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JUN 15 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 -v- )  
 )  
 FIRST ROCKFORD GROUP, INC., an Illinois )  
 corporation, VILLAGE OF CHERRY VALLEY, )  
 an Illinois municipal corporation, HERITAGE )  
 ENGINEERING, LTD., an Illinois corporation, )  
 and SCHLICHTING & SONS EXCAVATING, )  
 INC., an Illinois corporation, )  
 )  
 Respondents. )

PCB 05- 215

**NOTICE OF FILING**

TO: See Service List

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that 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. Pursuant to 415 ILCS 5/31(c)(1), I am required to advise you that financing may be available through the Illinois Environmental Facilities Financing Act to correct the violations.

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

BY:   
BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-0608

## SERVICE LIST

### Cherry Valley

Stephan Appell, Village President  
Village of Cherry Valley  
806 East State Street  
Cherry Valley, Illinois  
61016

Mr. James E. Stevens  
Barrick, Switzer, Long, Balsley & Van Evera  
One Madison Street  
Rockford, Illinois  
61104

### First Rockford Group

Mr. Sunil Puri  
First Rockford Group  
6801 Spring Creek Road  
Rockford, Illinois  
61114

Ms. PaTrisha Gibbs  
First Rockford Group  
6801 Spring Creek Road  
Rockford, Illinois  
61114

### Heritage Engineering

Mr. John P. Malburg  
Heritage Engineering Ltd.  
345 Executive Parkway  
Suite M1  
Rockford, Illinois  
61125

### Schlichting & Sons Excavating, Inc.

Mr. Bruce Schlichting  
Schlichting & Sons Excavating  
8966 East State Street  
Rockford, Illinois  
61108

Mr. Jack D. Ward  
Reno, Zahm, Folgate, Lindberg & Powell  
2902 McFarland Road  
Suite 400  
Rockford, Illinois  
61107

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CLERK'S OFFICE

JUN 15 2005

STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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 -v- )  
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 FIRST ROCKFORD GROUP, INC., an Illinois )  
 corporation, VILLAGE OF CHERRY VALLEY, )  
 an Illinois municipal corporation, HERITAGE )  
 ENGINEERING, LTD., an Illinois corporation, )  
 and SCHLICHTING & SONS EXCAVATING, )  
 INC., an Illinois corporation, )  
 )  
 Respondents. )

PCB 05- 215

**COMPLAINT**

Complainant, People of the State of Illinois, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, HERITAGE ENGINEERING, LTD., an Illinois corporation, FIRST ROCKFORD GROUP, INC., an Illinois corporation, VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation, and SCHLICHTING & SONS EXCAVATING INC., an Illinois corporation, as follows:

**COUNT I**

**CONSTRUCTION OF POTABLE WATER LINES WITHOUT A PERMIT**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, against HERITAGE ENGINEERING, LTD., an Illinois corporation, FIRST ROCKFORD GROUP, INC., an Illinois corporation, and VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation on her own motion and at the request of the Illinois EPA pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31 (2002) ("Act").

2. This count is also brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, against SCHLICHTING & SONS EXCAVATING INC., an Illinois corporation, on her own motion pursuant to Section 42 of the Illinois Environmental Protection Act, 415 ILCS 5/42 (2002) ("Act").

3. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

4. At all times relevant to this Complaint, Respondent, FIRST ROCKFORD GROUP, INC. ("First Rockford") has been an Illinois corporation qualified to do business in the State of Illinois. The principal place of business for First Rockford is located at 6801 Spring Creek Road, Rockford, Illinois, 61114.

5. Respondent First Rockford is a development company undertaking a development project at the Golf Hill subdivision ("Site"), a 78 home development located in Cherry Valley, Winnebago County, Illinois.

6. At all times relevant to this Complaint, Respondent, HERITAGE ENGINEERING, LTD. ("Heritage") has been an Illinois corporation qualified to do business in the State of Illinois. The principal place of business for Heritage is located at 345 Executive Parkway, Suite M1, Post Office Box 5145, Rockford, Illinois, 61125-0145.

7. Respondent Heritage acted as Respondent First Rockford's engineer in developing Site grading plans, potable water and sewer installation plans, and in completing necessary permit application forms for development work at the Site.

8. At all times relevant to this Complaint, Respondent, the VILLAGE OF CHERRY VALLEY ("Cherry Valley") has been an Illinois municipal corporation. The mailing address for Cherry Valley is 806 East State Street, Cherry Valley, Illinois 61016.

9. Respondent Cherry Valley is the owner of the public water supply system to which the potable water system at the development Site is attached.

10. At all times relevant to this Complaint, Respondent SCHLICHTING & SONS EXCAVATING INC. ("Schlichting & Sons") has been an Illinois corporation qualified to do business in the State of Illinois. The principal place of business for Schlichting & Sons is located at 8966 East State Street, Rockford, Illinois, 61108.

11. Respondent, Schlichting & Sons, was the construction contractor who installed the potable water lines at the Golf Hill subdivision.

12. Respondent Heritage prepared a construction permit application for potable water lines at the Site on behalf of Respondent First Rockford. On September 24, 2003, First Rockford and Heritage signed the permit application.

13. On October 7, 2003, Respondent Cherry Valley signed the permit application. Shortly thereafter, the permit application was submitted to the Illinois EPA.

14. On October 28, 2003, prior to the issuance of a construction permit for the project by the Illinois EPA, Respondents First Rockford, Cherry Valley, Heritage and Schlichting & Sons directed, commenced and/or allowed the construction of the potable water line at the development Site.

15. On October 29, 30, 31, November 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 17, 2003, Respondent Cherry Valley inspected the on-going construction of the water line.

16. On or about November 11, 2003, the Illinois EPA received information that construction had occurred on a potable water supply line at the Site, prior to the issuance of a construction permit for the project by the Illinois EPA.

17. On November 18, 2003, an Illinois EPA potable water line construction permit was eventually issued for the Site.

18. As a result of the Respondents' construction of potable water lines without a construction permit at the Site, the Illinois EPA sent Respondents Heritage, First Rockford and Cherry Valley, violation notice ("VN") letters on May 18, 2004.

19. Section 15 of the Act, 415 ILCS 5/15 (2002), provides, in pertinent part, as follows:

- (a) 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.

20. Illinois EPA's review of potable water supply construction permit applications and issuance of construction permits are necessary to ensure potable water sources for the public are safe and sanitary.

21. Section 602.101(a) of the Illinois Pollution Control Board ("Board") Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a), provides as follows:

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 (Agency).

22. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), contains the following definition:

"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.

23. Respondents First Rockford, Heritage and Schlichting & Sons are corporations, and Cherry Valley is a political subdivision, and are therefore "persons" as the term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

24. At all times relevant to this Complaint, Respondent Cherry Valley was the owner of the public water supply system, and First Rockford, Heritage and Schlichting & Sons have been the owner's authorized representatives or legal custodians of the public water supply systems.

25. Sections 3.365 and 3.145 of the Act, 415 ILCS 5/3.365 and 5/3.145 (2002), respectively, provide the following definitions:

Section 3.365 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".

Section 3.145 provides as follows:

"COMMUNITY WATER SUPPLY" means a public supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.

26. The water supply constructed at the Site is a “public water supply” (“PWS”) and a “community water supply” (“CWS”) as those terms are defined respectively in Sections 3.365 and 3.145 of the Act, 415 ILCS 5/3.365 and 5/3.145 (2002).

27. From October 28, 2003, or a date better known to Respondents, through at least November 17, 2003, Respondents caused or allowed the construction, installation, changes or additions to potable water supply lines at the Site without first obtaining written approval for an Illinois EPA construction permit before the work started.

28. Respondent, First Rockford, the authorized representative or legal custodian of the public water supply system, as the developer of the Site and signatory of the Illinois EPA construction permit application, caused or allowed the construction, installation, changes or additions to potable water supply lines at the Site without first obtaining written approval for an Illinois EPA construction permit in violation of Section 15 of the Act, 415 ILCS 5/15 (2002), and Section 602.101(a) of the Board’s Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a).

29. Respondent, Cherry Valley, as the owner and official custodian of the public water supply system and signatory of the Illinois EPA construction permit, caused or allowed the construction, installation, changes or additions to potable water supply lines at the Site without first obtaining written approval for an Illinois EPA construction permit in violation of Section 15 of the Act, 415 ILCS 5/15(2002), and Section 602.101(a) of the Board’s Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a).

30. Respondent, Heritage, as the consulting engineer and the authorized representative of the public water supply system, and as signatory of the Illinois EPA construction permit application, caused or allowed the construction, installation, changes or



additions to potable water supply lines at the Site without a construction permit and failed to obtain written approval before construction of any proposed public water supply installations in violation of Section 15 of the Act, 415 ILCS 5/15 (2002), and Section 602.101(a) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a).

31. Respondent, Schlichting & Sons, as the construction contractor and the authorized representative of the public water supply system, caused or allowed the construction, installation, changes or additions to potable water supply lines at the Site without a construction permit and failed to obtain written approval before construction of any proposed public water supply installations in violation of Section 15 of the Act, 415 ILCS 5/15 (2002), and Section 602.101(a) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 602.101(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FIRST ROCKFORD GROUP, LTD., the VILLAGE OF CHERRY VALLEY, HERITAGE ENGINEERING, INC., and SCHLICHTING & SONS EXCAVATING INC. on this 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 Respondents have caused or allowed violations of Section 15 of the Act and 35 Ill. Adm. Code 602.101(a);
3. Ordering the Respondents to cease and desist from any further violations of Section 15 of the Act and 35 Ill. Adm. Code 602.101(a);
4. Assessing a civil penalty of \$50,000.00 against each Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for each day that the violations continued;

5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondents; and,
6. Granting such other relief as the Board deems appropriate and just.

**VIOLATIONS AGAINST CHERRY VALLEY**

**COUNT II**

**ALLOWING THE CONSTRUCTION OF POTABLE WATER LINES PRIOR TO OBTAINING A CONSTRUCTION PERMIT**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, against the VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation on her own motion and at the request of the Illinois EPA pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31 (2002).

2. - 23. Complainant realleges and incorporates herein by reference paragraphs 3 through 18, 20, and 22 through 26 of Count I as paragraphs 2 through 23 of this Count II.

24. Section 652.101(a) of the Illinois EPA's Public Water Supplies Regulations, 35 Ill. Adm. Code 652.101(a)(2002), provides as follows:

Construction permits shall be obtained by the official custodian of a community water supply prior to beginning construction of any proposed community water supply and prior to all alterations, changes or additions to an existing community water supply which may affect the sanitary quality, mineral quality or adequacy of the supply including changes pursuant to 35 Ill. Adm. Code 653.115.

25. Section 601.105 of the Board's Public Water Supplies regulations, 35 Ill. Adm. Code 601.105, provides the following definition:

"Official Custodian" means any officer of an organization which is the owner or operator of a public water supply, and who has direct administrative responsibility.

for the supply.

26. Respondent Cherry Valley is an "official custodian" of the public water supply system at the Site, as that term is defined in Section 601.105 of the Board's Public Water Supplies regulations, 35 Ill. Adm. Code 601.105.

27. From October 28, 2003, or a date better known to Respondent, through at least November 17, 2003, as official custodian of its community water supply, the Respondent Cherry Valley failed to obtain an Illinois EPA construction permit for the potable water lines prior to beginning alterations, changes or additions to an existing community water supply which affect the sanitary quality, mineral quality or adequacy of the supply at the Site.

28. Respondent, Cherry Valley, as owner and official custodian of its community water supply and signatory of the Illinois EPA construction permit, caused or allowed the construction of potable water lines at the Site without a construction permit in violation of 35 Ill. Adm. Code 652.101(a) of the Illinois EPA's Public Water Supplies Regulations, 35 Ill. Adm. Code 652.101(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent VILLAGE OF CHERRY VALLEY on this Count II:

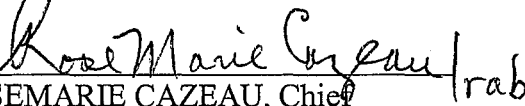
1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has caused or allowed violation of 35 Ill. Adm. Code 652.101(a);
3. Ordering the Respondent to cease and desist from any further violations of 35 Ill. Adm. Code 652.101(a);

4. Assessing a civil penalty of \$50,000.00 against the Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for each day that the violations continued;
5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

By:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:  
Bridget M. Carlson  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20th Floor  
Chicago, IL 60601  
(312) 814-0608

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on June 15, 2005.

BY: Bridget M. Carlson  
BRIDGET M. CARLSON

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on June 15, 2005:

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

BY: Bridget M. Carlson  
BRIDGET M. CARLSON