

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

FEB 10 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
 ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 EMMETT UTILITIES, INC., an Illinois )  
 corporation, and RUSSELL D. )  
 THORELL, individually and as )  
 president of EMMETT UTILITIES, INC., )  
 )  
 Respondent. )

PCB NO. 04-81  
(Enforcement)

NOTICE OF FILING

To: EMMETT UTILITIES, INC.  
RUSSELL D. THORELL  
President  
RR2, Box 58N  
Oquawka, IL 61469

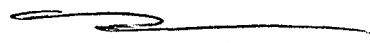
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT REGARDING RUSSELL D. THORELL and COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT REGARDING EMMETT UTILITIES, INC., a copy of which is attached hereto and herewith served upon you.

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:   
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 5, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that I did on February 5, 2004, send by First Class 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, COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT REGARDING RUSSELL D. THORELL and COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT REGARDING EMMETT UTILITIES, INC.,

To: EMMETT UTILITIES, INC.  
RUSSELL D. THORELL  
President  
RR2, Box 58N  
Oquawka, IL 61469

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

A copy was also sent to:

Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue East  
Springfield, IL 62794

  
\_\_\_\_\_  
Thomas Davis, Chief  
Assistant Attorney General

This filing is submitted on recycled paper.

FEB 10 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
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Complainant, )  
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v. )  
)  
EMMETT UTILITIES, INC., )  
an Illinois corporation, and )  
RUSSELL D. THORELL, individually and )  
as president of EMMETT UTILITIES, INC. )  
)  
Respondents. )

STATE OF ILLINOIS  
Pollution Control Board

PCB NO. 04- 81  
(Enforcement)

**COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**  
**REGARDING RUSSELL D. THORELL**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Sections 101.516(a) and 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516(a) and 103.204(d), hereby moves for Summary Judgment against the Respondent, RUSSELL D. THORELL, and states as follows:

1. The Complaint against EMMETT UTILITIES, INC., an Illinois corporation, and RUSSELL D. THORELL, individually and as president of EMMETT UTILITIES, INC., was filed with the Board on November 10, 2003. The Complaint was served upon both Respondents by certified mail on November 8, 2003, [see attached exhibit for proof of service] along with the notice required by Section 103.204(f), to wit: "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."

2. In Count I, the Complaint alleges that the Respondents failed to immediately notify the Illinois EPA and to take appropriate action to protect the supply in violation of Section 607.103(c) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 607.103(c), and Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

3. In Count II, the Complaint alleges that the Respondents failed to provide continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality and adequate in quantity for ordinary domestic consumption in violation of Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101, and Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

4. In Count III, the Complaint alleges that the Respondents caused or allowed the discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

5. In Count IV, the Complaint alleges that the Respondents caused offensive conditions, including unnatural color, odor, sludge, and turbidity, in the receiving stream in violation of the water quality standard of 35 Ill. Adm. Code 302.203 and Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

6. In Count IV, the Complaint alleges that the Respondents caused or allowed the discharge of discharges of untreated effluent, raw sewage, and overflows from the treatment system and sanitary sewers in violation of the NPDES permit and Section 12(f) of the Act, 415 ILCS 5/12(f) (2002).

7. No Answer or responsive pleadings to the Complaint have been filed and, therefore, all material allegations of the Complaint will be taken as admitted pursuant to Section 103.204(d).

8. On January 9, 2004, Complainant submitted to the Hearing Officer a copy of correspondence dated December 30, 2003, since this document was apparently not filed with the Clerk. This document was sent to the Attorney General's Office by Russell Thorell under the letterhead of and ostensibly on behalf of EMMETT UTILITIES, INC., in Mr. Thorell's stated capacity as President of EMMETT UTILITIES, INC. This document cannot serve as an answer on behalf of RUSSELL THORELL as required by Section 103.204(d) of the Board's Procedural Rules because it does not purport to specifically deny the material allegations of the Complaint. While this Respondent could have appeared in his own behalf as an individual, he has failed to address and satisfy the procedural and substantive requirements.

9. Accordingly, there is no genuine issue as to any material fact as to the prima facie proof of the violations cited therein and Complainant is entitled to judgment as a matter of law as to Counts I, II, III, IV and V.

10. RUSSELL THORELL is pursuant to Section 103.204(d) precluded from pleading any affirmative defense since this Respondent has failed to timely file an answer to the Complaint.

10. Complainant requests pursuant to Section 103.212 that a hearing be held on issues relating to the requested remedy, including civil penalties and attorney's fees.

**WHEREFORE**, Complainant, People of the State of Illinois, respectfully request that the Board grant the following relief:

- A) Enter summary judgment in favor of Complainant and a finding of liability against RUSSELL THORELL on Counts I, II, III, IV and V of the Complaint;
- B) Schedule a hearing upon the issues of civil penalty and other relief; and

C) Grant such other relief as the Board deems appropriate.

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: 

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 5, 2004

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Emmett Utilities, Inc.  
Russell D. Thorell  
President  
RR2, Box 58N  
Oquawka, IL 61469

2. Article Number  
(Transfer from service label) 7000 0520 0012 5364 5633

PS Form 3811, August 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
*Payge Link*  Agent  
 Addressee

B. Received by (Printed Name) *Payge Link* C. Date of Delivery *11/8/03*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt

102595-01-M-2509

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2. In Count I, the Complaint alleges that the Respondents failed to immediately notify the Illinois EPA and to take appropriate action to protect the supply in violation of Section 607.103(c) of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 607.103(c), and Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

3. In Count II, the Complaint alleges that the Respondents failed to provide continuous operation and maintenance of public water supply facilities so that the water shall be assuredly safe in quality and adequate in quantity for ordinary domestic consumption in violation of Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101, and Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2002).

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9. Accordingly, there is no genuine issue as to any material fact as to the prima facie proof of the violations cited therein and Complainant is entitled to judgment as a matter of law as to Counts I, II, III, IV and V.

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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: \_\_\_\_\_

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 5, 2004

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RR2, Box 58N  
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2. Article Number  
(Transfer from service label) 7000 0520 0012 5364 5633

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
*Peggy C. Kirk*  Addressee

B. Received by (Printed Name) C. Date of Delivery  
*Peggy C. Kirk* *11/8/03*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes