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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 5, 2004

PCBOS-86

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

Re: ***People v. Fairacres Subdivision Association***

Dear Clerk Gunn:

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

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD NOV 09 2004

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

FAIRACRES SUBDIVISION ASSOCIATION,
an Illinois not-for-profit corporation,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05 86
(Enforcement)

NOTICE OF FILING

To: Joseph Johnson
Fairacres Subdivision Association
P.O. Box 25
1020 B Street
Silvis, IL 61282

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 (2002), to correct the pollution alleged in the Complaint filed in this case.

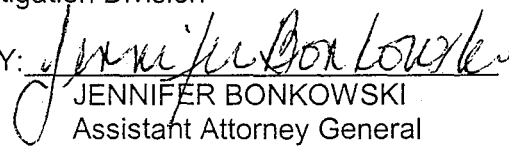
Respectfully submitted,

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 5, 2004


CERTIFICATE OF SERVICE

I hereby certify that I did on November 5, 2004, 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: Joseph Johnson
Fairacres Subdivision Association
P.O. Box 25
1020 B Street
Silvis, IL 61282

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,

v.

FAIRACRES SUBDIVISION ASSOCIATION,
an Illinois not-for-profit corporation,

Respondent.

PCB NO. 05-86
(Enforcement)

APPEARANCE

I, JENNIFER BONKOWSKI, 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

LISA MADIGAN,
Attorney General of the
State of Illinois,

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

BY:

Jennifer Bonkowski
JENNIFER BONKOWSKI,
Assistant Attorney General

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

Dated: 11/5/04

NOV 09 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

FAIRACRES SUBDIVISION ASSOCIATION,
an Illinois not-for-profit corporation,

Respondent.

PCB NO. 05 86
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, FAIRACRES SUBDIVISION ASSOCIATION, as follows:

COUNT I
CONTAMINANT AND SAMPLING VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion, pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois Environmental Protection Agency ("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 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. Respondent, Fairacres Subdivision Association, an Illinois not-for-profit corporation, is a "public water supply" as that term is defined under Section 3.365 of the Act, 415 ILCS 5/3.365 (2002), 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 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 Association's public water supply is a "community water supply" or "CWS" as that term is defined under Section 3.145 of the Act, 415 ILCS 5/3.145 (2002).

4. The Association is comprised of the homeowners of the Fairacres Subdivision located in Silvis, Rock Island County, Illinois. The water supply serves approximately 57 homes and 200 residents from one drilled well. The water is chlorinated, fluoridated, and then stored within a 7,500 gallon hydropneumatic tank, the capacity of which meets the 35 gallon per capita standard.

5. Section 18(a) of the Act, 415 ILCS 5/18(a) (2002), 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 (2002), 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. "Maximum contaminant level" or "MCL" is defined at Section 611.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.101, as "the maximum permissible level of a contaminant in water that is delivered to any user of a public water supply."

9. Section 611.121(a) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.121(a), provides that:

Maximum Contaminant Levels: No person may cause or allow water that is delivered to any user to exceed the MCL for any contaminant.

10. Section 611.325 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.325, provides, in pertinent part:

Microbiological Contaminants

- a) The MCL is based on the presence or absence in a sample, rather than coliform density.

* * *

- 2) For a supplier that collects fewer than 40 samples per month, if no more than one sample collected during a month is a total coliform-positive, the supplier is in compliance with the MCL for total coliforms.

* * *

- b) A supplier must determine compliance with the MCL for total coliforms in subsections (a) and (b) of this Section for each month in which it is required to monitor for total coliforms.

* * *

11. Section 611.521(a) of the Board's Public Water Supplies Regulations, 35 Ill.

Adm. Code 611.521(a), provides that:

- a) Suppliers shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan, which must be approved by a [Special Exception Permit] issued pursuant to Section 611.110.

12. Section 611.522(a) of the Board's Public Water Supplies Regulations, 35 Ill.

Adm. Code 611.522(a), provides that:

- a) If a routine sample is total-coliform positive, the supplier must collect a set of repeat samples within 24 hours of being notified of the positive result. . . .

13. Pursuant to its approved written sample siting plan, the Association collects fewer than 40 samples per month.

14. During May 2003, one sample collected by the Association was determined to be total-coliform positive. The Association failed to collect a set of repeat samples within 24 hours of being notified of the positive results, thereby violating Section 611.522(a) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.522(a).

15. During June 2003, two samples collected by the Association were determined to be total-coliform positive, thereby violating Sections 611.121(a) and 611.325(a)(2) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.121(a), 611.325(a)(2).

16. During August 2003, two samples collected by the Association were determined to be total-coliform positive, thereby violating Sections 611.121(a) and 611.325(a)(2) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.121(a), 611.325(a)(2).

17. By failing to comply with Sections 611.121(a), 611.325(a)(2) and 611.522(a) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.121(a), 611.325(a)(2),

611.522(a), the Respondent thereby violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, FAIRACRES SUBDIVISION ASSOCIATION:

- 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) (2002), 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

1-7. Complainant realleges and incorporates herein paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count II.

8. 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].

9. The Association is required to add fluoride to the water, but failed to do so during the month of October 2003, due to the failure or malfunction of the fluoride pump, thereby

violating Section 611.125 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.125.

10. 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) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, FAIRACRES SUBDIVISION ASSOCIATION:

- 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) (2002), 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 III **REPORTING VIOLATIONS**

1-7. Complainant realleges and incorporates herein paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count III.

8. 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.

9. Section 653.605 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 653.605, requires that a copy of the chlorination operating records be submitted to the Illinois EPA each month.

10. Section 653.704 of the Board's Public Water Supplies Regulations, 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 Association failed to submit the required reports and records for the month of October 2003, thereby violating Sections 611.831, 653.605, and 653.704 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.831, 653.605, and 653.704.

12. By failing to comply with Sections 611.831, 653.605, and 653.704 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 611.831, 653.605, and 653.704, the Respondent thereby violated Section 19 of the Act, 415 ILCS 5/19 (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, FAIRACRES SUBDIVISION ASSOCIATION:

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) (2002), 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: 11/05/04