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SEP 18 2001

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Jim Ryan
ATTORNEY GENERAL

September 14, 2001

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

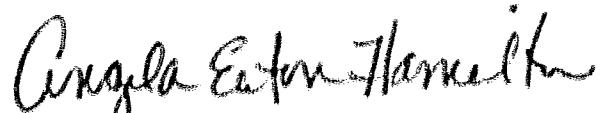
Re: *People v. City of Golconda, et al.*
PCB No. *03-36*

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and COMPLAINT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,



Angela Eaton Hamilton
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

AEH/pp
Enclosures

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CLERK'S OFFICE

SEP 18 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

PCB No. *0296*

CITY OF GOLCONDA,)

An Illinois municipal corporation,)

BROWN, ROFFMANN & ROBERTS,)

INC., an Illinois corporation, and)

FORBY EXCAVATING, INC., an)

Illinois corporation,)

Respondents.)

NOTICE OF FILING

To: Frederick Turner, Jr.
Attorney at Law
On Main Street
P.O. Box 512
Golconda, IL 62938

Brown, Roffmann & Roberts, Inc.
c/o Jim Brown, Registered Agent
1 West Ridge Road
Harrisburg, IL 62946

Forby Excavating, Inc.
8725 Bennell Road
Benton, IL 62812

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, an APPEARANCE and COMPLAINT, a copy of which is attached hereto and herewith 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 this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the Complaint filed in this case.

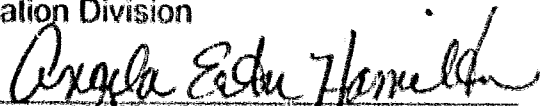
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General of the
State of Illinois

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

BY:


ANGELA EATON HAMILTON
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 14, 2001

CERTIFICATE OF SERVICE

I hereby certify that I did on September 14, 2001, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument entitled APPEARANCE and COMPLAINT:


To: Frederick Turner, Jr.
Attorney at Law
On Main Street
P.O. Box 512
Golconda, IL 62938

Forby Excavating, Inc.
8725 Bennett Road
Benton, IL 62812

Brown, Roffmann & Roberts, Inc.
c/o Jim Brown, Registered Agent
1 West Ridge Road
Harrisburg, IL 62946

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Ch.cago, Illinois 60601


Angela Eaton Hamilton
Assistant Attorney General

This filing is submitted on recycled paper.

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SEP 18 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CITY OF GOLCONDA,)
An Illinois municipal corporation,)
BROWN, ROFFMANN & ROBERTS,)
INC., an Illinois corporation, and)
FORBY EXCAVATING, INC., an)
Illinois corporation,)
)
Respondents.)

PCB No. 0236

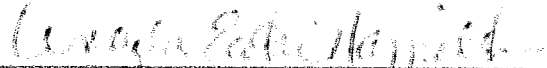
APPEARANCE

I, ANGELA EATON HAMILTON, Assistant Attorney General of the State of Illinois, hereby file my appearance in this proceeding on behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS.

Respectfully submitted.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the
State of Illinois

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

BY: 
ANGELA EATON HAMILTON
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 14, 2001

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 CITY OF GOLCONDA,)
 An Illinois municipal corporation,)
 BROWN, ROFFMANN & ROBERTS,)
 INC., an Illinois corporation, and)
 FORBY EXCAVATING, INC., an)
 Illinois corporation,)
)
 Respondents.)

PCB No. 02-96

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by James E. Ryan, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondents, CITY OF GOLCONDA, an Illinois municipality, BROWN, ROFFMANN & ROBERTS, INC., an Illinois corporation, and FORBY EXCAVATING, INC., an Illinois corporation, as follows:

COUNT I

PUBLIC WATER SUPPLY PERMIT

1. This Complaint is brought on behalf of the People of the State of Illinois, by James E. Ryan, the Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/1 *et seq.* (2000).

