281	Accumulated Deferred Income Taxes -			
	Accelerated Depreciation			
282	Accumulated Deferred Income Taxes -			
	Liberalized Depreciation			
	Total Accumulated Deferred Income Taxes			
	TOTAL EQUITY CAPITAL AND LIABILITIES		102,886	90,723

NOTES TO THE BALANCE SHEET

This space is provided for important notes regarding the balance sheet.

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

COMPARATIVE STATEMENT OF INCOME FOR THE YEAR

Acct No. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	Current Year (d)	Previous Year (e)
	UTILITY OPERATING INCOME			
400	Operating Revenues	17W, 23S	20,671	19,279
401	Operating Expenses	18Wa, 24Sa	35,659	33,145
403	Depreciation Expenses	19W, 25S	2,514	2,514
406	Amortization of Utility Plant Acquisition Adjustment			
407.X	Amortization Expense			
408.1X	Taxes Other Than Income		1,108	927
409.1X	Income Taxes			
410.10	Deferred Federal Income Taxes			
410.1X	Deferred State Income Taxes			
411.10	Provision for Deferred Income Taxes			
412.10	Investment Tax Credits Deferred to Future Periods			
412.11	Investment Tax Credits Restored to Operating Income			
	Utility Operating Expenses		39,281	36,586
	Utility Operating Income			
413	Income From Utility Plant Leased to Others			
414	Gains (Losses) From Disposition of Utility Property			
	Total Utility Operating Income		(18,610)	(17,307)
	OTHER INCOME AND DEDUCTIONS			
415	Revenues from Merchandising, Jobbing & Contract Deductions			
416	Costs & Expenses of Merchandising, Jobbing & Contract Work			
419	Interest and Dividend Income			
420	Allowance for Funds Used During Construction			
421	Nonutility Income			
426	Miscellaneous Nonutility Expenses			(591)
	Total Other Income and Deductions			
	TAXES APPLICABLE TO OTHER INCOME			
408.20	Taxes Other Than Income			
409.20	Income Taxes			
410.20	Provision for Deferred Income Taxes			
411.20	Provision for Deferred Income Taxes-Credits			
412.20	Investment Tax Credits - Net			
412.30	Investment Tax Credits Restored to Operating Income			
	Total Taxes Applicable to Other Income			
	INTEREST EXPENSE			
427.X	Interest Expense		2,400	
428	Amortization of Debt Discount & Expense	13F		
429	Amortization of Premium on Debt	13F		
	Total Interest Expense		2,400	
	EXTRAORDINARY ITEMS			
433	Extraordinary Income			
434	Extraordinary Deductions			
409.30	Income Taxes, Extraordinary Items			
	Total Extraordinary Items			
	NET INCOME (LOSS)		(21,010)	(17,898)

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

STATEMENT OF CASH FLOWS

1. If the notes to the cash flow statement in the respondent's annual stockholders report are applicable to this statement, such notes should be attached to page 10F. Information about noncash investing and financing activities should be provided on page 10F. Provide also on page 10F a reconciliation between "Cash and Cash Equivalents at End of Year" with related amounts on the balance sheet.
2. Under "Other" specify significant amounts and group others.
3. Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show on page 10F the amounts of interest paid *(net of amounts capitalized)* and income taxes paid.

(Further instructions are provided on page 9F)

Line No.	DESCRIPTION *(See Instruction No. 5 for Explanation of Codes (a) thru (d))* (a)	Amount (b)
1	Net Cash Flow from Operating Activities:	
2	Net Income *(on page 7F)*	(21,010)
3	Noncash Charges *(Credits)* to Income:	
4	Depreciation and Depletion	2,514
5	Amortization of *(Specify)*	
6		
7		
8	Deferred Income Taxes *(Net)*	
9	Investment Tax Credit Adjustments *(Net)*	
10	Net *(Increase)* Decrease in Receivables	(3,085)
11	Net *(Increase)* Decrease in Inventory	
12	Net Increase *(Decrease)* in Payables and Accrued Expenses	3,173
13	*(Less)* Allowance for Other Funds Used During Construction	
14	*(Less)* Undistributed Earnings from Subsidiary Companies	
15	Other:	
16		
17		
18		
19		
20		
21	Net Cash Provided by *(Used In)* Operating Activities *(Total of lines 2 thru 20)*	
22		(18,408)
23		
24	Cash Flows from Investment Activities:	
25	Construction and Acquisition of Plant *(including land)*:	
26	Gross Additions to Water Utility Plant	10,403
27	Gross Additions to Sewer Utility Plant	
28	Gross Additions to Common Utility Plant	
29	Gross Additions to Nonutility Plant	
30	*(Less)* Allowance for Other Funds Used During Construction	
31	Other:	
32		
33		
34	Cash Outflows for Plant *(Total of lines 26 thru 33)*	10,403
35		
36	Acquisition of Other Noncurrent Assets (d)	
37	Proceeds from Disposal of Noncurrent Assets (d)	
38		
39	Investments in and Advances to Associated and Subsidiary Companies	
40	Contributions and Advances from Associated and Subsidiary Companies	
41	Disposition of Investments in *(and Advances to)* Associated and Subsidiary Companies	
42	ADDITIONAL CAPITOL PAID IN BY STOCKHOLDER	30,146
43		
44	Purchase of Investment Securities (a)	
45	Proceeds from Sales of Investment Securities (a)	

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

STATEMENT OF CASH FLOWS *(continued)*

4. Investing Activities: Include at Other *(line 31)* net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed on page 10F. Provide a reconciliation of the dollar amount of leases capitalized with the plant cost on page 10F.

5. Net proceeds or payments; (b) Bonds, debentures and other long-term debt; (c) include commercial paper; (d) identify separately such items as investments, fixed assets, intangibles, etc.

6. Enter on page 10F clarifications and explanations. NA

Line No.	DESCRIPTION *(See Instruction No. 5 for Explanation of Codes (a) thru (d))* (a)	Amount (b)
46	Loans Made or Purchased	
47	Collections on Loans	
48		
49	Net *(Increase)* Decrease in Receivables	
50	Net *(Increase)* Decrease in Inventory	
51	Net Increase *(Decrease)* in Payables and Accrued Expenses	
52	Other:	
53		
54		
55		
56	Net Cash Provided by *(Used in)* Investing Activities *(Total of lines 34 thru 55)*	
57		
58		
59	Cash Flows from Financing Activities:	
60	Proceeds from Issuance of:	
61	Long-Term Debt (b)	
62	Preferred Stock	
63	Common Stock	
64	Other:	
65		
66	Net Increase in short-term Debt (c)	
67	Other:	
68		
69		
70	Cash Provided by Outside Sources *(Total of lines 61 thru 69)*	
71		
72	Payments for Retirement of:	
73	Long-Term Debt (b)	
74	Preferred Stock	
75	Common Stock	
76	Other:	
77		
78	Net Decrease in short-term Debt (c)	
79		
80	Dividends on Preferred Stock	
81	Dividends on Common Stock	
82	Net Cash Provided by *(Used in)* Financing Activities *(Total of lines 70 thru 81)*	
83		
84	Net Increase *(Decrease)* in Cash and Cash Equivalents *(Total of lines 22, 57 and 83)*	
85		
86		
87	Cash and Cash Equivalents at Beginning of Year	
88		
89	Cash and Cash Equivalents at End of Year	

UTILITY NAME	EMMETT UTILITIES, INC.	Year of Report Dec. 31, 2003

NOTES TO FINANCIAL STATEMENTS

1. Use the space below for important notes regarding the Comparative Balance Sheet, Comparative Income Statement for the Year, Statement of Retained Earnings for the Year, and Statement of Cash Flows or any account thereof. Classify the notes according to each basic statement, providing a sub-heading for each statement except where a note is applicable to more than one statement.
2. Furnish particulars *(details)* as to any significant contingent assets or liabilities existing at end of year, including a brief explanation of any action initiated by the Internal Revenue Service involving possible assessment of additional income taxes of material amount, or of a claim for refund of income taxes of material amount initiated by the utility. Give also a brief explanation of any dividends in arrears on cumulative preferred stock.
3. For Accounts 114-115, Utility Plant Acquisition Adjustments, explain the origin of such amount, debits and credits during the year, and plans of disposition contemplated, giving references to Commission orders or other authorizations respecting classification of amounts as plant adjustments and requirements as to disposition thereof.
4. Give a concise explanation of any retained earnings restrictions and state the amount of retained earnings affected by such restrictions.
5. If the notes to financial statements relating to the respondent company appearing in the annual report to the stockholders are applicable, such notes may be attached hereto.

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

UTILITY PLANT (ACCOUNTS 101 - 106)

Acct. No.		WATER	SEWER	TOTAL
	PLANT ACCOUNTS			
101	Utility Plant In Service	41,118	116,031	157,149
102	Utility Plant Leased to Others			
103	Property Held For Future Use			
104	Utility Plant Purchased or Sold			
105	Construction Work in Progress			
106	Completed Construction Not Classified			
	Total Utility Plant	41,118	116,031	157,149

UTILITY PLANT ACQUISITION ADJUSTMENTS (ACCOUNTS 114-115)

Report each acquisition adjustment and related accumulated amortization separately. For any acquisition adjustment approved by the Commission, include the Order Number.

	WATER	SEWER	TOTAL
ACQUISITION ADJUSTMENTS (114)			
Total Plant Acquisition Adjustments			
ACCUMULATED AMORTIZATION (115)			
Net Acquisition Adjustments			

ACCUMULATED DEPRECIATION AND AMORTIZATION OF UTILITY PLANT

ACCOUNT 108 - 110	WATER	SEWER	TOTAL
Balance First of Year	14,116	48,546	62,662
Credits During Year:			
Accruals Charged to Depreciation Account	674	1,840	2,514
Salvage			
Other Credits (Specify)			
Total Credits			
Debits During Year:			
Book Cost of Plant Retired	2,780		2,780
Cost of Removal			
Other Debits (Specify)			
Total Debits			
Balance End of Year	12,010	50,386	62,395

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

★ACCOUNTS RECEIVABLE FROM ASSOCIATED COMPANIES (ACCOUNT 145)

Report each account receivable from associated companies separately.

DESCRIPTION	TOTAL
NA	
Total	

★NOTES RECEIVABLE FROM ASSOCIATED COMPANIES (ACCOUNT 146)

Report each note receivable from associated companies separately.

DESCRIPTION	INTEREST RATE	TOTAL
	%	
	%	
	%	
	%	
NA	%	
	%	
Total	%	

★MATERIALS AND SUPPLIES (ACCOUNTS 151-153)

	WATER	SEWER	TOTAL
Plant Materials and Supplies (Account 151)			
Merchandise (Account 152) NA			
Other Materials and Supplies (Account 153)			
Total Materials and Supplies			

★PREPAYMENTS (ACCOUNT 162)

	WATER	SEWER	TOTAL
Prepaid Insurance			
Prepaid Rents NA			
Prepaid Interest			
Prepaid Taxes			
Other Prepayments (Specify):			
Total Prepayments			

★MISCELLANEOUS DEFERRED DEBITS (ACCOUNT 186)

DESCRIPTION	TOTAL
Miscellaneous Deferred Debits (Account 186)	
Deferred Rate Case Expense (Account 186.1) NA	
Other Deferred Debits (Account 186.2)	
Total Miscellaneous Deferred Debits	

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC	Dec. 31, 2003

★UNAMORTIZED DEBT DISCOUNT AND EXPENSE AND PREMIUM DEBT (ACCOUNTS 181 & 251)
Report the net discount and expense or premium separately for each security issue.

	Amount Written Off During Year	Year End Balance
Unamortized Debt Discount and Expense (Account 181):		
NA		
Total Unamortized Debt Discount and Expense		
Unamortized Premium On Debt (Account 251):		
Total Unamortized Premium on Debt		

★EXTRAORDINARY PROPERTY LOSSES (ACCOUNT 182)
Report each item separately.

DESCRIPTION	TOTAL
Extraordinary Property Losses (Account 182):	
NA	
Total Extraordinary Property Losses	

★NOTES PAYABLE (ACCOUNTS 232 AND 234)

	Nominal Date of Issue	Date of Maturity	Interest		Principal Amount Per Balance Sheet
			Rate	Frequency of Payment	
Account 232 – Notes Payable:					
Total Account 232					
Account 234 – Notes Payable to Associated Companies					
STOCKHOLDER	12-31-2003	demand	6 %		40,000
Total Account 234					40,000

UTILITY NAME	EMMETT UTILITIES, INC.	Year of Report Dec. 31, 2003

★ACCOUNTS PAYABLE TO ASSOCIATED COMPANIES (ACCOUNT 233)
Report each account payable separately.

