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JUL 20 2004 *JA*

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
VILLAGE OF CAPRON, an Illinois)
municipal corporation,)
)

No. PCB *05-008*
(Enforcement)

NOTICE OF FILING

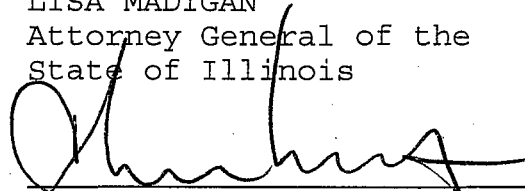
PLEASE TAKE NOTICE that we have today, July 20, 2004 filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of our Complaint, a copy of which is attached herewith and served upon you.

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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PEOPLE OF THE STATE OF ILLINOIS,)
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Respondent.)

No. PCB 05-008
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Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, complains of
Respondent, the VILLAGE OF CAPRON, as follows:

COUNT I
FAILURE TO PREPARE AND DISTRIBUTE CONSUMER CONFIDENCE REPORTS

1. This Complaint is brought on behalf of THE PEOPLE OF
THE STATE OF ILLINOIS 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 the terms and provisions of Section 31 of the
Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31
(2002).

2. Illinois EPA is an administrative agency of the State
of Illinois, established by Section 4 of the Act, 415 ILCS 5/4
(2002), and is charged, *inter alia*, with the duty of enforcing
the Act and regulations promulgated by the Illinois Pollution
Control Board ("Board"), including regulations governing owners
and operators of municipal public water supplies.

3. Respondent, the VILLAGE OF CAPRON was, and is, an Illinois municipal corporation, located in Boone County, Illinois.

4. The Village of Capron owns and operates a potable water supply and distribution system ("Village Water Supply"), including, *inter alia*, a potable water well, water supply pipes, distribution equipment, and water meters. The Village Water Supply serves a population of approximately 961 people on a year-round basis.

5. Public water supplies in Illinois are subject to regulations promulgated by the Board, codified at 35 Ill. Adm. Code, Subtitle F ("Board Drinking Water regulations"). These regulations, *inter alia*, require public water suppliers to provide their customers and Illinois EPA with annual reports, commonly known as "Consumer Confidence Reports" ("CCRs").

6. As part of Illinois EPA's oversight responsibilities, the Agency monitors public water suppliers for conformance with Board recordkeeping and reporting requirements.

7. In 2003, Illinois EPA determined that the Village of Capron had failed to provide to Illinois EPA, and had failed to mail to and make available to users, its CCR for the year 2002.

8. On August 29, 2003, Illinois EPA issued a Violation Notice to the Respondent by certified mail, advising the Respondent that its failure to provide the 2002 CCR constituted

violations of the Act and Board Drinking Water regulations. In its notification, Illinois EPA requested that this report be prepared and mailed to customers within 30 days [i.e. by September 28, 2003]. The Respondent neither complied nor responded to Illinois EPA's violation notice.

9. On March 2, 2004, Illinois EPA issued a Notice of Intent to Pursue Legal Action ("NIPLA") to the Respondent, by certified mail. In the NIPLA letter, Illinois EPA again notified the Respondent that its continued failure to provide the 2002 Consumer Confidence Report to Illinois EPA, failure to mail the report to its customers, and failure to certify to Illinois EPA that it had conformed with these requirements, constituted a continuing violation of the Act and Board Drinking Water regulations. The Respondent did not respond to Illinois EPA's NIPLA letter.

10. To the date of filing this Complaint, the Respondent has failed to prepare its 2002 CCR, and therefore also failed to submit its 2002 CCR to its customers and Illinois EPA.

11. To the date of filing this Complaint, the Respondent has failed to make its 2002 CCR available to non-billed users of the Village Water Supply.

12. To the date of filing this Complaint, the Village has failed to submit to Illinois EPA, a certification that its 2002 CCR had been submitted to customers.

13. Section 18 of the Act, 415 ILCS 5/18 (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;...

* * *

14. 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.

15. The Respondent, a political subdivisions, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

16. Section 611.100 of the Board Drinking Water regulations, 35 Ill. Adm. Code 611.100, provides the following definitions:

"Community Water System" or "CWS" means a public water system (PWS) that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

BOARD NOTE: Derived from 40 CFR 141.2 (1998). This definition differs slightly from that of Section 3.05 of the Act.

* * *

"Public water system" or "PWS" means a system for the

provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A PWS is either a community water system (CWS) or a non-community water system (non-CWS). Such term includes:

Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

Any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.

BOARD NOTE: Derived from 40 CFR 141.2 (1998). Where used in Subpart F, "public water supply" means the same as "public water system."

* * *

"Supplier of water" or "supplier" means any person who owns or operates a public water system (PWS). This term includes the "official custodian".

