

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
) PCB No. 08-
) (Enforcement - Water)
CITY OF HOMETOWN, a municipal)
corporation,)
)
Respondent.)

NOTICE OF FILING

To: Joseph Cainkar
Louis F. Cainkar, Ltd.
30 North LaSalle Street, Suite 3922
Chicago, Illinois 60602-2507

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint for Civil Penalties, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Ste. 1800
Chicago, Illinois 60602
(312) 814-0609

DATE: October 1, 2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 08-
) (Enforcement - Water)
 CITY OF HOMETOWN, a)
 municipal corporation,)
)
 Respondent.)

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, CITY OF HOMETOWN, a municipal corporation, as follows:

COUNT I

FAILURE TO HAVE A CERTIFIED OPERATOR RESPONSIBLE FOR THE PUBLIC WATER SUPPLY

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 (2006), and is an action for civil penalties.

2. 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 (2006), and is charged, *inter*

alia, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, the City of Hometown ("Hometown") was and is a municipal corporation duly organized and existing under the laws of the State of Illinois. Hometown is a city with a population of approximately 4,467 individuals and located approximately eight (8) miles south west of downtown Chicago, Cook County, Illinois.

4. Hometown has no water supply treatment facility, but is a satellite water supply that purchases finished Lake Michigan water from the City of Chicago, Cook County, Illinois.

5. Hometown has two (2) meter vaults. A primary meter vault is at 87th Street and Kostner Avenue and another meter vault is at 87th Street and Rumsey Avenue. The water flows from these two locations to Hometown's residents. The satellite supply has 1,977 service connections within Hometown.

6. On July 1, 2005, the certified operator of Hometown's public water supply retired.

7. On November 20, 2006, the Superintendent of Oak Lawn's Water Department advised the Illinois EPA that he has a Class A certification and was willing to serve as Hometown's interim water operator.

8. On December 13, 2006, the Illinois EPA received the completed Notification of Certified Operator in Responsible Charge forms for the Superintendent of Oak Lawn's Water

Department to serve as Hometown's interim public water supply operator.

9. Section 1 of the Public Water Supply Operations Act ("Public Water Act"), 415 ILCS 45/1 (2006), provides, in pertinent part, as follows:

Section 1

- (1) In order to safeguard the health and well being of the populace, every community water supply in Illinois shall have on its operational staff at least one natural person certified as competent as a water supply operator under the provisions of this Act.

Except for exempt community water supplies as specified in Section 9.1 of this Act, all portions of a community water supply system shall be under the direct supervision of a properly certified community water supply operator.

- (2) The following class requirements apply:

* * *

- (d) Each community water supply in which the facilities are limited to pumpage, storage, or distribution shall have in its employ at least one natural person certified as competent as a Class D, Class C, Class B, or Class A community water supply operator.

* * *

- (3) A community water supply may satisfy the requirements of this Section by contracting the services of a properly qualified certified operator of the required class or higher, as specified in subsection (2). A written agreement to this effect must be on file with the Agency certifying that such an agreement exists, and delegating responsibility and authority to the contracted party. This written agreement shall be

signed by both the certified operator to be contracted and the responsible community water supply owner or official custodian and must be approved in writing by the Agency.

10. Section 5 of the Public Water Act, 415 ILCS 45/5 (2006), provides, in pertinent part, the following definitions:

- (a) "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 serves at least 15 service connections or which regularly serves 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".
- (b) "Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.
- (c) "Non-community water supply" means a public water supply that is not a community water supply. The requirements of this Act shall not apply to non-community water supplies.

11. The City of Hometown has two (2) meter vaults leading to 1,977 service connections and is therefore a "community water supply" of a "public water supply" as those terms are defined in Section 5 of the Public Water Act, 415 ILCS 45/5 (2006).

12. From at least July 1, 2005, or a date better known to the Respondent, to December 13, 2006, Respondent did not have a certified operator responsible for its public water supply,

thereby violating Section 1 of the Public Water Act, 415 ILCS 45/1 (2006).