DESCRIPTION	TOTAL
TOTAL NA	

★CAPITAL STOCK (ACCOUNTS 201 & 204)

	Common Stock	Preferred Stock
Par or Stated Value Per Share	100	
Shares Authorized	10	
Shares Issued and Outstanding	10	
Total Par Value of Stock Issued	1,000	
Dividends Declared Per Share For Year	NONE	

LONG TERM DEBT (ACCOUNT 224)

Description of Obligation (Including Nominal Date of Issue and Date of Maturity)	Interest		Principal Amount Per Balance Sheet
	Rate	Frequency Of Payment	
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
Total			

RETAINED EARNINGS (ACCOUNTS 214 – 215)

	AMOUNTS
Balance First of Year	(80,003)
Changes During the Year (Specify): (LOSS)	(21,010)
Balance End of Year	(101,013)

UTILITY NAME	Year of Report
emmett utilities, inc	Dec. 31, 2003

★BONDS (ACCOUNT 221)

Description of Obligation (Including Nominal Date of Issue and Date of Maturity)	Interest		Principal Amount Per Balance Sheet
	Rate	Frequency Of Payment	
	%		
	%		
NA	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
	%		
Total			

★ADVANCES TO ASSOCIATED COMPANIES (ACCOUNT 223)

Report each advance separately.

DESCRIPTION	TOTAL
NA	
TOTAL	

★ADVANCES FOR CONSTRUCTION (ACCOUNT 252)

Name Payor	Balance Beginning of Year	Debits		Credits	Balance End of Year
		Account Debit	Amount		
Total NA					

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

CONTRIBUTIONS IN AID OF CONSTRUCTION

	WATER	SEWER	TOTAL
Balance First of Year			
Add credits during year:			
Contributions received from Customer Main Extension Agreements			
Customer Connection Charges			
Contributions received from Developer or contractor Agreements			
In cash or property			
Total Credits			
Deduct Charges During Year			
Balance End of Year			
Less Accumulated Amortization			
Net CIAC NA			

★RECONCILIATION OF REPORTED NET INCOME WITH TAXABLE INCOME FOR FEDERAL INCOME TAXES
(UTILITY OPERATIONS)

1. The reconciliation should include the same detail as furnished on Schedule M-1 of the federal tax return for the year. The reconciliation shall be submitted even though there is no taxable income for the year. Descriptions should clearly indicate the nature of each reconciling amount and show the computation of all tax accruals.
2. If the utility is a member of a group which files a consolidated Federal tax return, reconcile reported net income with taxable net income as if a separate return were to be filled, indicating intercompany amounts to be eliminated in such consolidated return. State names of group members, tax assigned to each group member, and basis of allocation, assignment or sharing of the consolidated tax amount among the group members.

	Reference	AMOUNT
Net Income for the Year		(21,010)
Reconciling Items for the Year:		
Taxable Income Not Reported on Books:		
Deductions Recorded on Books Not Deducted for Return:		
Income Recorded on Books Not Included for Return:		
Deductions on Return Not Charged Against Book Income:		
Federal Tax Net Income		(21,010)
Computation of Tax:		

UTILITY NAME	Year of Report
emmett utilities, inc.	Dec. 31, 2003

RECONCILIATION OF GROSS REVENUE TAX

This schedule is to reconcile the amounts shown in the accompanying Annual Report with the amounts shown on the Amended/Annual Gross Revenue Tax Return:

	(a)		As Shown on Annual Report (b)	Page & Line Where Amount at Left Can Be Found in the Annual Report (c)
1	1] a. Actual Gross Operating Revenue as shown in Annual Report		20,671	
2	b. Less Interstate Revenue			
3	c. Gross Revenue Applicable to Illinois			
4	DEDUCT:			
5	2] a. Revenue from Sale to Utilities for Resale			
6	b. Uncollectible Accounts (if billing basis used)			
7	c. Other Deductions (if amounts are included in 1-a. above)			
8	**Account Description**	**Account No.**		
9				
10				
11				
12				
13				
14				
15	Taxable Illinois Gross Revenue from Annual Report (lines 1-2 thru 14)		20,671	
16	Taxable Illinois Gross Revenue from Amended/Annual Gross Revenue Tax Return		20,671	
17	DIFFERENCE (line 15 minus line 16)		NONE	

If difference calculated on line 17 is a positive amount of $1,000.00 or more, a revised Amended/Annual Tax Return for the year plus payment of any additional tax due must be promptly remitted to the Illinois Commerce Commission. If the calculated difference is less than $1,000.00 or a negative amount, no further action is required regarding your tax reconciliation. (The tax owed on $1,000 at the current tax rate of .10% is $1.00. According to the Public Utilities Act a deficiency in taxes paid of less than $1.00 need not be paid to the Commission.)

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

ANALYSIS OF UNBILLED REVENUE

This form is to be completed by all water and sewer utilities. NA

		PRIOR YEAR	CURRENT YEAR	REFERENCE
1	Water Utility Revenue			
2	Less: Prior Year Unbilled Revenue			Prior Yr. ILCC Form 22 Pg. 16F(b), Line 3
3	Add: Current Year Unbilled Revenue			
4	Gross Water Utility Operating Revenue			Pg 17W
5	Sewer Utility Revenue			
6	Less: Prior Year Unbilled Revenue			Prior Yr. ILCC Form 22 Pg. 16F(b), Line 7
7	Add: Current Year Unbilled Revenue			
8	Gross Sewer Utility Operating Revenue			Pg 23S
9	Total Utility Revenue (Line 1 + Line 5)			
10	Less: Total Prior Year Unbilled Revenue (Line 2 + Line 6)			Prior Yr. ILCC Form 22 Pg. 16F(b), Line 11
11	Add: Total Current Year Unbilled Revenue (Line 3 + Line 7)			
12	Gross Water Utility Operating Revenue			Pg 16F(a), Line 1

UTILITY NAME	Year of Report
EMMETT UTILITES, INC.	Dec. 31, 2003

WATER OPERATION SECTION

List below the names and titles of all full time employees whose salaries and wages are recorded in Account Number 601, page 18W.
NOTE: Only those utilities with 2,500 or fewer customers are required to complete this item.

NAME	TITLE
NONE	

WATER OPERATING REVENUE

Acct No.		Gallons Sold	Year End Number of Customers	Amounts
	Operating Revenues:			
0	Unmetered Water Revenue			
	Metered Water Revenue:	99,439		
461.1	Metered Sales to Residential Customers		21	7403
461.2	Metered Sales to Commercial Customers			
461.3	Metered Sales to Industrial Customers			
461.4	Metered Sales to Public Authorities			
461.5	Metered Sales to Multiple Family Dwellings			
	Total Metered Sales			7,403
	Fire Protection Revenue:			
462.1	Public Fire Protection			
462.2	Private Fire Protection			
	Total Fire Protection Revenue			
464	Other Sales to Public Authorities			
465	Sales to Irrigation Customers			
466	Sales for Resale			
467	Interdepartmental Sales			
	Total Sales of Water			7,403
	Other Water Revenues:			
469	Guaranteed Revenues			1,020
470	Forfeited Discounts			
471	Miscellaneous Service Revenues			
472	Rents from Water Property			
473	Interdepartmental Rents			
474	Other Water Revenues			
	Total Other Water Revenues			
	Total Water Operating Revenues			8,423

UTILITY NAME	EMMETT UTILITIES, INC	Year of Report Dec. 31 2003

WATER UTILITY PLANT ACCOUNTS

Acct. No.	Account Name	Previous Year	Additions	Retirements	Current Year
	INTANGIBLE PLANT				
301	Organization	8,000			8,000
302	Franchises				
339	Other Plant & Miscellaneous Equipment				
	SOURCE OF SUPPLY				
303	Land and Land Rights	1,240			1,240
304	Structures and Improvements	3,125			3,125
305	Collecting & Impounding Reservoirs				
306	Lakes, Rivers & Other Intakes				
307	Wells & Springs	2,012		658	1,354
308	Infiltration Galleries & Tunnels				
309	Supply Mains				
339	Other Plant & Miscellaneous Equipment				
	PUMPING PLANT				
303	Land and Land Rights				
304	Structures and Improvements				
310	Power Generation Equipment				
311	Pumping Equipment	2,122	10,403	2,122	10,403
339	Other Plant & Miscellaneous Equipment				
	WATER TREATMENT				
303	Land and Land Rights				
304	Structures and Improvements				
320	Water Treatment Equipment				
339	Other Plant and Miscellaneous Equipment				
	TRANSMISSION/DISTRIBUTION PLANT				
303	Land and Land Rights				
304	Structures and Improvements				
330	Dist. Reservoirs and Standpipes	2,213			2,213
331	Transmission & Distribution Mains	2,168			2,168
333	Services				
334	Meters	12,615			12,615
334	Meter Installations				
335	Hydrants				
336	Backflow Prevention Devices				
339	Other Plant & Miscellaneous Equipment				
	GENERAL PLANT				
303	Land and Land Rights				
304	Structures and Improvements				
340	Office Furniture & Equipment				
341	Transportation Equipment				
342	Stores Equipment				
343	Tools, Shops & Garage Equipment				
344	Laboratory Equipment				
345	Power Operated Equipment				
346	Communications Equipment				
347	Miscellaneous Equipment				
348	Other Tangible Plant				
	TOTAL PLANT IN SERVICE	33,495	10,403	2,780	41,118

UTILITY NAME	EMMETT UTILITIES, INC.	Year of Report Dec. 31, 2003

WATER OPERATION AND MAINTENANCE EXPENSE

Acct. No.	Account	Previous Year	Current Year
	SOURCE OF SUPPLY		
601	Salaries and Wages-Employees		
610	Purchased Water		
615	Purchased Power		
616	Fuel for Power Production		
618	Chemicals		
620	Materials and Supplies	725	198
631	Contractual Service - Engineering		
635	Contractual Service – Testing		
636	Contractual Service – Other		
641	Rental of Building/ Real Property		
642	Rental of Equipment		
650	Transportation Expenses		
658	Insurance- Workman's Compensation		
668	Water Resource Conservation Expense		
675	Miscellaneous Expenses		
	PUMPING EXPENSES		
601	Salaries and Wages-Employees		
615	Purchased Power	373	579
616	Fuel for Power Production		
620	Materials and Supplies		
631	Contractual Services - Engineering		
635	Contractual Services – Testing		
636	Contractual Services – Other		
641	Rental of Building/ Real Property		
642	Rental of Equipment		
650	Transportation Expenses		
[illegible]8	Insurance- Workman's Compensation		
[illegible]5	Miscellaneous Expenses		
	WATER TREATMENT EXPENSE		
601	Salaries and Wages-Employees		
615	Purchased Power		
616	Fuel for Power Production		
618	Chemicals		
620	Materials and Supplies		
631	Contractual Services – Engineering		
635	Contractual Services – Testing		
636	Contractual Services – Other		
641	Rental of Building/Real Property		
642	Rental of Equipment		
650	Transportation Expenses		
658	Insurance-Workman's Compensation		
675	Miscellaneous Expenses		
	TRANSMISSION/DISTRIBUTION		
601	Salaries and Wages –Employees		
615	Purchased Power		
616	Fuel for Power Production		
618	Chemicals		
620	Materials and Supplies		
631	Contractual Services - Engineering		
635	Contractual Services – Testing		
636	Contractual Services – Other		
641	Rental of Building/Real Property		
642	Rental of Equipment		
650	Transportation Expenses		
658	Insurance – Workman's Compensation		
675	Miscellaneous Expenses		

