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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 16, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PCB07-40

Re: ***People v. Village of Browning***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 VILLAGE OF BROWNING,)
 Illinois municipal corporation,)
)
 Respondent.)

PCB No. 07-40
(Enforcement)

NOTICE OF FILING

To: Village of Browning
c/o Burl H. Boyd, Village President
P.O. Box 169
Browning, IL 62624

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a 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 (2004), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

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: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 16, 2006

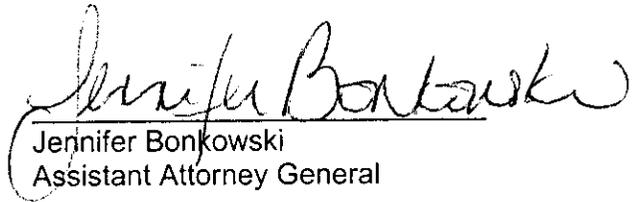
CERTIFICATE OF SERVICE

I hereby certify that I did on November 16, 2006, 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 instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Village of Browning
c/o Burl H. Boyd, Village President
P.O. Box 169
Browning, IL 62624

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
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 VILLAGE OF BROWNING,)
 Illinois municipal corporation,)
)
 Respondent.)

PCB No. 07-40
(Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

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: 
JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 16, 2006

"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."

The public water supply is also a "community water supply" or "CWS" as that term is defined under Section 3.145 of the Act, 415 ILCS 5/3.145 (2004).

4. The Village's water supply serves approximately 130 residents from one drift well. The water is chlorinated, fluoridated, fed potassium permanganate, filtered and then stored within a 160,000 gallon elevated tank.

5. Section 18(a) of the Act, 415 ILCS 5/18(a) (2004), 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 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.

6. Section 19 of the Act, 415 ILCS 5/19 (2004), provides:

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.

7. 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.

8. Pursuant to Section 602.115 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 602.115, the Illinois EPA has adopted standards and criteria, published in the form of Technical Policy Statements, governing the design, operation and maintenance of public water supplies to insure safe, adequate and clean water.

9. Section 611.240(g) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.240(g), provides in pertinent part, that:

(g) CWS suppliers using groundwater which is not under the direct influence of surface water shall chlorinate the water before it enters the distribution system. . . .

(1) All GWS supplies that are required to chlorinate pursuant to this Section shall maintain residuals of free or combined chlorine at levels sufficient to provide adequate protection of human health and the ability of the distribution system to continue to deliver potable water that complies with the requirements of this Part.

* * *

10. Section 653.604(a) of the Illinois EPA's Technical Policy Statements, 35 Ill. Adm. Code 653.604(a), provides:

A minimum free chlorine residual of 0.2 mg/l or a minimum combined residual of 0.5 mg/l shall be maintained in all active parts of the distribution system at all times.

11. The Illinois EPA inspected the Village's water supply and treatment facilities on March 5, 2004. The subsequent analysis of a sample from a tap revealed a chlorine residual of zero, less than the minimum standards required by Section 653.604(a) of the Illinois EPA's Technical Policy Statements.

12. By failing to maintain the minimum chlorine residual in all active parts of the water supply distribution system, the Village has violated Sections 601.101 and 611.240(g) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101 and 611.240(g).

13. By violating the Board's Public Water Supplies Regulations as to disinfection requirements, the Village has also violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, VILLAGE OF BROWNING:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondents a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

COUNT II **FLUORIDATION VIOLATIONS**

1-8. Complainant realleges and incorporates herein paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count II.

9. Section 611.125 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.125, provides that:

All CWSs which are required to add fluoride to the water shall maintain a fluoride ion concentration reported as F of 0.9 to 1.2 mg/l in its distribution system, as required by Section 7a of the Public Water Supply Regulation Act [415 ILCS 40/7a].

10. Section 653.701(b) of the Illinois EPA's Technical Policy Statements, 35 Ill. Adm. Code 653.701(b), provides as follows:

Basis of Design - Equipment shall have the capacity to maintain the fluoride content in the finished water between 0.9 and 1.2 mg/l.

11. The Village is required to add fluoride to the water. According to testing during the months of November and December 2003, the fluoride levels were 1.86 mg/L and 1.62 mg/L, respectively. The Village's Water Superintendent reported to the Illinois EPA that the failure to maintain the required fluoride content in the finished water was due to insufficient monitoring and calibration of the mixing pumps.

12. By failing to maintain a fluoride ion concentration in the range of 0.9 mg/L to 1.2 mg/L in its distribution system, the Village violated Section 611.125 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.125.

13. By failing to comply with Section 611.125 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.125, the Respondent thereby violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, VILLAGE OF BROWNING:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondents a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

COUNT II
REPORTING VIOLATIONS

1-8. Complainant realleges and incorporates herein paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count II.

9. Section 611.831 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.831, provides that:

Within 30 days following the last day of the month, each CWS supplier shall submit a monthly operating report to the Agency on forms provided or approved by the Agency.

10. Section 653.605 of the Illinois EPA's Technical Policy Statements, 35 Ill. Adm. Code 653.605, requires that a copy of the chlorination operating records be submitted to the Illinois EPA each month.

11. Section 653.704 of the Illinois EPA's Technical Policy Statements, 35 Ill. Adm. Code 653.704, requires that a copy of the fluoride operating records be submitted to the Illinois EPA each month.

11. The Village failed to submit complete reports and records from at least February 2003 through April 2004, thereby violating Sections 611.831 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.831.

12. By failing to comply with Sections 653.605 and 653.704 of the Illinois EPA's Technical Policy Statements, 35 Ill. Adm. Code 653.605 and 653.704, the Village thereby violated Section 19 of the Act, 415 ILCS 5/19 (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, VILLAGE OF BROWNING:

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

- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose upon the Respondents a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

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: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

JENNIFER BONKOWSKI
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 11/15/06