13. Section 23 of the Public Water Act, 415 ILCS 45/23 (2006), provides as follows:

Authority is hereby vested in the Illinois Pollution Control Board to conduct hearings on complaints charging that any public water supply owner, owner's manager or agent, official custodian, municipal, state or other official has violated or aided and abetted the violation of Section 1 of this Act, or has refused or neglected to comply with any order issued by the Director, as herein provided for. Based on the determinations of the Illinois Pollution Control Board, the violator shall be penalized by the Illinois Pollution Control Board not less than \$100.00 nor more than \$1000.00 for each offense.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CITY OF HOMETOWN, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 1 of the Public Water Act, 415 ILCS 45/1 (2006);
3. Order Respondent to cease and desist from any further violations of Section 1 of the Public Water Act, 415 ILCS 45/1 (2006);
4. Assess against the Respondent a civil penalty of not less than \$100.00 or more than \$1,000.00 for each offense of Section 1 of the Public Water Act, 415 ILCS 45/1 (2006); and

5. Grant such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO DESIGNATE AND NOTIFY THE ILLINOIS EPA OF
A CERTIFIED OPERATOR RESPONSIBLE FOR THE PUBLIC WATER SUPPLY

1-10. Complainant re-alleges and incorporates by reference herein Paragraphs 1 through 8, 10 and 11 of Count I as Paragraphs 1 through 10 of this Count II.

11. Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2006), provides 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; or

* * *

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides 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.

13. The City of Hometown, a municipal corporation, is a "person" as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

14. Sections 3.365 and 3.145 of the Act, 415 ILCS 5/3.365 and 3.145 (2006), provide definitions for "public water supply", "community water supply" and "non-community water supply" that are identical to those provided by Section 5 of the Public Water Act, 415 ILCS 45/5 (2006), as alleged in paragraph 9 in this Count II.

15. Section 603.102 of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.102, provides:

Responsible Personnel

Each public water supply shall have designated an individual in responsible charge of the operation of that supply properly qualified and registered pursuant to Public Water Supply Operations Act [415 ILCS 45], with all provisions of the Public Water Supply Operations Act complied with.

16. Section 603.103(a) of the Illinois Pollution Control Board ("Board") Public Water Supply Regulations, 36 Ill. Adm. Code 603.103(a), provides as follows:

Certified Operator

a) Each public water supply, unless exempted under Section 603.104, shall have a certified operator, qualified and registered in accordance with the Public Water Supply Operations Act, designated in responsible charge of the supply's operation.

17. From at least July 1, 2005, or a date better known to the Respondent, to December 13, 2006, Respondent did not designate a certified operator, qualified and registered in accordance with the Public Water Supply Operations Act,

responsible for its public water supply in violation of Sections 603.102 and 603.103(a) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.102 and 603.103(a).

18. Section 603.105(b) of the Board Public Water Supplies regulations, 35 Ill. Adm. Code 603.105(b), provides:

Notification of Change of Ownership or Responsible Personnel

* * *

b) The Agency shall be notified within fifteen days, on forms supplied by the Agency, of changes in responsible personnel and who may be contacted in the event such contact is required.

19. From at least July 15, 2005, or a date better known to the Respondent, to December 13, 2006, Respondent failed to provide the Illinois EPA with an updated notification form stating the personnel responsible for its public water supply in violation of Section 603.105(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.105(b).

20. By violating Sections 603.102, 603.103(a), and 603.105(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.102, 603.103(a), and 603.105(b), Respondent thereby violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2006).


WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CITY OF HOMETOWN, for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 18(a)(2) of the Act, 415 ILCS 45/18(a)(2) (2006), and Sections 603.102, 603.103(a), and 603.105(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.102, 603.103(a), and 603.105(b);
3. Order Respondent to cease and desist from any further violations of Section 18(a)(2) of the Act, 415 ILCS 45/18(a)(2) (2006), and Sections 603.102, 603.103(a), and 603.105(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 603.102, 603.103(a), and 603.105(b);
4. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Illinois Environmental Protection Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

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

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

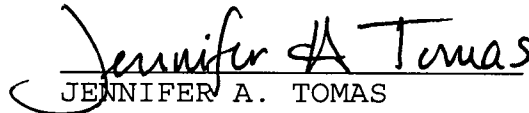
By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

JENNIFER A. TOMAS
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 1st day of October 2007, I caused to be served by U.S. Certified Mail, Return Receipt Requested, the foregoing Complaint for Civil Penalties to the party named on the attached Notice of Filing, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


JENNIFER A. TOMAS