UTILITY NAME	EMMETT UTILITIES, INC.	Year of Report Dec. 31, 2003

WATER OPERATION AND MAINTENANCE EXPENSE

Acct. No.	Account	Previous Year	Current Year
	CUSTOMER ACCOUNT EXPENSES		
601	Salaries and Wages-Employees		
615	Purchased Power		
616	Fuel for Power Production		
620	Materials and Supplies		
631	Contractual Services – Engineering		
635	Contractual Services – Testing	3054	6213
636	Contractual Services – Other	3,713	4,740
641	Rental of Building/Real Property		
642	Rental of Equipment		
650	Transportation Expenses		
658	Insurance – Workman's Compensation		
670	Bad Debt Expense		
675	Miscellaneous Expenses		
	ADMINISTRATIVE AND GENERAL EXPENSES		
601	Salaries and Wages – Employees		
603	Salaries and Wages – Officers, Directors, and Majority Stockholders		
604	Employee Pensions and Benefits		
615	Purchased Power		
616	Fuel for Power Production		
620	Materials and Supplies		
631	Contractual Services – Engineering		
632	Contractual Services – Accounting		
634	Contractual Services – Management Fees		
635	Contractual Services – Testing		
636	Contractual Services – Other	4,798	718
641	Rental of Building/Real Property	360	360
642	Rental of Equipment	215	
650	Transportation Expenses		53
656	Insurance – Vehicle		
657	Insurance-General Liability		
658	Insurance - Workman's Compensation		
659	Insurance - Other		
660	Advertising Expense		
666	Regulatory Commission Expenses - Amortization Rate Case Expense		
667	Regulatory Commission Expense – Other	2,332	4,186
675	Miscellaneous Expenses	453	1,287
	TOTAL OPERATION AND MAINTENANCE EXPENSE	17,120	18,334

UTILITY NAME	EMMETT UTILITIES, INC.	Year of Report Dec. 31, 2003

ANALYSIS OF ACCUMULATED DEPRECIATION BY PRIMARY ACCOUNT - WATER

Acct No.	Account	Average Service Life in Yrs	Depr. Rate Applied	Accumulated Depreciation Bal. Prev. Yr.	Debits	Credits	Accumulated Depreciation Bal. End Yr.
	INTANGIBLE PLANT						
301	Organization		%				
302	Franchises		%				
339	Other Plant & Miscellaneous Equipment		%				
	SOURCE OF SUPPLY						
303	Land and Land Rights		%				
304	Structures and Improvements		%				
305	Collecting & Impounding Reservoirs		%				
306	Lakes, Rivers & Other Intakes		%				
307	Wells & Springs		%				
308	Infiltration Galleries & Tunnels		%				
309	Supply Mains		%				
339	Other Plant & Miscellaneous Equipment		%				
	PUMPING PLANT						
303	Land and Land Rights		%				
304	Structures and Improvements		%				
310	Power Generation Equipment		%				
311	Pumping Equipment		%				
339	Other Plant & Miscellaneous Equipment		%				
	WATER TREATMENT						
303	Land and Land Rights		%				
304	Structures and Improvements		%				
	Water Treatment Equipment		%				
	Other Plant & Miscellaneous Equipment		%				
	TRANSMISSION/DISTRIBUTION PLANT						
303	Land and Land Rights		%				
304	Structures and Improvements		%				
330	Dist. Reservoirs and Standpipes		%				
331	Transmission & Distribution Mains		%				
333	Services		%				
334	Meters		%				
334	Meter Installations		%				
335	Hydrants		%				
336	Backflow Prevention Devices		%				
339	Other Plant & Miscellaneous Equipment		%				
	GENERAL PLANT						
303	Land and Land Rights		%				
304	Structures and Improvements		%				
340	Office Furniture & Equipment		%				
341	Transportation Equipment		%				
342	Stores Equipment		%				
343	Tools, Shop & Garage Equipment		%				
344	Laboratory Equipment		%				
345	Power Operated Equipment		%				
346	Communications Equipment		%				
347	Miscellaneous Equipment		%				
348	Other Tangible Plant		%				
	TOTAL PLANT IN SERVICE	33.3	3%	14,116	2,780	674	12,010

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

PUMPING AND PURCHASED WATER STATISTICS (Gallons)

Month	Total Water Pumped and Purchased	Water Pumped From Well/Station	Water Pumped From Well/Station	Water Pumped From Well/Station	Water Purchased	Water Sold To Customers
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
Total						

CHEMICAL STATISTICS

Type of Solution	Chlorine	Fluoride	Polyphosphate	Other
Type (specify Gas or Liquid)	NONE	NONE	NONE	
Quantity Used				
Cost				

ELECTRICAL STATISTICS

	KWH	$
Electricity consumed in pumping		
Average Cost of Current Per KWH		

If water is purchased for resale, indicate the following:

a) Vendor NA

b) Point of Delivery

If water is sold to other water utilities for redistribution, list names of Distribution Companies:

Estimated amount of water used for flushing of the distribution system: gallons NONE

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

TRANSMISSION AND DISTRIBUTION MAINS

Size	In Use First of Year	Laid During Year	Total for Year	Abandoned During Year	Taken Up During Year	Total Deductions For Year	In Use Close Of Year
2"	1969	1969	343'				343'
1.5"	1969	1969	60'				60'
1.25"	1969	1969	168'				168'
2"	1972	1972	1026'				1026'
Total			1,597'				1,597'

SERVICES AND METERS AT CLOSE OF YEAR

Services in Use				Meters in Use			
Size of Service	Owned or Leased by Utility	Owned by Consumer	Total In Use	Size of Meter	Owned or Leased by Utility	Owned by Consumer	Total In Use
½ inch				½ inch			
5/8 inch				5/8 inch	22		22
¾ inch		22	22	¾ inch			
1 inch				1 inch			
1 ½ inch				1 ½ inch			
2 inch				2 inch			
Total		22	22		22		22

FIRE HYDRANTS

Size	In Service Beginning of Year	Added During The Year	Retired During The Year	In Service End of Year
		NONE		

WELLS AND WELL PUMPS

	Station 1	Station 2	Station 3	Station 4
Year Constructed	1969			
Types of Well Construction & Casing	6" steel			
Depth of Wells	320'			
Diameters of Wells	6"			
Pump – GPM	38			
Motor – HP	5			
Yields of Wells in GPD	57,600			
Auxiliary Power	NONE			

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

RESERVOIRS				
Description (steel, concrete or pneumatic)				
Capacity of Tank				
Ground or Elevated				

HIGH SERVICE PUMPING				
	Motor	Motor	Motor	Motor
Manufacturer				
Type				
Rated Horsepower				
	Pump	Pump	Pump	Pump
Manufacturer				
Type				
Capacity in GPM				
Average Number of Hours Operated Per Day				

BOOSTER STATIONS		
	Booster Station	Booster Station
KW-HR Used		
Average Cost Per KW-HR		
Gallons Pumped		

SOURCE OF SUPPLY		
List for Each Source of Supply	Gals. Per Day of Source	Type of Source
	NONE	

WATER TREATMENT FACILITIES				
List for Each Water Treatment Facility:	Type	Make	Gals. Per Day Capacity	Method of Measurement
		NONE		

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

SEWER OPERATION SECTION

List below the names and titles of all full time employees whose salaries and wages are recorded in Account Number 701, page 24S.

Note: *Only those utilities with 2,500 or fewer customers are required to complete this item.*

Name	Title
LARRY YOUELL	CONTRACT SEWER OPERATOR

SEWER OPERATING REVENUE

Acct. No.		Year End Number Of Customers	Amounts
	Operating Revenues:		
	Flat Rate Revenues:		
521.1	Residential Revenues	21	12,248
521.2	Commercial Revenues		
521.3	Industrial Revenues		
521.4	Revenues from Public Authorities		
521.5	Multiple Family Dwelling Revenues		
521.6	Other Revenues		
	Total Flat Rate Revenues	21	12,248
	Revenues Based on Metered Water Consumption		
522.1	Residential Revenues		
522.2	Commercial Revenues		
522.3	Industrial Revenues		
522.4	Revenues from Public Authorities		
522.5	Multiple Family Dwelling Revenues		
	Total Revenues		
523	Revenues from Public Authorities		
524	Revenues from Other Systems		
	Totals		
	Other Sewer Revenues:		
531	Sale of Sludge		
532	Forfeited Discounts		
536	Other Sewer Revenues		
	Total Other Sewer Revenues		
	Total Sewer Operating Revenues		12,248

UTILITY NAME		Year of Report			
EMMETT UTILITIES, INC.		Dec. 31, 2003			
SEWER UTILITY PLANT ACCOUNTS					
Acct. No.	Account Name	Previous Year	Additions	Retirements	Current Year
	INTANGIBLE PLANT				
351	Organization	23,214			23,214
352	Franchises	5,911			5,911
389	Other Plant and Misc. Equipment				
	COLLECTION PLANT				
353	Land and Land Rights	22,864			22,864
354	Structures and Improvements				
355	Power Generation Equipment				
360	Collection Sewers - Force	5,542			5,542
361	Collection Sewers - Gravity	11,866			11,866
362	Special Collecting Structures				
363	Services to Customers				
364	Flow Measuring Devices				
365	Flow Measuring Installation				
389	Other Plant and Miscellaneous Equipment				
	SYSTEM PUMPING PLANT				
353	Land and Land Rights				
354	Structures and Improvements				
355	Power Generation Equipment				
370	Receiving Wells				
371	Pumping Equipment	22,830			22,830
389	Other Plant and Miscellaneous Equipment				
	TREATMENT AND DISPOSAL PLANT				
353	Land and Land Rights				
354	Structures and Improvements	23,804			23,804
355	Power Generation Equipment				
380	Treatment and Disposal Equipment				
381	Plant Sewers				
382	Outfall Sewer Line				
389	Other Plant & Miscellaneous Equipment				
	GENERAL PLANT				
353	Land and Land Rights				
354	Structures and Improvements				
390	Office Furniture and Equipment				
391	Transportation Equipment				
392	Stores Equipment				
393	Tools, Shop and Garage Equipment				
394	Laboratory Equipment				
395	Power Operated Equipment				
396	Communication Equipment				
397	Miscellaneous Equipment				
398	Other Tangible Plant				
	TOTAL SEWER PLANT	116,031	-	-	116,031

UTILITY NAME	Year of Report
emmett utilities, inc.	Dec. 31, 2003

SEWER OPERATION AND MAINTENANCE EXPENSE

Acct. No.	ACCOUNT	Previous Year	Current Year
	COLLECTION EXPENSES		
701	Salaries and Wages - Employees		
715	Purchased Power		
716	Fuel for Power Production		
718	Chemicals		
720	Materials and Supplies		
731	Contractual Services – Engineering		
736	Contractual Services – Other		
741	Rental of Building/Real Property		
742	Rental of Equipment		
750	Transportation Expenses		
758	Insurance- Workman's Compensation		
775	Miscellaneous Expenses		
	PUMPING EXPENSES		
701	Salaries and Wages-Employees.		
715	Purchased Power	559	868
716	Fuel for Power Production		
718	Chemicals		
720	Materials and Supplies		
731	Contractual Services – Engineering		
736	Contractual Services – Other		
741	Rental of Building/Real Property	4353	485
742	Rental of Equipment		
750	Transportation Expenses		
758	Insurance-Workman's Compensation		
775	Miscellaneous Expenses	443	361
	TREATMENT AND DISPOSAL EXPENSES		
701	Salaries and Wages-Employees		
710	Purchased Wastewater Treatment		
711	Sludge Removal Expense		
715	Purchased Power		
716	Fuel for Power Production		
718	Chemicals		
720	Materials and Supplies		
731	Contractual Services – Engineering		
736	Contractual Services – Other		
741	Rental of Building/Real Property		
742	Rental of Equipment		
750	Transportation Expenses		
758	Insurance-Workman's Compensation		
775	Miscellaneous Expenses		
	CUSTOMER ACCOUNTS EXPENSE		
715	Purchased Power		
716	Fuel for Power Production		
720	Materials and Supplies		
731	Contractual Services – Engineering		
736	Contractual Services – Other		
741	Rental of Building/Real Property		
742	Rental of Equipment		
750	Transportation Expense		
758	Insurance - Workman's Compensation		
770	Bad Debt Expense		
775	Miscellaneous Expenses		

