

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

NOV 08 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CITY OF HOMETOWN, a municipal)
Corporation,)
Respondent.)

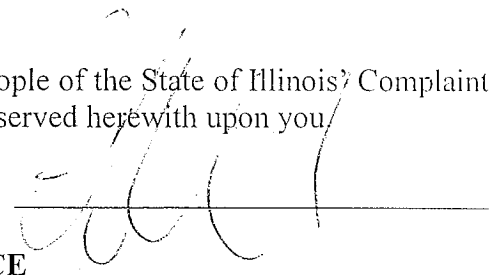
PCB No. 08-27

NOTICE OF FILING

TO: See attached service list.

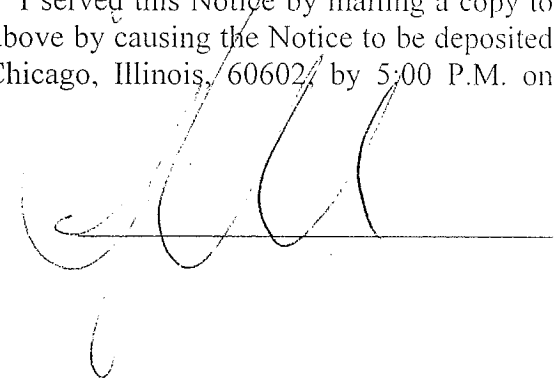
PLEASE TAKE NOTICE that on the 8th day of November 2007, we filed with the Office of the Clerk of the Illinois Pollution Control Board, James R. Thompson Center, Suite 11-500, 100 West Randolph Street, Chicago, Illinois:

Respondent City of Hometown's Answer to the People of the State of Illinois' Complaint for Civil Penalties; a copy of which is attached hereto and served herewith upon you



PROOF OF SERVICE

I, the undersigned, an attorney, on oath state: I served this Notice by mailing a copy to the above-mentioned parties at the addresses shown above by causing the Notice to be deposited in the U.S. Mail Chute at 30 N. LaSalle Street, Chicago, Illinois, 60602, by 5:00 P.M. on November 8, 2007, with proper postage prepaid.



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ANSWER TO COMPLAINT

NOW COMES the Respondent, CITY OF HOMETOWN ("City"), an Illinois municipal corporation, by and through its attorneys, LOUIS F. CAINKAR, LTD., and for its Answer to the PEOPLE OF THE STATE OF ILLINOIS' ("State") Complaint, states 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.

ANSWER: City admits the allegations contained in Paragraph 1 of the Complaint.

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.

ANSWER: City admits the allegations contained in Paragraph 2 of the Complaint.

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.

ANSWER: City admits the allegations contained in Paragraph 3 of the Complaint.

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.

ANSWER: City admits the allegations contained in Paragraph 4 of the Complaint.

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.

ANSWER: City admits the allegations contained in Paragraph 5 of the Complaint.

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

ANSWER: City denies the allegations contained in Paragraph 6 of the Complaint.

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.

ANSWER: City admits the allegations contained in Paragraph 7 of the Complaint but deny any implication that the City did not have a certified water operator through that date.

8. On December 12, 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.

ANSWER: City admits the allegations contained in Paragraph 8 of the Complaint but deny any implication that the City did not have a certified water operator through that date.

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.

ANSWER: City neither admits nor denies the allegations of Paragraph 9 of the Complaint and simply states that 415 ILCS 45/1 speaks for itself.

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 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.

ANSWER: City neither admits nor denies the allegations of Paragraph 10 of the Complaint and simply states that 415 ILCS 45/5 speaks for itself.

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).

ANSWER: Objection. The allegation calls for a legal conclusion. Without waiving said objection, City admits the allegations contained in Paragraph 11 of the Complaint.

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).

ANSWER: City denies the allegations contained in Paragraph 12 of the Complaint.

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.

ANSWER: City neither admits nor denies the allegations of Paragraph 13 of the Complaint and simply states that 415 ILCS 45/23 speaks for itself.

WHEREFORE, Respondent, City of Hometown, respectfully requests that this cause of action be dismissed with costs awarded in its favor.

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.

ANSWER: City re-alleges and incorporates by reference herein its answers to Paragraphs 1 through 8, 10 and 11 of Count 1 as its answers to Paragraphs 1-10 of 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

* * *

ANSWER: City neither admits nor denies the allegations of Paragraph 11 of the Complaint and simply states that 415 ILCS 5/18(a)(2) speak for itself.

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.

ANSWER City neither admits nor denies the allegations of Paragraph 12 of the Complaint and simply states that 415 ILCS 5/18(a)(2) speak for itself.

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).

ANSWER: Objection. The allegation calls for a legal conclusion. Without waiving said objection, City admits the allegations contained in Paragraph 13 of the Complaint.

14. Section 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.

ANSWER: City neither admits nor denies the allegations of Paragraph 14 of the Complaint and simply states that 415 ILCS 5/3.365 and 415 ILCS 5/3.145 speak for themselves.

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.

ANSWER: City neither admits nor denies the allegations of Paragraph 15 of the Complaint and simply states that 35 Ill. Adm. Code 603.102 speaks for itself.

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.

ANSWER: City neither admits nor denies the allegations of Paragraph 16 of the Complaint and simply states 35 Ill. Adm. Code 603.102 speaks for itself.

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).

ANSWER: City denies the allegations contained in Paragraph 17 of the Complaint.

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.

ANSWER: City neither admits nor denies the allegations of Paragraph 18 of the Complaint and simply states 35 Ill. Adm. Code 603.105(b) speaks for itself.

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).

ANSWER: The City denies the allegations contained in Paragraph 19 of the Complaint.

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).

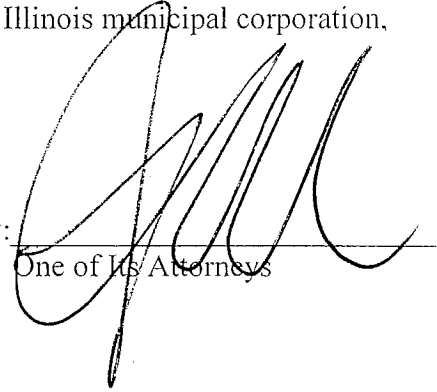
ANSWER: Objection. The allegation calls for a legal conclusion. Without waiving said objection, the City denies the allegations contained in Paragraph 20 of the Complaint.

WHEREFORE, Respondent, City of Hometown, respectfully requests that this cause of action be dismissed with costs awarded in its favor.

Respectfully submitted,
CITY OF HOMETOWN,
an Illinois municipal corporation,

By:

One of Its Attorneys

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and appears to be the initials 'JFC'.

Joseph Cainkar-#40625
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