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 (2000), and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, City of Golconda, an Illinois municipal corporation, is a "public water supply" as that term is defined under Section 3.28 of the Act, 415 ILCS 5/3.28 (2000), 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 serves at least 15 service connections or which regularly serves at least 25 persons at least 60 days per year.

4. The City of Golconda's public water supply is a "public water system" ("PWS"), and a "community water system" ("CWS"), as those terms are defined under Section 611.101 of the Pollution Control Board's ("Board") Public Water Supply Regulations, 35 Ill. Adm. Code 611.101, as follows:

"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

* * *

"PUBLIC WATER SYSTEM" or "PWS" means a system for the provision to the public of piped water for human consumption, 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.

5. At all times relevant to this Complaint, the City of Golconda serves approximately 834 consumers through 340 direct connections.

6. Brown, Roffmann & Roberts, Inc. is an Illinois Corporation with its principal place

of business at 1 West Ridge Road, Harrisburg, Saline County, Illinois. The registered agent for Brown, Roffmann & Roberts, Inc., is Jimi W. Brown, 1 West Ridge Road, Harrisburg, Illinois. The City employed Brown, Roffmann & Roberts, Inc., to serve as a consulting engineer to design and oversee construction of a water main installation.

7. Forby Excavating, Inc., is an Illinois corporation with its principal place of business at 8725 Bennett Road, Benton, Franklin County, Illinois. The registered agent for Forby Excavating, Inc., is Gary Forby, 8725 Bennett Road, Benton, Franklin County, Illinois. The City employed Forby Excavating, Inc., to perform construction work on the water main installation.

8. Section 3.26 of the Act, 415 ILCS 5/3.26 (2000), defines "person" as:

'PERSON' is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency or any other legal entity or their legal representative, agent or assignee.

9. Section 1⁴(a) of the Act, 415 ILCS 5/18(a) (2000), provides in pertinent part:

(a) 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 Board under this Act; . . .

10. Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101, provides that:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act (Act), the Pollution Control Board (Board) Regulations, the Safe Drinking Water Act (42 U.S.C. 300f et seq.) Continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

11. Section 607.104 of the Board's Public Water Supplies Regulations, 35 Ill. Adm.

Code 607.104, provides that:

- a) No physical connection shall be permitted between the potable portion of a supply and any other water supply not of equal or better bacteriological and chemical quality as determined by inspection and analysis by the Agency, except as provided for in subsection (d).
- b) There shall be no arrangement by which an unsafe substance may enter a supply. (Emphasis added)

12. Section 601.105 of the Board's Public Water Supplies Regulations, 35 Ill. Adm.

Code 601.105, defines "water main" as:

Any pipe for the purpose of distribution of potable water which serves or is accessible to more than one property, dwelling, or rental unit, and is exterior to buildings.

13. Section 653.119 of the Board's Public Water Supplies Regulations, 35 Ill. Adm.

Code 653.119, provides that:

Water mains and water service lines shall be protected from sanitary sewers, storm sewers, combined sewers, house sewer service connections and drains as follows:

- a) Water Mains:
 - 1) Horizontal Separation:
 - A) Water mains shall be laid at least ten feet horizontally from any existing or proposed drain, storm sewer, sanitary sewer, combined sewer or sewer service connection.
 - B) Water mains may be laid closer than ten feet to a sewer line when:
 - i) local conditions prevent a lateral separation of ten feet;
 - ii) the water main invert is at least 18 inches above the crown of the sewer; and
 - iii) the water main is either in a separate trench or in the same trench on an undisturbed earth shelf located to one side of the sewer.
 - C) Both the water main and drain or sewer shall be constructed of slip-on or mechanical joint cast or

ductile iron pipe, asbestos-cement pressure pipe, prestressed concrete pipe, or PVC pipe meeting the requirements of Section 653.111 when it is impossible to meet (A) or (B) above. The drain or sewer shall be pressure tested to the maximum expected surcharge head before backfilling.

2) Vertical Separation:

- A) A water main shall be laid so that its invert is 18 inches above the crown of the drain or sewer whenever water mains cross storm sewers, sanitary sewers or sewer service connections. The vertical separation shall be maintained for that portion of the water main located within ten feet horizontally of any sewer or drain crossed. A length of water main pipe shall be centered over the sewer to be crossed with joints equidistant from the sewer or drain.
- B) Both the water main and sewer shall be constructed of slip-on or mechanical joint cast or ductile iron pipe, asbestos-cement pressure pipe, prestressed concrete pipe, or PVC pipe meeting requirements of Section 653.111 when:
 - i) it is impossible to obtain the proper vertical separation as described in (A) above; or
 - ii) the water main passes under a sewer or drain.
- C) A vertical separation of 18 inches between the invert of the sewer or drain and the crown of the water main shall be maintained where a water main crosses under a sewer. Support the sewer or drain lines to prevent settling and breaking the water main.
- D) Construction shall extend on each side of the crossing until the normal distance from the water main to the sewer or drain line is at least ten feet.

b) Water Service Lines:

- 1) The horizontal and vertical separation between water service lines and all storm sewers, sanitary sewers, combined sewers or any drain or sewer service connection shall be the same as the water main separation described in (a) above.
- 2) Water pipe described in (a) above shall be used for sewer

service lines when minimum horizontal and vertical separation cannot be maintained.

- c) **Special conditions - Alternate solutions shall be presented to the Agency when extreme topographical, geological or existing structural conditions make strict compliance with (a) and (b) above technically and economically impractical. Alternate solutions will be approved provided watertight construction structurally equivalent to approved water main material is proposed.**
- d) **Water mains shall be separated from septic tanks, disposal fields and seepage beds by a minimum of 25 feet.**
- e) **Water mains and water service lines shall be protected against entrance of hydrocarbons through diffusion through any material used in construction of the line.**

14. On November 5, 1998, the Illinois EPA, Bureau of Water, issued Construction Permit No. 0482-FY1999 for the installation of eight thousand feet of six-inch diameter water main at the City of Golconda. On September 8, 1999, the Illinois EPA, Bureau of Water, issued Supplemental Construction Permit No. 1-0482-FY1999 for an additional 4,300 feet of six-inch diameter water main.

15. On June 14, 2000, the Illinois EPA conducted an inspection of the installed water main and observed violations of the required water main/sewer system separation regulations.

16. In June, 1999 through November, 1999, the Respondents installed a water main extension at the intersection of Franklin and Madison Streets without maintaining the required physical separation from the City of Golconda's sewer system.

17. In June, 1999 through November, 1999, the Respondents installed a water main extension at the intersection of Adams Street and an alley on the north end of town and within a one-half block of Main Street without maintaining the required physical separation from the City of Golconda's sewer system.

18. In June, 1999 through November, 1999, the Respondents installed a water main extension at the intersection of Franklin Street and an alley on the north end of town and within a

one-half block of Main Street without maintaining the required separation from the City of Golconda's sewer system.

19. By failing to maintain the required physical separation between a water main and a sewer system, the Respondents have violated Section 18 of the Act, 415 ILCS 5/18 (2000) and Sections 601.101, 607.104(b), and 653.119 of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 601.101, 607.104(b) and 653.119.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board enter an order against the Respondents, CITY OF GOLCONDA, BROWN, ROFFMAN & ROBERTS and FORBY EXCAVATING, INC.:

- A. Authorizing a hearing in this matter, at which time, the Respondents will be required to answer the allegations herein;
- B. Finding that the Respondents have violated Section 18 of the Act, 415 ILCS 5/18 (2000), and 35 Ill. Adm. Code 601.101, 607.104(b) and 653.119;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2000), and after the adjudication of the violations, impose upon the Respondents a monetary penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and after the adjudication of the violations, award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

F. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
JAMES E. RYAN,
Attorney General of the
State of Illinois

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

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Angela Eaton Hamilton
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 9/13/01