UTILITY NAME	Year of Report
EMMETT UTILITIES, INC.	Dec. 31, 2003

SEWER OPERATION AND MAINTENANCE EXPENSE

Acct. No.	ACCOUNT	Previous Year	Current Year
	ADMINISTRATIVE AND GENERAL		
701	Salaries and Wages- Employees		
703	Salaries and Wages –Officers		
704	Employee Pensions and Benefits		
715	Purchased Power		
716	Fuel for Power Production		
720	Materials and Supplies		
731	Contractual Services – Engineering		
732	Contractual Services – Accounting		
733	Contractual Services – Legal		
734	Contractual Services – Management Fees		
735	Contractual Services – Testing	3605	3600
736	Contractual Services – Other	1998	4677
741	Rental of Building/Real Property	360	360
742	Rental of Equipment		
750	Transportation Expense		
756	Insurance-Vehicle		
757	Insurance – General Liability		
758	Insurance – Workman's Compensation		
759	Insurance – Other		
760	Advertising Expense		
766	Regulatory – Amortization Rate Case Expense		
767	Regulatory Expense-Other	2,333	4,186
775	Miscellaneous Expenses	669	2,788
	TOTAL SEWER OPERATION AND MAINTENANCE EXPENSES	17,129	17,325

Page 24S(b)

UTILITY NAME	Year of Report Dec. 31,

ANALYSIS OF ACCUMULATED DEPRECIATION BY PRIMARY ACCOUNT - SEWER

Acct. No.	Account	Average Service Life in Yrs.	Depr. Rate Applied	Accumulated Depr. Balance Previous Year	Debits	Credits	Accumulated Depr. Balance End of Yr.
	INTANGIBLE PLANT						
351	Organization		%				
352	Franchises		%				
389	Other Plant and Misc. Equipment		%				
	COLLECTION PLANT						
353	Land and Land Rights		%				
354	Structures and Improvements		%				
355	Power Generation Equipment		%				
360	Collection Sewer –Force		%				
361	Collection Sewer-Gravity		%				
362	Special Collecting Structures		%				
363	Services to Customers		%				
364	Flow Measuring Devices		%				
365	Flow Measuring Installation		%				
389	Other Plant and Misc. Equipment		%				
	SYSTEM PUMPING PLANT						
353	Land and Land Rights		%				
354	Structures & Improvements		%				
355	Power Generation Equipment		%				
370	Receiving Wells		%				
371	Pumping Equipment		%				
389	Other Plant & Misc. Equipment		%				
	TREATMENT & DISPOSAL PLANT						
	Land and Land Rights		%				
354	Structures & Improvements		%				
355	Power Generation Equipment		%				
380	Treatment & Disposal Equipment		%				
381	Plant Sewers		%				
382	Outfall Sewer Line		%				
389	Other Plant & Misc. Equipment		%				
	GENERAL PLANT						
353	Land and Land Rights		%				
354	Structures and Improvements		%				
390	Office Furniture & Equipment		%				
391	Transportation Equipment		%				
392	Stores Equipment		%				
393	Tools, Shop & Garage Equip.		%				
394	Laboratory Equipment		%				
395	Power Operated Equipment		%				
396	Communication Equipment		%				
397	Miscellaneous Equipment		%				
398	Other Tangible Plant		%				
	TOTAL PLANT IN SERVICE		%				

PUMPING EQUIPMENT	Station 1	Station 2	Station 3
Lift Station Number			
Make or Type of Nameplate data of pump			
Year Installed			
Rated Capacity			
Size			
er:			
Electric			
Mechanical			
Nameplate data motor			

UTILITY NAME	Year of Report Dec. 31,

SERVICE CONNECTIONS						
Size (Inches)						
Type PVC, VCP, etc)						
Average Length						
No. of Active Service Connections:						
Beginning of Year						
Added During Year						
Retired During Year						
End of Year						
Give Full Particulars Concerning						
Inactive Connections						

COLLECTING MAINS						
Size (Inches)						
Type of Main						
Length of Main (nearest foot):						
Beginning of Year						
Added During Year						
Retired During Year						
End of Year						

MANHOLES						
Size (Inches)						
Type						
Number:						
Beginning of Year						
Added During Year						
Retired During Year						
End of Year						

FORCE MAINS						
Size (Inches)						
Type of Main						
Length of Main (nearest foot):						
Beginning of Year						
Added During Year						
Retired During Year						
End of Year						

TREATMENT PLANT						
Manufacturer						
Type (Steel or Concrete)						
Total Capacity						
Average Daily Flow						
Effluent Disposal						

MASTER LIFT STATION PUMPS						
Size (Inches)						
Manufacturer						
Capacity						
Motor: Mfr. Horsepower						
Power (electric or mechanical)						

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT

MCDONOUGH COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, and WILLIAM PONCIN, McDonough County State's Attorney,	)	
Plaintiffs,	)	
v.	)	NO. 01-CH-2
EMMETT UTILITIES, INC., an Illinois corporation, and RUSSELL D. THORELL, individually and as president of EMMETT UTILITIES, INC.	)	
Defendants.	)	

JUDGMENT ORDER

This cause came before the court for an evidentiary hearing on July 22, 2002. The plaintiff was present by a representative of the Illinois Environmental Protection Agency and the Office of the Illinois Attorney General. The Defendant corporation was present by counsel John Myers. Defendant Russell Thorell was present individually and as president of Emmett Utilities, Inc., and by counsel John Myers.

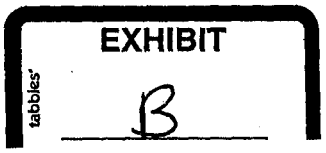
This action was commenced on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by the Attorney General of the State of Illinois, on the Attorney General's own motion and at the request of the Illinois Environmental Protection Agency.

A. FINDINGS

The court heard testimony and received documentary evidence and makes the following findings:

1. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Environmental Protection Act, 415 ILCS 5/4 (1996), and is charged, *inter alia*, with the duty of enforcing the Act.

2. The Defendant, Emmett Utilities, Inc., is an Illinois corporation which, by the time



of the hearing in this cause, was qualified to do business in Illinois.

3. The Defendant Russell Thorell is president of Emmett Utilities, Inc. At the time of trial, Mr. Thorell was before the court in his capacity as president of Emmett Utilities, Inc. and in his capacity as an individual.

4. The court finds that it has jurisdiction over the parties and the subject matter of the complaint.

5. At all times relevant to this Complaint, Emmett Utilities, Inc. has owned and operated a public water supply and sewer system in McDonough County, Illinois, which serves approximately 22 direct service connections from one drilled well.

6. The court makes the following findings:

Count I

7. The Plaintiff has proven that on August 13, 1997 and April 20, 1999:

a. No monthly operating reports had been submitted, in violation of 415 ILCS 5/18(a)(1) and (2), as well as 34 Ill. Adm. Code Sections 611.831, 653.605 and 653.704.

b. No master flow meter had been installed in the well pump discharge line, in violation of 415 ILCS 5/18(a)(1) and (2), as well as 35 Ill. Adm. Code Sections 601.101, 653.106 and Section 3.2.7.3 (a)(4) of the Recommended Standards for Water Works.

c. No hydro pneumatic storage tank sight-glass tubes had been installed, in violation of 415 ILCS 5/18(a)(1) and (2), as well as 35 Ill. Adm. Code Sections 601.101, 653.109 and section 7.2.4 of the Recommended Standards for Water Works.

8. The Court finds that Defendant Emmett Utilities, Inc. failed to prepare and distribute and failed to submit certification of distribution of a 1999 Consumer Confidence Report, in violation of 415 ILCS 5/18(a)(2) AND 35 Ill. Adm. Code 611.882

and 611.885.

9. The remaining allegations of Count I were not stipulated to by the parties. No evidence was presented by the Plaintiff as to the condition of Defendant's facilities on the dates in question. The Plaintiff has failed to meet its burden as to the remaining allegations of Count I.

10. As a result of the findings indicated above, Defendant Emmett Utilities is permanently enjoined from further violations of Illinois' Public Water Supply Regulations. In addition, based upon the standard set forth in People ex. rel Ryan v. McHenry Shores Water Co., 295 Ill.App.3d 628 (1998), Defendant is assessed a monetary penalty of $10,000. This amount is also based upon the Defendant's reported operating revenues and is intended as an inducement to correct the conditions which have threatened the health of Defendant's customers. This penalty shall be paid by January 31, 2004 and is subject to remittur provided Defendant Emmett Utilities, by that date, has corrected the conditions resulting in the violations found to exist.

11. The Plaintiff presented no evidence in support of its request pursuant to 415 ILCS 5/42(f) that it be awarded its costs in this matter. Therefore, that request is denied.

Count II

As to Count II, the court finds:

12. Plaintiff has proven that Emmett Utilities failed to submit coliform sample results in violation of 415 ILCS 5/18 and 5/19 and 35 Ill. Admin. Code section 611 521 for the following periods:

a. November 1, 1998 to November 30, 1998

b. December 1, 1998 to December 31, 1998

c. January 1, 1999 to January 31, 1999

d. April 1, 1999 to April 30, 1999

e. May 1, 1999 to May 31, 1999

13. Emmett Utilities failed to submit nitrate sample results for the period from January 1, 1999 to March 31, 1999 in violation of 415 ILCS 5/18 and 5/19 and 35 Ill. Admin. Code 611.604(a)(1)(A).

14. Emmett Utilities failed to submit lead and copper sample results for the time period from June 1, 1998 to September 30, 1998, in violation of 415 ILCS 5/18 and 5/19 and 35 Ill. Admin. Code 611.356(d)(4)(B).

15. Emmett Utilities failed to provide fluoridation to the water being discharged to the distribution system in violation of 415 ILCS 40/7a and 35 Ill. Admin. Code 611.125.

16. As a result of these findings, Defendant Emmett Utilities is permanently enjoined from further violation of the Illinois Pollution Control Board's Public Water Supply Rules. In addition, based upon the standard set forth in People ex. rel Ryan v. McHenry Shores Water Co., 295 Ill.App.3d 628 (1998), Emmett Utilities is assessed a monetary penalty of $10,000. This penalty shall be paid by January 31, 2004 and is subject to remittur provided Defendant Emmett Utilities, by that date has corrected the conditions resulting in these violations.

17. The Plaintiff presented no evidence in support of its request pursuant to 415 ILCS 5/42(f) that it be awarded its costs in this matter. Therefore, that request is denied.

Count III

18. The court finds that on or about March 21, 2000, April 17, 2000, May 18, 2000, June 21, 2000, July 26, 2000, August 23, 2000, October 10, 2000, and November 28, 2000 Defendant Emmett Utilities allowed the discharge of raw sewage such as to threaten pollution of water in violation of 415 ILCS 5/12(a). No evidence was presented as to either the environmental effects of these actions or the cost of any cleanup that took place.

19. As a result of this finding, Defendant Emmett Utilities is permanently enjoined from further unauthorized discharge of raw sewage from its facility and is directed to correct the circumstances which resulted in these violations.

20. The Plaintiff presented no evidence in support of its request pursuant to 415 ILCS 5/42(f) that it be awarded its costs in this matter. Therefore that request is denied.

Count IV

21. The Plaintiff seeks to hold Defendant Russell Thorell personally liable for the acts of Emmett Utilities. The burden is on the Plaintiff to make a substantial showing that the corporation is really a sham for another dominating entity. In re Estate of Wallen, 262 Ill.App.3d 61 (1994).

22. In order to pierce the corporate veil a Plaintiff must show: (1) such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and, (2) circumstances must be such that an adherence to the fiction of a separate corporate existence would promote injustice or inequitable consequences. Pederson v. Paragon Pool Enterprises, 214 Ill.App.3d 815 (1991).

23. Factors to be considered in determining whether a sufficient unity of interest exists between a corporation and an individual to warrant piercing the corporate veil include: 1) inadequate capitalization; 2) failure to issue stock; 3) failure to observe corporate formalities; 4) nonpayment of dividends; 5) insolvency of the debtor corporation at the time; 6) non-functioning of other officers or directors; 7) absence of corporate records; 8) whether the corporation is a mere facade for the operation of dominant stockholders. Ted Harrison Oil Co. v. Dokka, 247 Ill.App.3d 791 (1993).

24. The capitalization of a corporation is a major factor in assessing whether a legitimate separate corporate entity existed. McCracken v. Olson Co., 149 Ill.App.3d 104 (1986). In determining whether a corporation is adequately capitalized it is necessary to compare the amount of capital to the amount of business to be conducted

and obligations to be fulfilled. Jacobson v. Buffalo Rock Shooters Supply, 278 Ill.App.3d 1084 (1996). In the instant case the evidence has shown that Emmett Utilities has been adequately capitalized to serve the purposes for which the corporation was established.

25. The evidence in the instant case showed that 10 shares of stock were issued when the corporation was formed. Those shares remain outstanding.

26. Corporate formalities are sufficiently observed where the corporation completed required documents for its formation, issued shares of stock and filed the appropriate corporate tax returns. Jacobson v. Buffalo Rock Shooters Supply, 278 Ill.App.3d 1084 (1996). The Plaintiff has failed to show that these corporate formalities were not observed in the instant case.

27. There was no evidence in the instant case that any dividends were paid. There was no evidence that Emmett Utilities was insolvent at any time relevant to the allegations in the complaint. The evidence established that the only functioning officer or director was Defendant Thorell. Evidence was presented that corporate records were maintained.

28. After weighing all of the above factors, the court finds that the Plaintiff has not made the substantial showing necessary to impose individual liability upon Defendant Thorell. Therefore, Count IV is dismissed.

Count V

For the reasons stated above, Count V is dismissed.

Count VI

For the reasons stated above, Count VI is dismissed.

B. PAYMENT OF PENALTY

1. Subject to the terms of this order, in the event Emmett Utilities, Inc. is obligated to make the penalty payment of twenty thousand dollars ($20,000.00) as set forth in this order, payment shall be made to the Environmental Protection Trust Fund by Jan. 31,

2004. As set forth above, this amount is subject to remittur provided Defendant Emmett Utilities, Inc., by that date, has corrected the conditions resulting in the violations found to exist. In the event Emmett Utilities, Inc. is obligated under the terms of this order to pay the penalty assessed, this amount shall be paid by certified check or money order, payable to: "Treasurer of the State of Illinois, for deposit in the Environmental Protection Trust Fund," and be delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the penalty transmittal and check shall be simultaneously submitted to:

Illinois Attorney General's Office
c/o Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

The name and court number of this case and the Federal Employer Identification Number ("FEIN") of the Defendant shall appear on the certified check or money order. For purposes of payment and collection, the Defendant may be reached at the following address:

Emmett Utilities, Inc.
c/o Russell D. Thorell, President
RR 2 Box 58N
Oquawka, IL 61469

2. In the event the penalty is not paid in a timely fashion, interest shall accrue and be paid by the Defendant at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1996), pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1996).

C. COMPLIANCE

1. The Defendant shall diligently comply with, and shall cease and desist from violation of the Act, 415 ILCS 5/1 *et seq.* (1996), the Board's rules and regulations

(35 Ill. Adm. Code Subtitles A through H (1994)) and any and all federal laws and regulations.

2. The Defendant shall implement corrective action and shall completely abate the violations set forth herein on or before January 31, 2004. ~~In the alternative~~, ~~Defendant shall secure, from the Illinois Commerce Commission, an Order allowing it to terminate or abandon service pursuant to Section 8-508 of the Public Utilities Act.~~ RHG

3. ~~Any petition to terminate or abandon service shall be filed with the Illinois Commerce Commission within 60 days of the date of this Order. A copy of any such petition, and all other motions and papers filed by the Defendant in the Commission, shall be served upon the Attorney General, Environmental Bureau.~~ RHG

D. JURISDICTION

This Court shall retain jurisdiction of this matter for the purpose of enforcing this order and for the purpose of adjudicating all matters of dispute among the parties. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process. This is a final order subject to appeal.

Richard Gambrell, Associate Judge 4/29/03

Agreed only as to form:

Deborah L. Barnes
Assistant Attorney General
Attorney for Plaintiff

John M. Myers
Attorney for Defendants

State of Illinois)
)SS
County of Henderson)

VERIFICATION

RUSSELL D. THORELL, being duly sworn on his oath, deposes and states that he is the President of the Petitioner, Emmett Utilities, Inc.; that he has reviewed the foregoing Petition to Discontinue and Abandon Service; and that the statements contained therein are true and correct.

Russell D Thorell

Russell D. Thorell

SUBSCRIBED AND SWORN BEFORE ME
THIS 29th DAY OF January, 2004

Molly M Jones

NOTARY PUBLIC

"OFFICIAL SEAL"
MOLLY M. JONES
Notary Public, State of Illinois
My Commission Exp. 09/05/2005

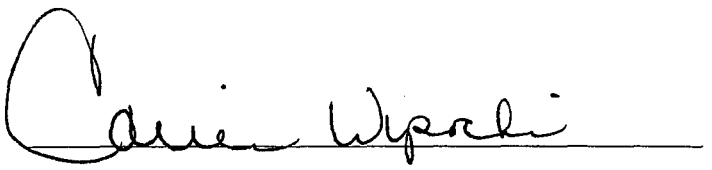
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **MOTION FOR STAY OF PROCEEDINGS** was served upon all counsel of record by placing same in the United States Post Office mail box, postage prepaid in Springfield, Illinois on February 6, 2004 and addressed to:

Thomas Davis, Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

and that the original was filed with the Clerk of the Court in which said cause is pending.



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 04-81

MOTION OF DEFENDANT RUSSELL D. THORELL TO DISMISS COMPLAINT

Now comes Defendant Russell D. Thorell, by his attorney, John M. Myers and moves the Board for an order dismissing him from these proceedings. In support of this Motion, Defendant states as follows:

1. Russell D. Thorell is named as a Defendant in these proceedings solely on the grounds that he is a "responsible corporate officer". (See paragraph 3 and prayer for relief contained in each count).

2. Recently in *People v. Thorell,* Case No. 01-CH-2, the Attorney General and Illinois EPA attempted to pierce the corporate veil with respect to Mr. Thorell, and were rebuffed by the Court. A copy of the Court's order finding Thorell not liable on a corporate veil piercing theory is attached hereto as Exhibit A.

3. Illinois does not recognize a "responsible corporate officer" doctrine. That doctrine has been recognized in a couple of other jurisdictions and is apparently our new Attorney General's weapon of choice. However, the First District Appellate Court has pretty much rejected, or at least severely limited, the doctrine. See *People ex rel. Madigan v. Tang,* 2004 Ill. App. LEXIS 74 (1st Dist. 2004). (copy attached).

4. One aberrant decision of the Third District Appellate Court has recognized that in environmental cases under proper facts, a corporate officer who actively participated in a violation can be held personally liable notwithstanding the absence of facts sufficient to pierce the corporate veil. *People ex rel. Burris v. C.J.R. Processing,* 269 Ill. App. 3d 1013 (3rd Dist. 1995).

5. *C.J.R. Processing* notwithstanding, the instant complaint merely alleges in a completely conclusory fashion Defendant Thorell's involvement in the alleged violations, and as such, fails to state a cause of action.

WHEREFORE, Defendant Russell D. Thorell moves the Board for an order dismissing him as a Defendant in these proceedings.

Respectfully Submitted,
RUSSELL D. THORELL, Defendant

By: _____
His Attorney

John M. Myers
RABIN, MYERS, HANKEN & DURR, P.C.
1300 South Eighth Street
Springfield, IL 62703
217.544.5000
fax: 217.544.5017
email: jmyers@springfieldlaw.com

2 of 3 DOCUMENTS

THE PEOPLE ex rel. LISA MADIGAN, Attorney General of the State of Illinois, Plaintiffs-Appellant, v. CYRUS TANG, Indiv., and as Chairman and Chief Executive Officer of Pielet Brothers Scrap Iron and Metal L.P., Defendant-Appellee.

No. 1-02-3337

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FIRST DIVISION

2004 Ill. App. LEXIS 74

February 2, 2004, Decided
February 2, 2004, Opinion Filed

NOTICE: [*1] THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE 21 DAY PETITION FOR REHEARING PERIOD.

PRIOR HISTORY:

Appeal from the Circuit Court of Cook County. 01 CH 10095. Honorable Donald J. O'Brien, Judge Presiding.

DISPOSITION: Affirmed.

COUNSEL: For Plaintiff-Appellant, Lisa Madigan, Attorney General Chicago (Dianne M. Potts, of counsel) and Gary S. Feinerman, Solicitor General, Chicago.
For Defendant-Appellee, Scahnoff & Weaver, LTD, Chicago (Edward V. Walsh, III and Michael D. Richman, of counsel).

JUDGES: JUSTICE McBRIDE delivered the opinion of the court. O'MALLEY, P.J., and McNULTY, J., concur.

OPINIONBY: McBRIDE

OPINION:

JUSTICE McBRIDE delivered the opinion of the court:

The State appeals the dismissal of its second amended complaint in which it charged Cyrus Tang, individually and as chairman and chief executive officer of Pielet Brothers Scrap Iron and Metal L.P. (P Brothers LP), with violations of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.* (West 2000)) (the Act). We affirm dismissal of the complaint.

The State filed its original complaint against Tang on June 19, 2001. It charged him, under the Act, with open dumping, improper waste [*2] disposal, developing a waste disposal site without a permit, operation of a waste disposal site without an operating permit, water pollution, water pollution hazard, and failure to post a landfill bond. It also charged common law public nuisance. The complaint alleged that Tang was chairman and chief executive officer of and had a controlling ownership in P Brothers LP. A nonparty was the chief operating officer. The complaint alleged that "Defendant Tang conducted an automobile shredding operation at the site through the business entities." It accused him of causing and allowing auto shredder residue and auto fluff to be piled outside for more than one year, both from on-site operations and other off-site automobile shredding operations. It further alleged that the decision to spend money to clean up the wastes could not have been made without Tang's approval. It claimed that "defendant Tang had taken no action, nor had caused any action to be taken, to institute measure(s) to prevent this material including auto fluff waste from entering the environment via different pathways, including but not limited to, storm water runoff from the site." The complaint sought declaratory and mandatory [*3] injunctive relief and assessment of fines.

Tang moved to dismiss the complaint under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2000)), claiming that the State failed to "allege any personal involvement in any wrongful act by Mr. Tang, and thus fail[ed] to state a claim under Illinois

law." Tang further claimed that the court could not grant the requested mandatory injunctive relief because Tang did not own or have control over the site. Although the order is not included in the record on appeal, the parties inform us that the State's original complaint was dismissed on December 7, 2001, without prejudice.

The State subsequently filed its first amended complaint. The complaint was nearly identical to the original complaint, except that it added counts for failure to file an initial report on location and disposal practices, violation of the annual reporting requirement, violation of the groundwater reporting requirement, violation of the record-keeping requirements, and accumulation of waste on site for over one year. It also contained an allegation that Tang "caused or allowed" the violations

> "as a part of his [*4] performance of, and as a direct result of, his duties as Chairman and Chief Executive Officer of P Brothers LP, and because of his controlling ownership interest in both a limited partner and the general partner of P Brothers LP. These duties included, and his controlling ownership interest meant, that Defendant Tang was a person, if not the only one, who could decide to make the expenditure in such an amount to be sufficient to dispose of the auto shredder residue and/or auto fluff waste at the site."

It further alleged:

> "Defendant Tang failed to make the decision to properly dispose of, or direct or authorize sufficient funding reasonably necessary for the disposal of, the auto shredder residue and/or auto fluff waste at the site. In this fashion, Defendant Tang caused or allowed the consolidation of the auto shredder residue and/or auto fluff waste at the site."

Tang moved to dismiss the first amended complaint under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2000)). The court granted the motion and dismissed the first amended complaint in part with prejudice and in part without prejudice on April 12, 2002. The [*5] portions dismissed with prejudice were the requests for mandatory injunctive relief, which the court dismissed because it found that the portion of the Act under which the State sought a mandatory injunction did not permit mandatory injunctive relief, and the counts charging Tang with failing to comply with the reporting requirements because the court found that those sections of the Act impose duties on facilities, not on individuals. After its first amended complaint was dismissed, the State filed motions to reconsider or alternatively to enter a Rule 304(a) (155 Ill. 2dR. 304(a)) finding, allowing immediate appeal. The court denied the motions.

The State sought leave to file its second amended complaint. The State included those claims that were dismissed with prejudice from the first amended complaint. According to the State, the claims were included only "to preserve the issue for appeal." Tang objected to inclusion of the previously dismissed claims, and the court disallowed them.

