

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB 18 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
VILLAGE OF POPLAR GROVE, an)
Illinois municipal corporation, and,)
R.H. BATTERMAN & COMPANY, INC.,)
a Wisconsin corporation,)
)
Respondents.)

PCB No. 04-142

NOTICE OF FILING

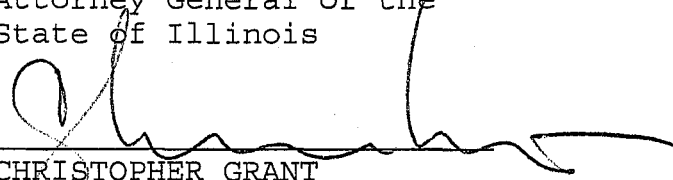
PLEASE TAKE NOTICE that we have today, February 18, 2004 filed with the Office of the Clerk of the Illinois Pollution Control Board an original and seven copies of our Complaint, a copy of which is attached herewith and served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY:



CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, VILLAGE OF POPLAR GROVE, and R.H. BATTERMAN & COMPANY, INC., as follows:

COUNT I:
CONSTRUCTION WITHOUT A PERMIT

1. This complaint is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Environmental Protection Act, ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged *inter alia*, with the duty of enforcing the Act.

3. Respondent VILLAGE OF POPLAR GROVE ("Poplar Grove") is

an Illinois municipal corporation, duly authorized and operating under the laws of the State of Illinois. Poplar Grove is located in Boone County, Illinois.

4. Respondent R.H. BATTERMAN & COMPANY, INC. ("Batterman") is a Wisconsin corporation, not authorized to transact business in the State of Illinois. Batterman is in the business of construction project management and municipal engineering.

5. Poplar Grove is the owner and operator of a potable water supply and distribution system ("Poplar Grove Water Supply"), containing, inter alia, underground potable water supply mains, storage tanks, and distribution lines. The Poplar Grove Water Supply serves approximately 1,100 persons on a year around basis.

6. On a date better known to Respondents, Poplar Grove retained Batterman to design and manage construction of several additions to the Poplar Grove Water Supply, including an above-ground water storage and distribution tank ("new water tower"). As part of its construction management agreement with Poplar Grove, Batterman was responsible for obtaining all required permits relating to construction and operation of the new water tower.

7. On August 9, 2002, Illinois EPA received an application for a construction permit for the new water tower. The application was submitted by Batterman on behalf of Poplar Grove.

8. On September 13 and October 3, 2002, Illinois EPA sent letters to the Respondents, requesting additional information for the purpose of reviewing Respondents' construction permit application.

9. On or about September 15, 2002, before Illinois EPA had taken final action on Respondents' construction permit application, the Respondents commenced construction of the new water tower.

10. On October 6, 2002, Illinois EPA inspected the Site and discovered that Respondents had commenced construction.

11. On February 21, 2003, the Illinois EPA issued an 'as-built' approval letter to the Respondents for the now-completed new water tower.

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

(a) No person shall:

* * *

2. Violate regulations or standards adopted by the Agency pursuant to Section 15(b) of this Act or by the Board under this Act;
3. Construct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such a permit.

* * *

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides, as follows:

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

14. Respondent Poplar Grove, a political Subdivision, and Respondent Batterman, a Wisconsin corporation, are "Person[s]" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

15. Section 3.365 of the Act, 415 ILCS 5/3.365 (2002), provides, as follows:

"Public Water Supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply".

16. The Poplar Grove Water Supply, including the newly built water tower, is a "Public Water Supply" as that term is defined in Section 3.365 of the Act, 415 ILCS 5/3.365 (2002).

17. Section 15 of the Act, 415 ILCS 5/15 (2002), provides, as follows:

Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete

and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

18. Section 602.101 of the Illinois Pollution Control Board Regulations ("Drinking Water Regulations"), 35 Ill. Adm Code 602.101, provides, as follows:

CONSTRUCTION PERMITS

- a) No person shall cause or allow the construction of any new public water supply installation or cause or allow the change of or addition to any existing public water supply, without a construction permit issued by the Environmental Protection Agency ...

19. Respondents commenced construction of the new water tower while Illinois EPA was still seeking and reviewing information and specifications, and prior to Illinois EPA granting a permit or otherwise issuing written approval for construction. The Respondents thereby violated Sections 15 and 18(a) (3) of the Act, 415 ILCS 5/15 and 5/18(a) (3) (2002), and 35 Ill. Adm. Code 602.101.

20. By violating 35 Ill. Adm. Code 602.101, the Respondents thereby also violated Section 18(a) (2) of the Act, 415 ILCS 5/18(a) (2) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, VILLAGE OF POPLAR GROVE, and R.H. BATTERMAN &

COMPANY, INC. on Count I:

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

2. Finding that the Respondents have violated Sections 15, 18(a)(2), and 18(a)(3) of the Act, and 35 Ill. Adm. Code 602.101;

3. Ordering the Respondents to cease and desist from any further violations of Sections 15, 18(a)(2), and 18(a)(3) of the Act, and 35 Ill. Adm. Code 602.101;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondents for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

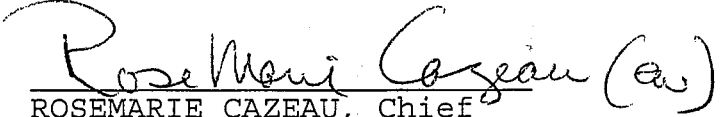
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL

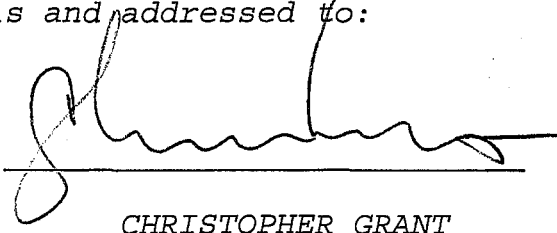
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18th day of February, 2004, the foregoing Complaint and Notice of Filing upon the person listed below, by first class mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois and addressed to:



CHRISTOPHER GRANT

Service List:

Mr. Charles Thomas Sewell
Attorney at Law
Strom, Sewell Larson & Popp
215 South State Street
Belvidere, Illinois 61008