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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

December 30, 1999

PCB 00-113

Jim Ryan

ATTORNEY GENERAL

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

Re: People v. Illinois-American Water Co.
Unfiled

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a COMPLAINT and NOTICE OF FILING 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.

Sincerely,

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

AEH:cc
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
ILLINOIS-AMERICAN WATER CO.)
)
Respondents.)
)

PCB NO. 00-113

NOTICE OF FILING

To: Sue Schultz
General Counsel
330 N. Water Works Drive
P.O. Box 24040
Belleville, Illinois 62223-9040

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

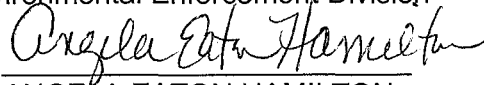
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: 
ANGELA EATON HAMILTON
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 30, 1999

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CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN - 4 2000

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 ILLINOIS-AMERICAN WATER CO.)
 an Illinois corporation,)
)
 Respondent.)

PCB NO. 00-113
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, complains of Respondent, ILLINOIS-AMERICAN WATER COMPANY, as follows:

COUNT I

WATER MAIN INSTALLATION VIOLATIONS

1. This Complaint is brought by the Attorney General on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (1998).

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 (1998), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (1998), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent, ILLINOIS-AMERICAN WATER COMPANY, an Illinois corporation, is a "public water supply" as that term is defined under Section 3.28 of the Act, 415 ILCS 5/3.28 (1996), 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.

5. Defendant'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 Supplies Regulations, 35 Ill. Adm. Code 611.101 (1996), 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.

6. At all times relevant to this Complaint, the Respondent has owned six public water supplies, serving a total population of approximately 422,701 people through approximately 144,261 direct service connections. The Northern (Peoria) Division of ILLINOIS-AMERICAN WATER COMPANY serves approximately 158,564 consumers through 47,581 direct connections.

7. ILLINOIS-AMERICAN WATER COMPANY maintains its headquarters at 300 N. Water Works Drive, P.O. Box 24040, Belleville, Illinois 62223-9040. The operations for the Northern Division of ILLINOIS-AMERICAN WATER COMPANY are located at 123 S.W. Washington Street, Peoria, Illinois 61602.

8. Section 18(a) of the Act, 415 ILCS 5/18(a) (1996), 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. . .

* * *

9. Respondent, is a "person" as that term is defined under Section 3.26 of the Act, 415 ILCS 5/3.26 (1996), as follows:

"PERSON" is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

10. Section 601.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm. Code 601.101 (1996), 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 supplied)

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. In November of 1997, the Respondent installed a water main extension at the intersection of Cedar Hills and Route 29 in Peoria, Illinois without maintaining the required physical separation from a nearby septic system.

15. By failing to maintain the required physical separation between a water main and a septic system, the Respondent violated Section 18 of the Act, 415 ILCS 5/18 (1998) and Sections 601, 607.104(b), and 653.119 of the Pollution Control Board regulations, 35 Ill. Adm. Code 601.101, 607.104(b), and 653.119.

16. By constructing a water main within twenty-five (25) feet of a septic system, the Respondent threatened serious injury to human health in violation of Section 18 of the Act, 415 ILCS 5/18 and sections 601.101, 607.104(b), and 653.119 of the Board's requirements, 35 Ill. Adm. Code 601.101, 607.104(b), and 653.119.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ILLINOIS-AMERICAN WATER COMPANY:

- 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 the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 4/42(a) (1998), impose upon the Respondent a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1998), award the Complainant its cost in this matter, including reasonable attorney's fees and expert witness costs; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT II

FAILURE TO CONSTRUCT WATER MAIN IN ACCORDANCE WITH PERMIT

1-14. Complainant realleges and incorporates herein paragraphs 1 through 14 of Count 1 as paragraphs 1 through 14 of this Count II.

15. Section 15 of the Act, 415 ILCS 5/15 (1998), provides, in pertinent part:

Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

16. Section 17(a) of the Act, 415 ILCS 5/17 (1998), provides, in pertinent part:

The Board may adopt regulations governing the location, design, construction, and continuous operation and maintenance of public water supply installations, changes or additions which may affect the continuous sanitary quality, mineral quality, or adequacy of the public water supply, pursuant to Title VII of this Act.

17. Section 602.101 of the Board's Public Water Supplies Regulations, 35 Ill. Adm.

Code 602.101, provides that:

Construction Permit:

- a) No person shall cause or allow the construction of any new public water supply installation or cause or allow the change of or addition to any existing public water supply, without a construction permit issued by the Environmental Protection Agency (Agency)...
- b) All work performed on a public water supply shall be in accordance with accepted engineering practices.

18. Section 602.115 of the Board's Public Water Supplies Regulations, 35 Ill. Adm.

Code 602.115, provides that:

- a) The Agency may adopt criteria, published in the form of Technical Policy Statements (Illinois EPA regulations), for the design, operation and maintenance of public water supply facilities as necessary to insure safe, adequate, and clean water. These criteria shall be revised from time to time to reflect current engineering judgment and advances in the state of the art.
- b) Before adding new criteria or making substantive changes to any Technical Policy Statement, the Agency shall comply with the provisions of the Administrative Procedure Act.

19. In November 1997, the Respondent failed to construct a water main extension in accordance with Illinois EPA DPWS Permit #1371FY1997. The Respondent constructed a water main within 25 feet of a septic tank and disposal fields.

20. By failing to construct the water main extension in accordance with Illinois EPA DPWS Permit #1371FY1997, Respondent violated Sections 15, 17(a), and 18 of the Act, 415 ILCS 5/15, 5/17 (a) and 5/18 (1998) and the requirements within 35 Ill. Adm. Code 601.101, 602.101, 607.104(b), and 653.119 (1998).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ILLINOIS-AMERICAN WATER COMPANY:

- 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 the Act and regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 4/42(a) (1998), impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (1998), award the Complainant its cost in this matter, including reasonable attorney's fees and expert witness costs; and

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

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

Of Counsel

Angela Eaton Hamilton
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 30, 1999

CERTIFICATE OF SERVICE

I hereby certify that I did on the 30th day of December, 1999, 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 COMPLAINT and NOTICE OF FILING

To: Sue Schultz
General Counsel
330 N. Water Works Drive
P.O. Box 24040
Belleville, Illinois 62223-9040

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
Chicago, Illinois 60601


ANGELA EATON HAMILTON
Assistant Attorney General

This filing is submitted on recycled paper.