As filed, the second amended complaint charged open dumping, improper waste disposal, developing a waste disposal site without a permit, operation of a waste disposal site without an operating permit, [*6] water pollution, water pollution hazard, common law public nuisance, failure to post landfill bond, and accumulation of waste on site for over one year. Its allegations were very similar to the allegations made in the original and first amended complaints. With regard to the first six counts, it alleged that Tang "conduct[ed] an automobile shredding operation at the site" and "caused and allowed" (1) the resultant "auto shredder residue and auto fluff to be piled outside, uncontainerized and uncovered"; (2) "auto shredder residue and/or auto fluff waste from off-site automobile shredding operations to be accepted at the site in addition to that generated on-site"; and (3) "auto shredder residue and/or auto fluff waste to be consolidated." Further, it alleged that Tang "failed to take any action to remove the wastes *** to a licensed disposal facility" and "fail[ed] to authorize the expenditure necessary for proper removal of the [wastes]." The complaint again sought mandatory injunctive relief and, this time, alleged:

> "On information and belief, Midwest Metallics LP [the now bankrupt entity that was formerly P Brothers LP] will raise no objection to Defendant Cyrus [*7] Tang entering the site and taking such actions necessary to cease the violations of the Act he is committing at the site if ordered to do so by this Court after trial."

Tang moved under section 2-619.1 (735 ILCS 5/2-619.1 (West 2000)) to dismiss the second amended complaint, claiming that the allegations were insufficient to state a claim against him personally, that mandatory relief was not allowed under the Act, and that he had no legal interest in the property, which prevented the court from ordering him to enter the property for remediation.

The trial court agreed with Tang on all three grounds. First, it found that the allegations were

insufficient to state a claim against Tang personally. It found that Tang's "involvement and participation as alleged [was] not because he was operating the facility *** but because he was chairman and chief executive officer and because of his controlling and ownership interest." At most, the court found that the complaint

> "alleged that [Tang's] personal involvement and active participation [was] due to his activities as Chairman and Chief Executive Officer and controlling interest and his failure [*8] in that capacity to dispose of the residue or to authorize sufficient funding to dispose of the residue or to authorize sufficient funding to dispose of the residue and 'in this fashion' caused or allowed the residue on the site."

With regard to the additional issues, the court recognized that "Illinois law is clear that a mandatory injunction may not issue to a non-owner or non-controller of the property [citation] which is the subject matter of the injunction." It also held that the portion of the Act relied upon by the State "allows only Restraining orders and not positive mandatory injunctions." Thus, the court dismissed the second amended complaint with prejudice.

The State appeals on three grounds. First, it claims that its first and second amended complaints adequately state multiple causes of action against Tang. Second, it maintains that mandatory injunctive relief is appropriate. Third, the State claims that the trial court erred in finding that it lacked authority to grant the requested relief because Tang has no legal interest in the property at issue. The State urges us to "reverse the dismissal of its first and second amended complaints and to remand all of [*9] the counts and remedies sought therein for further proceedings in the circuit court."

Tang contends that our review should be restricted to the State's second amended complaint because the State failed to "include in its Second Amended Complaint by restatement or incorporation by reference each theory of recovery argued in the First Amended Complaint" and, consequently, waived those claims on appeal. Regardless, Tang argues, even if the first amended complaint is considered, the trial court's dismissal was proper for the same reasons it was proper to dismiss the second amended complaint. In reply, the State argues that it did not waive its right to appeal the dismissal of its first amended complaint by failing to incorporate the dismissed claims in its second amended complaint because the State attempted to incorporate those claims, solely for the purpose of preserving them for appeal, but was prevented from doing upon Tang's objection. The State failed to include the order dismissing its first amended complaint in its appendix in violation of Rule 342(a) (155 Ill. 2d R. 342(a) ("The appellant's brief shall include as an appendix, *** a copy of the judgment appealed from ***")), and [*10] we need not consider the State's arguments with regard to that order. Regardless, the claims dismissed in the first amended complaint would be subject to dismissal for the same reasons as the claims in the second amended complaint as discussed below. n1 Thus, even if the claims were not waived, we would hold that they were properly dismissed.

> n1 Section 21(d) of the Act, under which the claims for failure to properly file reports were brought, requires that such reports be filed by a person who "conduct[s] any waste-storage, waste-treatment, or waste-disposal operation." 415 ILCS 5/21(d) (West 2000).

As to the merits, we first note that our review is *de novo. Safeway Insurance Co. v. Daddono,* 334 Ill. App. 3d 215, 218, 777 N.E.2d 693, 267 Ill. Dec. 890 (2002). "We take as true all well-pled facts and reasonable inferences therefrom and consider only those facts in the pleading and included in attached exhibits." *Safeway,* 334 Ill. App. 3d at 218. Illinois law requires [*11] a plaintiff to "allege facts stating the elements of the cause of action," and unsupported legal conclusions and factual conclusions are insufficient and will be disregarded in ruling on a motion to dismiss. *Safeway,* 334 Ill. App. 3d at 222. Dismissal of a complaint should be affirmed only when "it is clear that a plaintiff cannot prove a set of facts that will entitle him to the relief sought." *Safeway,* 334 Ill. App. 3d at 218.

In this case, we are not asked to determine whether, as a general proposition, a corporate officer may ever be held liable for corporate wrongs under the Act; both parties concede that, under certain circumstances, a corporate officer may be individually liable. Instead, we must determine whether the pleadings in this case are sufficient to state a claim for Tang's individual liability. Apparently, only one Illinois case has specifically addressed the issue of a corporate officer's potential individual liability under the Act. The trial court relied on this case in rendering its decision, and both parties claim the case supports their contentions on appeal.

In *People ex rel. Burns v. C.J.R. Processing, Inc.,* 269 Ill. App. 3d 1013, 1015, 647 N.E.2d 1035, 207 Ill. Dec. 542 (1995), [*12] the appellate court for the Third District considered "whether a corporate officer may be held individually liable for a corporation's violations of the Act when he or she is personally involved or actively

participates in those violations." The court found that the officer could be held liable under those limited circumstances, *i.e.,* "active participation or personal involvement." *C.J.R.,* 269 Ill. App. 3d at 1020. In *C.J.R.,* the court found that the complaint sufficiently alleged "active participation or personal involvement" to withstand a motion to dismiss. Specifically, the complaint alleged that the defendant was "responsible for CJR and controll[ed] its activities." *C.J.R.,* 269 Ill. App. 3d at 1014. He also served as executive vice president and chief operating officer for C.J.R.'s parent corporation. *C.J.R.,* 269 Ill. App. 3d at 1014. The defendant was also alleged, in cooperation with C.J.R. and its parent corporation to "own and operate a facility" to which they "transported large quantities of solid and liquid waste materials." *C.J.R.,* 269 Ill. App. 3d at 1014. The appellate court found that "the [*13] complaint alleged [that the corporate officer] was personally involved and actively participated in the decisions and corporate activities which caused the violations of the Act." *C.J.R.,* 269 Ill. App. 3d at 1018. Specifically, the court placed significance on the fact that each count of the complaint alleged that the defendant personally operated the facility. *C.J.R.,* 269 Ill. App. 3d at 1018. The court also considered significant in its holding that "the operative, allegations charged that [the corporate officer] 'caused or allowed' all of the violations to occur in conjunction with the other defendants." *C.J.R.,* 269 Ill. App. 3d at 1018.

The State argues that under *C.J.R.,* it has adequately stated claims against Tang individually. Tang also relies on *C.J.R.,* but claims that the complaint does not state a cause of action. No Illinois court has interpreted or applied those portions of *C.J.R.* dealing with a corporate officer's potential individual liability under the Act. Accordingly, both parties have referred us to cases from other jurisdictions in support of their positions.

Before analyzing those cases, we outline [*14] some of the principles underlying corporation law in Illinois. "One of the purposes of a corporate entity is to immunize the corporate officer from individual liability on contracts entered into in the corporation's behalf." *National Acceptance Co. of America v. Pintura Corp.,* 94 Ill. App. 3d 703, 706, 418 N.E.2d 1114, 50 Ill. Dec. 120 (1981). Accordingly, in most instances, the law immunizes corporate officers from corporate liabilities and debts. *Safeway,* 334 Ill. App. 3d at 219 ("Corporate status generally shields corporate officers and shareholders from liability from corporate debts and obligations"). However, "corporate officer status does not insulate [a corporate officer] from individual liability for the torts of the corporation in which he actively participates." *Pintura,* 94 Ill. App. 3d at 706; see also *Safeway,* 334 Ill. App. 3d at 219 ("This protection does not shield corporate officers from their own wrongdoing"); *Simon v. Pelouze,* 263 Ill. App. 177 (1931) (recognizing that corporate officers and directors can be held liable for tortious acts by the corporation only where the officer or director participated [*15] in the tortious act). Some torts for which corporate officers may be liable include negligence, fraud, trespass to realty, willfully inducing breach of contract, and conversion. *Pintura,* 94 Ill. App. 3d at 706.

We have reviewed the out-of-jurisdiction cases cited by the parties in support of their contrary claims regarding the sufficiency of the allegations in this case. Most of these cases deal with liability under the "owned or operated" standard for liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 *et seq.* (2000)) rather than the Act's "caused or allowed" standard, which is at issue here (415 ILCS 5/12(a) (West 2000)). Regardless, the cases are useful to our analysis because they are premised on the same general principles of corporation law that we discussed above and because the CERCLA provision is in many ways analogous to the Act's provision.

Both CERCLA and the Act impose liability on "persons" who violate their provisions, and "person" is broadly defined in both statutes to include individuals, partnerships, firms, associations, [*16] corporations, and governmental subdivisions and agencies. Compare 42 U.S.C. § 9601(21) (2000) and 415 ILCS 5/3.26 (West 2000). Under CERCLA, however, liability attaches to those who "owned or operated any facility at which such hazardous substances were disposed of" at the time of disposal. 42 U.S.C. § 9607(a)(2) (2000). Under the Act, on the other hand, liability attaches to those who "cause or allow the open dumping of any waste" (415 ILCS.5/21(a) (West 2000)) and those who "cause or threaten or allow the discharge" of contaminants that cause or tend to cause water pollution within the state (415 ILCS 5/12(a) (West 2000)). In determining a corporate officer's liability under the Act, this distinction is minimal. The difference is that instead of having to have been an owner or active operator of the facility where the violations occurred to be liable under CERCLA, the officer must have caused or allowed the violations in order to be liable under the Act. n2

n2 We note that this reasoning applies equally with the common law public nuisance claim because "[a] common law public nuisance has been defined as an act or failure to act which injures the safety, health or morals of the public; or which causes substantial public annoyance, inconvenience or injury." *C.J.R.,* 269 Ill. App. 3d

> at 1019. Thus, at its very least, an individual must be found to have acted or failed to act in such way to have caused the public nuisance in order for liability to attach.

[*17]

In *United States v. Bestfoods,* 524 U.S. 51, 141 L. Ed. 2d 43, 118 S. Ct. 1876 (1998), the Supreme Court considered whether a parent corporation could be held liable for its subsidiary's CERCLA violations. The Court made two important and relevant holdings. First, it held that "a parent corporation that actively participated in, and exercised control over, the operations of a subsidiary may [not], without more, be held liable as an operator of a polluting facility owned or operated by the subsidiary" "unless the corporate veil may be pierced." *Bestfoods,* 524 U.S. at 55, 141 L. Ed. 2d at 52, 118 S. Ct. at 1881. Second, the Court held that "a corporate parent that actively participated in, and exercised control over, the operations of the facility itself may be held directly liable in its own right as an operator of the facility." *Bestfoods,* 524 U.S. at 55, 141 L. Ed. 2d at 52, 118 S. Ct. at 1881. The Court noted that "it is hornbook law that the exercise of the "control" which stock ownership gives to the stockholders . . . will not create liability beyond the assets of the [corporation]." *Bestfoods,* 524 U.S. at 61-62, 141 L. Ed. 2d at 56, 118 S. Ct. at 1884, [*18] quoting W. Douglas & C. Shanks, *Insulation From Liability Through Subsidiary Corporations,* 39 Yale L.J. 193, 196 (1929). These holdings have guided courts across the country that have considered corporate officers' potential liability for corporate environmental wrongs.

The facts of the out-of-jurisdiction cases cited by the parties confirm that more than a corporate title is required in order for an officer to be held liable for corporate violations of environmental protection laws. There is, however, no precise definition as to what must be alleged to state a claim for personal liability. As we review the cases, we note that the federal courts impose a notice-pleading standard whereas we impose a fact-pleading standard. Compare *Redfield v. Continental Casualty Corp.,* 818 F.2d 596, 605 (7th Cir. 1987) ("Fed. R. Civ. P. 8(a) permits notice pleading ***"), with *Grund v. Donegan,* 298 Ill. App. 3d 1034, 1039, 700 N.E.2d 157, 233 Ill. Dec. 56 (1998) ("Illinois is a fact-pleading jurisdiction"). "As a consequence, a plaintiff in federal court need not set out in detail the facts upon which his claim is based." Redfield, 818 F.2d at 605. [*19] Thus, the burden on the State may be heavier in this case than the burden was on the plaintiffs in the cases from other jurisdictions that are discussed below.

The primary difficulty in cases like this one lies in identifying the officer's actions and determining whether they were personal acts or acts of the corporation. As one court has explained:

> "The line between a personal act and an act that is purely an act of the corporation (or of some other employee) and so not imputed to the president or to other corporate officers is sometimes a fine one, but often it is clear on which side of the line a particular act falls. If an individual is hit by a negligently operated train, the railroad is liable in tort to him but the president of the railroad is not. Or rather, not usually; had the president been driving the train when it hit the plaintiff, or had been sitting beside the driver and ordered him to exceed the speed limit, he would be jointly liable with the railroad." *Browning-Ferris Industries of Illinois, Inc. v. Ter Maat,* 195 F.3d 953, 956 (7th Cir. 1999).

In these examples the determination of personal liability is obvious, but the situations [*20] are not always so clear-cut, especially in the environmental protection arena.

In *Insulation From Liability Through Subsidiary Corporations Welfare Educ. Fund,* 25 F.3d 417, 418 (7th Cir. 1994), the court reversed dismissal of a complaint brought against corporate officers, asserting liability under CERCLA. The court emphasized that direct, personal liability is different and distinct from liability resulting from piercing the corporate veil. *Pipefitters,* 25 F.3d at 420. The court found the allegations sufficient to state a claim for personal liability under CERCLA: "Pipefitters alleged not only that the Arst officers in question exercised management control over the company's operations, but also that they knowingly exercised direct and personal control over the handling of the hazardous substance at issue in this appeal." *Pipefitters,* 25 F.3d at 421. The court explained:

> "To survive a motion to dismiss a plaintiff must allege that persons associated with the corporation *directly* and *personally* engaged in conduct that led to the specific environmental damage at issue in the case. Without such direct, personal involvement, the corporation [*21] and not the associated individuals must be regarded as owning or operating the hazardous waste site in question. It would certainly be unreasonable to infer simply from general allegations of corporate ownership or operation of a waste site that

> individuals acting on the corporation's behalf are themselves liable. Thus, a plaintiff does not state a claim for owner or operator liability if she merely alleges that certain individuals had general corporate authority or served generally in a supervisory capacity. Active participation in, or exercise of specific control of, the activities in question must be shown." *Pipefitters,* 25 F.3d at 421-22.

Courts that have upheld liability have similarly required more than a showing of general corporate authority. In *Carter-Jones Lumber Co. v. Dixie Distributing Co.,* 166 F.3d 840, 846 (6th Cir. 1999), for example, the court recognized that a corporate officer could be liable for the corporation's CERCLA violations because the officer was "actively involved in the arrangements for disposal." The evidence showed that the officer and the corporation purchased 10 transformers containing polychlorinated biphenyls [*22] (PCBs), that the officer negotiated the purchase price and signed an affidavit in which he acknowledged the problem with PCB disposal, that the transformers were moved to property owned by the officer, that some of the transformers were sold by the corporation, that those same transformers were later sold to another buyer by the officer, that the officer was attempting to hide the transformers from the Ohio Environmental Protection Agency, and that the officer misstated to the Ohio Environmental Protection Agency the number of transformers he had. *Carter-Jones,* 166 F.3d at 844.

In *State ex rel. Webster v. Missouri Resource Recovery, Inc.,* 825 S.W.2d 916, 926 (Mo. App. 1992), the court reversed the dismissal of a corporate officer defendant, finding that he could be liable for the corporation's violation of the Missouri Hazardous Waste Management Law (Mo. Rev. Stat. § 260.350 (1986), because the officer

> "was a 'hands-on' operator. He individually participated in and directed all the activities of the corporation. *** He had responsibility for the day-to-day operation of the business. [His] decisions and his actions [*23] [were] the source of. plaintiffs' charges against [the corporation]. He had the ability to control the activities of [the corporation] which gave rise to this lawsuit and he did control those activities."

Likewise, in *State v. Shore Realty Corp.,* 759 F.2d 1032, 1052 (2d Cir. 1985), the defendant officer was held liable where he was "in charge of the operation of the facility in question." In *United States v. Northeastern Pharmaceutical & Chemical Co.,* 810 F.2d 726, 744 (8th Cir. 1986), the court found a corporate officer liable under CERCLA because "he personally participated in the wrongful conduct" by arranging for the transportation and disposal of hazardous substances on behalf of the corporation.

In *United States v. Carolina Transformer Co.,* 978 F.2d 832, 837 (4th Cir. 1992), the Court of Appeals for the Fourth Circuit found that a plaintiff need only show that the officer had the "authority to control" the facility, not necessarily that he did. Still, the officers' liability was based on more than the mere fact that they were corporate officers. One officer "acknowledged that he was 'in charge' of the company and that [*24] he was 'responsible' for what went on upon the company's property." *Carolina Transformer,* 978 F.2d at 837. The other officer "operated or otherwise controlled operations on the property in question," and his basic responsibilities included "everyday operations of the company, delegation of authority, [and] management of the company." *Carolina Transformer,* 978 F.2d at 837. And these were not "all of the many facts," which supported a finding of liability. *Carolina Transformer,* 978 F.2d at 837.

One case, perhaps more than any other, exemplifies that it is not a person's title as a corporate officer that creates liability. In *United States v. Gurley,* 43 F.3d 1188, 1194-95 (8th Cir. 1994), the court held that a defendant who was "not an officer, director, or shareholder" was appropriately found liable for corporate hazardous waste disposal activities in violation of CERCLA because the individual was the "'director of operations' *** 'in control of the day to day operations of the plant'" and engaged in written communications with the Arkansas Department of Pollution Control and Ecology regarding the violations.

Applying [*25] rules similar to those applied in the above cases, some courts have found insufficient evidence to hold corporate officers liable. In *Riverside Market Development Corp. v. International Building Products, Inc.,* 931 F.2d 327, 330 (5th Cir. 1991), for example, the court upheld the grant of summary judgment in favor of an officer defendant because "the plaintiffs *** failed to come forward with any evidence showing that [the officer] personally participated in any conduct that violated CERCLA." In *T.V. Spano Building Corp. v. Department of Natural Resources & Environmental Controls,* 628 A.2d 53, 62 (Del. 1993), the court held that the officer was not personally liable for the corporation's improper disposal of hazardous wastes because while the officer "had broad, general authority for the Raintree project and direct knowledge of the disposal trenches," he "did not direct, control, approve, consent to, or ratify the decision to dispose of the construction waste."

From our analysis of *C.J.R.*, the other cases cited by the parties, and the Act itself, we conclude that in order to state a claim 'for personal liability against a corporate officer under [*26] the Act, a plaintiff must do more than allege corporate wrongdoing. Similarly, the plaintiff must allege more than that the corporate officer held a management' position, had general corporate authority, or served in a supervisory capacity in order to establish individual liability under the Act. The plaintiff must allege facts establishing that the corporate officer had personal involvement or active participation in the acts resulting in liability, not just that he had personal involvement or active participation in the management of the corporation. Application of these principles in this case shows that the State has not pled a cause of action against Tang for individual liability.

The State has made conclusory allegations that Tang "caused or allowed" certain actions to occur in violation of the Act. The State, however, offers no explanation as to how Tang "caused or allowed" these violations to occur, except that he did so "as a part of his performance of, and as a direct result of, his duties as Chairman and Chief Executive Officer of P. Brothers LP, and because of his controlling ownership interest in both a limited partner and the general partner of P Brothers LP." In other [*27] words, the State is saying that because he was an officer and shareholder of the corporation, Tang is accountable for the corporation's actions. As noted above, this flies in the face of the purpose of creating corporate entities. To state a claim, the allegations must show that Tang was personally, as opposed to only in his corporate capacity, involved in the alleged violations. They fail to do so, despite the State's multiple opportunities to state its claims. Significantly, the State does not even allege that Tang had knowledge of the wastes or the violations. The allegations merely state in conclusory fashion that Tang "conducted an automobile shredding operation at the site through the business entities" and inexplicably "caused or allowed" the violations to occur. These allegations are significantly deficient as compared to the allegations in *C.J.R.* and other cases finding individually liability. As pointed out above in *C.J.R.*, the corporate officer defendant actually "operated" the facility in question. In this case, for whatever reason, the chief operating officer of P Brothers LP was not made a party to this action. The allegations are conclusory and insufficient to [*28] state a claim for personal liability.

The State urges us to ignore the deficiencies in its pleadings because "the evidence to support [the] allegation[s] is principally within the defendant's knowledge and can be further developed through discovery." The State cites *John Burns Construction Co. v. City of Chicago,* 234 Ill. App. 3d 1027, 601 N.E.2d 1024, 176 Ill. Dec. 326 (1992), *Christoffel v. Country Mutual Insurance Co.,* 183 Ill. App. 3d 32, 538 N.E.2d 1171, 131 Ill. Dec. 615 (1989), and *Holton v. Resurrection Hospital,* 88 Ill. App. 3d 655, 410 N.E.2d 969, 43 Ill. Dec. 836 (1980). Those cases differ significantly from this case. In *Burns Construction,* the plaintiff argued on its motion for reconsideration that it needed to conduct discovery in order to make more specific allegations. *Burns Construction,* 234 Ill. App. 3d at 1033. In *Christoffel,* the missing information was a copy of the insurance policy, which policy the defendant insurer obviously had knowledge of. *Christoffel,* 183 Ill. App. 3d at 37. In *Holton,* the court found that the "defendant did not have to rely primarily on plaintiff's complaint to formulate an answer and prepare [*29] for trial." *Holton,* 88 Ill. App. 3d at 659. The defendant was a hospital that retained copies of treatment records, and one of the primary shortcomings of the complaint was that it failed to indicate the hospital employees who treated the deceased on June 29, 1974. *Holton,* 88 Ill. App. 3d at 657.

In this case, the State never petitioned the court to begin discovery. Instead, it continued to replead nearly identical conclusions without indicating to the trial court that its complaint might have benefitted from discovery. Further, the State has not, in its pleadings or in its appellate briefs, described any of the evidence, which it believes is in Tang's possession. Nor is there any indication that Tang has any evidence that would be useful in answering the complaint. As they stand, the State's allegations are insufficient to apprise Tang of what acts he is being asked to defend. Under these circumstances, we cannot accept the State's claim. Dismissal was proper.

The State alternatively maintains that Tang is liable as a corporate' officer because "the law imposes responsibility upon corporate agents who do not proactively work to prevent violations [*30] of statutes that effect the public's heath and safety from occurring." In some jurisdictions this is known as the "responsible corporate officer doctrine." See, *e.g., BEC Corp. v. Department of Environmental Protection,* 256 Conn. 602, 775 A.2d 928 (2001); *Commissioner, Department of Environmental Management v. RLG, Inc.,* 755 N.E.2d 556 (Ind. 2001). Tang argues that the State has waived this argument by not raising it in the trial court. We agree. See *Sparapany v. Rexall Corp.,* 249 Ill. App. 3d 388, 392, 618 N.E.2d 1098, 188 Ill. Dec. 528 (1993) ("It is settled law in Illinois that a theory cannot be presented on review which was not presented in the trial court; any such theory not presented below is deemed waived"). Regardless, the responsible corporate officer doctrine requires specific allegations of corporate responsibility with regard to the wrongful acts, rather than just general

allegations of corporate responsibility. See *United States v. Park,* 421 U.S. 658, 675, 44 L. Ed. 2d 489, 502-03, 95 S. Ct. 1903, 1913 (1975) ("The main issue for determination was not respondent's position in the corporate hierarchy, but rather his accountability, [*31] because of the responsibility and authority of his position, for the conditions which gave rise to the charges against him"); *United States v. Dotterweich,* 320 U.S. 277, 284, 88 L. Ed. 48, 53, 64 S. Ct. 134, 138 (1943) ("The offense is committed by all who do have such a responsible share in the furtherance of the transaction which the statute outlaws ***"). Thus, consideration of the argument would lead us to the same conclusion: the allegations are insufficient to support the State's claims against Tang.