BOARD NOTE: Derived from 40 CRF 141.2 (1998)

17. The Village Water Supply is a "community water system" and a "public water system" as those terms are described in Section 611.100 of the Board Drinking Water Regulations, 35 Ill. Adm. Code 611.100.

18. The Respondent owns the Village Water Supply, and is a "supplier of water", and a "supplier", as those terms are defined in Section 611.100 of the Board Drinking Water Regulations, 35 Ill. Adm. Code 611.100.

19. Section 611.881 of the Board Drinking Water regulations, 35 Ill. Adm. Code 611.881 provides, in pertinent part, as follows:

Purpose and Applicability of this Subpart

- a) This Subpart U establishes the minimum requirements for the content of annual reports that community water systems (CWSs) must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

* * *

- c) For the purpose of this Subpart, "customers" are defined as billing units or service connections to which water is delivered by a CWS.

* * *

20. Section 611.882 of the Board Drinking Water regulations, 35 Ill. Adm. Code 611.882, provides, in pertinent part, as follows:

Compliance Dates

- a) Each existing CWS must have delivered its first report by October 19, 1999, its second report by July 1, 2000, and it must deliver subsequent reports by July 1 annually thereafter.

* * *

21. Section 611.885 of the Illinois EPA Drinking Water regulations 35 Ill. Adm. Code 611.885, provides, in pertinent part, as follows:

Report Delivery and Recordkeeping

- a) Except as provided in subsection (g) of this Section, each CWS must mail or otherwise directly deliver one copy of the report to each customer.
- b) The CWS must make a good faith effort to reach consumers who do not get water bills, using a means approved by the Agency by a SEP granted pursuant to Section 611.110....
- c) No later than the date the CWS is required to distribute the report to its customers, each CWS must mail a copy of the report to the Agency, followed within three months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Agency.

* * *

22. As owner and operator of a community water system, the Respondent was required, prior to or on July 1, 2003, to prepare its 2002 CCR, to distribute the 2002 CCR to customers and Illinois EPA, and to make a good faith effort to reach non-billed users. The Respondent was also required, prior to or on October 1, 2003, to certify to Illinois EPA that it had conformed with these requirements.

23. By failing to prepare and distribute its 2002 CCR to customers at any time, by failing to make a good faith effort to inform non-billed users, and by failing to send a copy of its CCR to Illinois EPA, the Respondent violated Sections 611.882 and 611.885 of the Board Drinking Water regulations, 35 Ill. Adm. Code Sections 611.882 and 611.885, and thereby also violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

24. By failing to certify to Illinois EPA, by October 1, 2003, that it had complied with the Board CCR regulations, the Respondent violated Section 611.885 of the Board Drinking Water regulations, 35 Ill. Adm. Code 811.885, and 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 Respondent, VILLAGE OF CAPRON, on Count I:

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

2. Finding that the Respondent has violated Section 18(a)(2) of the Act, and 35 Ill. Adm. Code Sections 611.882 and 611.885;

3. Ordering the Respondent to cease and desist from any further violations of Section 18(a)(2) of the Act, and 35 Ill. Adm. Code Sections 611.882 and 611.885;

4. Ordering the Respondent to immediately prepare, and submit to Illinois EPA, its customers, and other users, a compliant Consumer Confidence Report for the year 2002;

5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent 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;

6. Ordering the Respondent 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

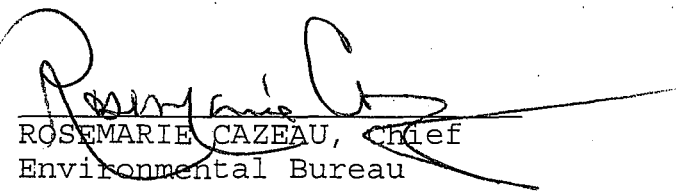
7. Granting such other relief as the Board deems appropriate and just.

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

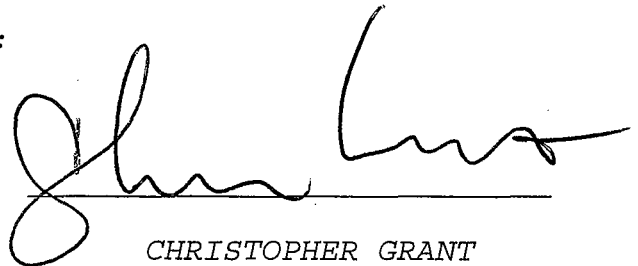
OF COUNSEL
CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 20th day of July, 2004, the foregoing Complaint and Notice of Filing upon the person listed below, by certified 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:
The Honorable John Ustich, President
The Village of Capron
118 4th Street
Capron, Illinois 61012