

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	PCB No.
)	
v.)	(Enforcement- PWS)
)	
VILLAGE OF MERRIONETTE PARK, an Illinois)	
municipal corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO: Paul O'Grady, esq.
 Querrey & Harrow
 175 W. Jackson Blvd.
 Suite 1600
 Chicago, IL 60604-2827

PLEASE TAKE NOTICE that today, March 24, 2008, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state 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.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 *et seq.*) to correct the alleged pollution.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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

BY: _____

NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-8567

Date: March 24, 2008

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 Complainant,) PCB No.
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 v.) (Enforcement- PWS)
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 VILLAGE OF MERRIONETTE PARK, an Illinois)
 municipal corporation,)
)
 Respondent.)

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on March 24, 2008.

BY: _____
NANCY J. TIKALSKY

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COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Complainant, 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"), complains of Respondent, Village of Merrionette Park, as follows:

COUNT I

DISTRIBUTING A PUBLIC WATER SUPPLY IN VIOLATION OF ITS PERMIT

1. This count 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 EPA, pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this complaint, Respondent, Village of Merrionette Park ("Merrionette") has been and is an Illinois municipal corporation in good standing and duly authorized to do business in the State of Illinois. Merrionette's office is located at 11720 South Kedzie Avenue, Merrionette Park, Cook County, Illinois.

4. Merrionette is owner and custodian of water storage tanks at a pump station on 113th Street and Whipple Street, Merrionette Park, Cook County, Illinois. ("System")

5. From prior to 2002 through the filing of this Complaint, or a date or dates better known to the Respondent, the System received water as finished Lake Michigan water from the City of Chicago, rechlorinated the water and discharged the water to a distribution system. The System has a storage capacity of 420,000 gallons and supplies approximately 570 residential service connections and 38 commercial service connections through its distribution system.

6. For the System's triennial monitoring period, October 2002 through September 2005, Merrionette was required to provide the Illinois EPA with the samples results obtained during the period June 1, 2005 through September 30, 2005, and tested by a certified laboratory for each lead and copper ("2005 Sample Results"). By October 2005, Respondent was required to submit 2005 Sample Results to the Illinois EPA.

7. On November 18, 2005, the Illinois EPA reviewed its records and issued a Violation Notice No. W-2005-00510 to Respondent for failing to submit, as required, the 2005 Sample Results. In its Violation Notice the Illinois EPA stated that the Respondent could meet compliance for monitoring each lead and copper for the System by submitting

10 samples results tested by a certified laboratory obtained during the period June 1, 2006 through September 30, 2006 ("2006 Sample Results").

8. On March 31, 2006, in a Commitment letter from the Respondent, Merrionette, to the Illinois EPA, the Respondent agreed to obtain and submit the 2006 Sample Results.

9. On April 11, 2006, in correspondence to Respondent, the Illinois EPA accepted Respondent's Commitment Compliance Agreement to obtain and submit the 2006 Sample Results. Additionally, the Illinois EPA's correspondence required the 2006 Sample Results to be submitted by Respondent by October 10, 2006.

10. On October 3, 2006, the Illinois EPA sent a Compliance Schedule Update Request to Respondent, reminding the Respondent that its Compliance Commitment to submit the 2006 Sample Results was coming due on October 10, 2006.

11. In February 2007, after a review of its records, the Illinois EPA determined that the 2006 Sample Results had not been submitted by Respondent as required by the Commitment Compliance Agreement.

12. On February 22, 2007, the Illinois EPA mailed a Notice of Intent to Pursue Legal Action on Violation Notice No. W-2005-00510 to Respondent.

13. On or about October 2007, Respondent submitted 10 sample results for lead and copper from the System and tested by certified laboratory to the Illinois EPA. The samples were obtained from the System from June 1, 2007 through September 30, 2007.

14. From approximately June 1, 2002 through September 30, 2007, or on a date or dates better known to Respondent, Respondent failed to submit sample results for lead and copper for the System to the Illinois EPA as required.

15. Respondent's ownership and operation of the System are subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board"). The Board's regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code ("Board Water Pollution Regulations").

16. Section 18(a) of the Act, 415 ILCS 5/18(a)(2006), provides as follows:

No person shall:

1. Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or

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

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.

17. Sections 3.315, 3.365, and 3.145 of the Act, 415 ILCS 5/3.315, 5/3.365, and 5/3.145 (2006), respectively, provide the following definitions:

"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.

"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".

"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.

18. Merrionette is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

19. The Merrionette is a "public water supply" ("PWS") and a "community water supply" as those terms are defined in Sections 3.365 and 3.145 of the Act, 415 ILCS 5/3.365 and 5/3.145 (2006), respectively.

20. Section 19 of the Act, 415 ILCS 5/19(2006), provides as follows:

Owners or official custodians of public water supplies shall submit such samples of water for analysis and such reports of operation pertaining to the sanitary quality, mineral quality, or adequacy of such supplies as may be requested by the Agency. Such samples and reports shall be submitted within 15 days after demand by the Agency.

21. Section 611.356(d) of the Board Public Water Supply Regulations, 35 Ill.

Adm. Code 611.356(d), (Tap Water Monitoring for Lead and Copper), provides in pertinent part:

d) Timing of monitoring.

1) Initial tap sampling.

The first six-month monitoring period for small, medium-sized and large system suppliers must begin on the dates specified in Table E of this Part.

* * *

B) All small- and medium-sized system suppliers must monitor during each consecutive six-month monitoring period until the following is true:

* * *

ii) The supplier meets the lead action level and the copper action level during each of two consecutive six-month monitoring periods, in which case the supplier may reduce monitoring in accordance with subsection (d)(4) of this Section.

* * *

4) Reduced monitoring.

* * *

A) Reduction to annual for small- and medium-sized system suppliers meeting the lead and copper action levels. A small- or medium-sized system supplier that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with subsection (c) of this Section, and reduce the frequency of sampling to once per year.

C) Reduction to triennial for small- and medium-sized System suppliers.

i) Small- and medium-sized System suppliers meeting lead and copper action levels. A small- or medium-sized System supplier that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years.

* * *

22. Section 611.350 of the Board Public Water Supply Regulations provides the following definitions:

"Small system" means a water system that regularly serves water to 3,300 or fewer persons.

"Monitoring period" means any of the six-month periods of time during which a supplier must complete a cycle of monitoring under this Subpart G. BOARD NOTE: USEPA refers to these as "monitoring periods." The Board uses "six-month monitoring period" to avoid confusion with "compliance period," as used elsewhere in this Part and defined at Section 611.101.

"Meet" as this term is applied to either the lead or the copper action level, means that the 90th percentile level of the supplier's samples collected during a six-month monitoring period is less than or equal to the action level for that contaminant.

"Action level" means that concentration of lead or copper in water computed pursuant to subsection (c) of this Section that determines, in some cases, the treatment requirements of this Subpart G that a supplier must complete. The action level for lead is 0.015 mg/l. The action level for copper is 1.3 mg/l.

23. By failing to submit sample results for lead and copper for the System as required, from approximately June 1, 2002 through September 30, 2007, or dates better

known to Respondent, Respondent threatened the distribution of water from a public water supply of such quality or quantity as to be injurious to human health.

24. By Respondent's actions and omissions, Respondent, Merrionette, violated Sections 18(a) and 19 of the Act, 415 ILCS 5/18(a) and 19 (2006), and Section 611.356(d)(4)(C)(i) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 611.356(d)(4)(C)(i).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, Village of Merrionette Park:

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

B. Finding that Respondent has violated Sections 18(a) and 19 of the Act, 415 ILCS 5/18(a) and 19 (2006), and Section 611.356(d)(4)(C)(i) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 611.356(d)(4)(C)(i);

C. Ordering the Respondent to cease and desist from any further violations of Sections 18(a) and 19 of the Act, 415 ILCS 5/18(a) and 19 (2006), and Section 611.356(d)(4)(C)(i) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 611.356(d)(4)(C)(i);

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation;


E. Ordering 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

F. Granting such other relief as the 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:

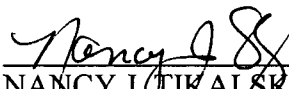
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