The State also argues that the trial court erred in holding that the Act does not authorize mandatory injunctive relief and that the court lacked authority to order Tang to remediate the property even though he has no legal interest in it. Because of our disposition on the liability issues, we need not address these relief issues.

For the foregoing reasons, we affirm the trial court's dismissal with prejudice of the State's second amended complaint.

Affirmed.

O'MALLEY, P.J., and McNULTY, J., concur.

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT

MCDONOUGH COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, and WILLIAM PONCIN, McDonough County State's Attorney,	)	
Plaintiffs,	)	
v.	)	NO. 01-CH-2
EMMETT UTILITIES, INC., an Illinois corporation, and RUSSELL D. THORELL, individually and as president of EMMETT UTILITIES, INC.	)	
Defendants.	)	

JUDGMENT ORDER

This cause came before the court for an evidentiary hearing on July 22, 2002. The plaintiff was present by a representative of the Illinois Environmental Protection Agency and the Office of the Illinois Attorney General. The Defendant corporation was present by counsel John Myers. Defendant Russell Thorell was present individually and as president of Emmett Utilities, Inc., and by counsel John Myers.

This action was commenced on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by the Attorney General of the State of Illinois, on the Attorney General's own motion and at the request of the Illinois Environmental Protection Agency.

A. FINDINGS

The court heard testimony and received documentary evidence and makes the following findings:

1. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Environmental Protection Act, 415 ILCS 5/4 (1996), and is charged, *inter alia*, with the duty of enforcing the Act.

2. The Defendant, Emmett Utilities, Inc., is an Illinois corporation which, by the time

of the hearing in this cause, was qualified to do business in Illinois.

3. The Defendant Russell Thorell is president of Emmett Utilities, Inc. At the time of trial, Mr. Thorell was before the court in his capacity as president of Emmett Utilities, Inc. and in his capacity as an individual.

4. The court finds that it has jurisdiction over the parties and the subject matter of the complaint.

5. At all times relevant to this Complaint, Emmett Utilities, Inc. has owned and operated a public water supply and sewer system in McDonough County, Illinois, which serves approximately 22 direct service connections from one drilled well.

6. The court makes the following findings:

Count I

7. The Plaintiff has proven that on August 13, 1997 and April 20, 1999:

a. No monthly operating reports had been submitted, in violation of 415 ILCS 5/18(a)(1) and (2), as well as 34 Ill. Adm. Code Sections 611.831, 653.605 and 653.704.

b. No master flow meter had been installed in the well pump discharge line, in violation of 415 ILCS 5/18(a)(1) and (2), as well as 35 Ill. Adm. Code Sections 601.101, 653.106 and Section 3.2.7.3 (a)(4) of the Recommended Standards for Water Works.

c. No hydro pneumatic storage tank sight-glass tubes had been installed, in violation of 415 ILCS 5/18(a)(1) and (2), as well as 35 Ill. Adm. Code Sections 601.101, 653.109 and section 7.2.4 of the Recommended Standards for Water Works.

8. The Court finds that Defendant Emmett Utilities, Inc. failed to prepare and distribute and failed to submit certification of distribution of a 1999 Consumer Confidence Report, in violation of 415 ILCS 5/18(a)(2) AND 35 Ill. Adm. Code 611.882

and 611.885.

9. The remaining allegations of Count I were not stipulated to by the parties. No evidence was presented by the Plaintiff as to the condition of Defendant's facilities on the dates in question. The Plaintiff has failed to meet its burden as to the remaining allegations of Count I.

10. As a result of the findings indicated above, Defendant Emmett Utilities is permanently enjoined from further violations of Illinois' Public Water Supply Regulations. In addition, based upon the standard set forth in People ex. rel Ryan v. McHenry Shores Water Co., 295 Ill.App.3d 628 (1998), Defendant is assessed a monetary penalty of $10,000. This amount is also based upon the Defendant's reported operating revenues and is intended as an inducement to correct the conditions which have threatened the health of Defendant's customers. This penalty shall be paid by January 31, 2004 and is subject to remittur provided Defendant Emmett Utilities, by that date, has corrected the conditions resulting in the violations found to exist.

11. The Plaintiff presented no evidence in support of its request pursuant to 415 ILCS 5/42(f) that it be awarded its costs in this matter. Therefore, that request is denied.

Count II

As to Count II, the court finds:

12. Plaintiff has proven that Emmett Utilities failed to submit coliform sample results in violation of 415 ILCS 5/18 and 5/19 and 35 Ill. Admin. Code section 611 521 for the following periods:

a. November 1, 1998 to November 30, 1998

b. December 1, 1998 to December 31, 1998

c. January 1, 1999 to January 31, 1999

d. April 1, 1999 to April 30, 1999

e. May 1, 1999 to May 31, 1999

13. Emmett Utilities failed to submit nitrate sample results for the period from January 1, 1999 to March 31, 1999 in violation of 415 ILCS 5/18 and 5/19 and 35 Ill. Admin. Code 611.604(a)(1)(A).

14. Emmett Utilities failed to submit lead and copper sample results for the time period from June 1, 1998 to September 30, 1998, in violation of 415 ILCS 5/18 and 5/19 and 35 Ill. Admin. Code 611.356(d)(4)(B).

15. Emmett Utilities failed to provide fluoridation to the water being discharged to the distribution system in violation of 415 ILCS 40/7a and 35 Ill. Admin. Code 611.125.

16. As a result of these findings, Defendant Emmett Utilities is permanently enjoined from further violation of the Illinois Pollution Control Board's Public Water Supply Rules. In addition, based upon the standard set forth in People ex. rel Ryan v. McHenry Shores Water Co., 295 Ill.App.3d 628 (1998), Emmett Utilities is assessed a monetary penalty of $10,000. This penalty shall be paid by January 31, 2004 and is subject to remittur provided Defendant Emmett Utilities, by that date has corrected the conditions resulting in these violations.

17. The Plaintiff presented no evidence in support of its request pursuant to 415 ILCS 5/42(f) that it be awarded its costs in this matter. Therefore, that request is denied.

Count III

18. The court finds that on or about March 21, 2000, April 17, 2000, May 18, 2000, June 21, 2000, July 26, 2000, August 23, 2000, October 10, 2000, and November 28, 2000 Defendant Emmett Utilities allowed the discharge of raw sewage such as to threaten pollution of water in violation of 415 ILCS 5/12(a). No evidence was presented as to either the environmental effects of these actions or the cost of any cleanup that took place.

19. As a result of this finding, Defendant Emmett Utilities is permanently enjoined from further unauthorized discharge of raw sewage from its facility and is directed to correct the circumstances which resulted in these violations.

20. The Plaintiff presented no evidence in support of its request pursuant to 415 ILCS 5/42(f) that it be awarded its costs in this matter. Therefore that request is denied.

Count IV

21. The Plaintiff seeks to hold Defendant Russell Thorell personally liable for the acts of Emmett Utilities. The burden is on the Plaintiff to make a substantial showing that the corporation is really a sham for another dominating entity. In re Estate of Wallen, 262 Ill.App.3d 61 (1994).

22. In order to pierce the corporate veil a Plaintiff must show: (1) such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and, (2) circumstances must be such that an adherence to the fiction of a separate corporate existence would promote injustice or inequitable consequences. Pederson v. Paragon Pool Enterprises, 214 Ill.App.3d 815 (1991).

23. Factors to be considered in determining whether a sufficient unity of interest exists between a corporation and an individual to warrant piercing the corporate veil include: 1) inadequate capitalization; 2) failure to issue stock; 3) failure to observe corporate formalities; 4) nonpayment of dividends; 5) insolvency of the debtor corporation at the time; 6) non-functioning of other officers or directors; 7) absence of corporate records; 8) whether the corporation is a mere facade for the operation of dominant stockholders. Ted Harrison Oil Co. v. Dokka, 247 Ill.App.3d 791 (1993).

24. The capitalization of a corporation is a major factor in assessing whether a legitimate separate corporate entity existed. McCracken v. Olson Co., 149 Ill.App.3d 104 (1986). In determining whether a corporation is adequately capitalized it is necessary to compare the amount of capital to the amount of business to be conducted

and obligations to be fulfilled. Jacobson v. Buffalo Rock Shooters Supply, 278 Ill.App.3d 1084 (1996). In the instant case the evidence has shown that Emmett Utilities has been adequately capitalized to serve the purposes for which the corporation was established.

25. The evidence in the instant case showed that 10 shares of stock were issued when the corporation was formed. Those shares remain outstanding.

26. Corporate formalities are sufficiently observed where the corporation completed required documents for its formation, issued shares of stock and filed the appropriate corporate tax returns. Jacobson v. Buffalo Rock Shooters Supply, 278 Ill.App.3d 1084 (1996). The Plaintiff has failed to show that these corporate formalities were not observed in the instant case.

27. There was no evidence in the instant case that any dividends were paid. There was no evidence that Emmett Utilities was insolvent at any time relevant to the allegations in the complaint. The evidence established that the only functioning officer or director was Defendant Thorell. Evidence was presented that corporate records were maintained.

28. After weighing all of the above factors, the court finds that the Plaintiff has not made the substantial showing necessary to impose individual liability upon Defendant Thorell. Therefore, Count IV is dismissed.

Count V

For the reasons stated above, Count V is dismissed.

Count VI

For the reasons stated above, Count VI is dismissed.

B. PAYMENT OF PENALTY

1. Subject to the terms of this order, in the event Emmett Utilities, Inc. is obligated to make the penalty payment of twenty thousand dollars ($20,000.00) as set forth in this order, payment shall be made to the Environmental Protection Trust Fund by Jan. 31,

2004. As set forth above, this amount is subject to remittur provided Defendant Emmett Utilities, Inc., by that date, has corrected the conditions resulting in the violations found to exist. In the event Emmett Utilities, Inc. is obligated under the terms of this order to pay the penalty assessed, this amount shall be paid by certified check or money order, payable to: "Treasurer of the State of Illinois, for deposit in the Environmental Protection Trust Fund," and be delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the penalty transmittal and check shall be simultaneously submitted to:

Illinois Attorney General's Office
c/o Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

The name and court number of this case and the Federal Employer Identification Number ("FEIN") of the Defendant shall appear on the certified check or money order. For purposes of payment and collection, the Defendant may be reached at the following address:

Emmett Utilities, Inc.
c/o Russell D. Thorell, President
RR 2 Box 58N
Oquawka, IL 61469

2. In the event the penalty is not paid in a timely fashion, interest shall accrue and be paid by the Defendant at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1996), pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1996).

C. COMPLIANCE

1. The Defendant shall diligently comply with, and shall cease and desist from violation of the Act, 415 ILCS 5/1 *et seq.* (1996), the Board's rules and regulations

(35 Ill. Adm. Code Subtitles A through H (1994)) and any and all federal laws and regulations.

2. The Defendant shall implement corrective action and shall completely abate the violations set forth herein on or before January 31, 2004. ~~In the alternative, Defendant shall secure, from the Illinois Commerce Commission, an Order allowing it to terminate or abandon service pursuant to Section 8-508 of the Public Utilities Act.~~ RHG

3. ~~Any petition to terminate or abandon service shall be filed with the Illinois Commerce Commission within 60 days of the date of this Order. A copy of any such petition, and all other motions and papers filed by the Defendant in the Commission, shall be served upon the Attorney General, Environmental Bureau.~~ RHG

D. JURISDICTION

This Court shall retain jurisdiction of this matter for the purpose of enforcing this order and for the purpose of adjudicating all matters of dispute among the parties. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process. This is a final order subject to appeal.

Richard Gambrell, Associate Judge 4/29/03

Agreed only as to form:

Deborah L. Barnes
Assistant Attorney General
Attorney for Plaintiff

John M. Myers
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **MOTION OF DEFENDANT RUSSELL D. THORELL TO DISMISS COMPLAINT** was served upon all counsel of record by placing same in the United States Post Office mail box, postage prepaid in Springfield, Illinois on February 6, 2004 and addressed to:

Thomas Davis, Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

and that the original was filed with the Clerk of the Court in which said cause is pending.