

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.)
)
VILLAGE OF VOLO, a Municipal)
Corporation, and SMITH ENGINEERING)
CONSULTANTS, INC., an Illinois)
Corporation,)
)
Respondents.)

PCB No. _____
(Enforcement -
Public Water Supply)

NOTICE OF FILING

TO: Jill J. Struck, Registered Agent for Smith
40 Brink Street
Crystal Lake, Illinois 60014

Burnell Russell, President
27273 West Volo Village Road
Volo, Illinois 60073

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that 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.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois



BY:

MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312)814-2069
Attorney No. 99000

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on December 9, 2005.

BY: 
MICHAEL C. PARTEE

It is hereby certified that Complaint and Notice of Filing were electronically filed with the Board on December 9, 2005:

BY: 
MICHAEL C. PARTEE

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PEOPLE OF THE STATE OF ILLINOIS,)
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CONSULTANTS, INC., an Illinois)
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Respondents.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondents, VILLAGE OF VOLO, a municipal corporation, and SMITH ENGINEERING CONSULTANTS, INC., an Illinois corporation, as follows:

A. VIOLATIONS BY BOTH RESPONDENTS

COUNT I

FAILING TO SUBMIT PLANS AND SPECIFICATIONS FOR A PUBLIC WATER SUPPLY BEFORE CONSTRUCTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

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 (2004), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to the Complaint, the VILLAGE OF VOLO ("Volo") was and is a municipal corporation incorporated under the laws of Illinois.

4. At all times relevant to the Complaint, Volo was and is the official custodian of a public water supply located in Volo, Lake County, Illinois.

5. At all times relevant to the Complaint, SMITH ENGINEERING CONSULTANTS, INC. ("Smith"), was and is an Illinois corporation incorporated under the laws of Illinois.

6. At all times relevant to the Complaint, Smith was a consultant to Volo and the certified operator of Volo's public water supply.

7. Pursuant to a public water supply construction permit issued by Illinois EPA to Volo on September 8, 2000, Volo installed a public water supply consisting, in relevant part, of two wells (Well #1 and Well #2) for obtaining raw water for potable use and an ion exchange system connected only to Well #1 for removing contaminants from the raw water.

8. The public water supply serves approximately 60 people for more than 60 days per year.

9. At some point well before July 19, 2004, on a date better known to Respondents, Well #2 and the ion exchange system were connected and placed in service.

10. Neither Volo nor Smith submitted plans and specifications to the Illinois EPA before causing or allowing construction of the connection between Well #2 and the ion exchange system.

11. Also, neither Volo nor Smith obtained a construction or operating permit from the Illinois EPA before causing or allowing construction and operation of the connection between Well #2 and the ion exchange system.

12. The public water supply is subject to the Act and the regulations promulgated thereunder by the Illinois Pollution Control Board ("Board") and the Illinois EPA. The Board's regulations for public water supplies are found in Title 35, Subtitle F, Chapter I of the Illinois Administrative Code ("Board's Public Water Supply Regulations"), and the Illinois EPA's regulations for public water supplies are found in Title 35, Subtitle F, Chapter II of the Illinois Administrative Code ("Illinois EPA's Public Water Supply Regulations").

13. Section 14 of the Act, 415 ILCS 5/14 (2004), provides as follows:

The General Assembly finds that state supervision of public water supplies is necessary in order to protect the public from disease and to assure an adequate supply of pure water for all beneficial uses.

It is the purpose of this Title to assure adequate protection of public water supplies.

14. Section 15(a) of the Act, 415 ILCS 5/15(a) (2004), provides as follows:

Plans and specifications; demonstration of capability.

- (a) 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.

15. Section 3.365 of the Act, 415 ILCS 5/3.365 (2004), provides as follows:

Public water supply. "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."

16. Volo's wells, ion exchange system, and all associated equipment, which serve approximately 60 people for more than 60 days per year, are a "public water supply" as that term is defined in Section 3.365 of the Act.

17. Respondents failed to submit plans and specifications to the Illinois EPA before causing or allowing construction of the

public water supply.

18. By failing to submit plans and specifications to the Illinois EPA before causing or allowing construction of the public water supply, Respondents violated Section 15(a) of the Act.

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondents, on Count I:

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

2. Finding that the Respondents violated Section 15(a) of the Act as alleged herein;

3. Ordering Respondents to cease and desist from further violations of Section 15(a) of the Act;

4. Assessing a civil penalty against Respondents in the amount of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and regulations and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continues;

5. Ordering Respondents to pay Complainant's attorney, expert witness and consultant fees expended in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

CONSTRUCTING A PUBLIC WATER SUPPLY WITHOUT A PERMIT

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.

14. Section 18(a) of the Act, 415 ILCS 5/18(a) (2004), provides, in relevant part, as follows:

Prohibitions; plugging requirements.

(a) No person shall:

* * *

(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,

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides as follows:

Person. "Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

16. Respondents are corporations and, therefore, "persons" as that term is defined in Section 3.315 of the Act.

17-18. Complainant realleges and incorporates by reference herein paragraphs 15 and 16 of Count I as paragraphs 17 and 18 of this Count II.

19. Section 602.101(a) of the Board's Public Water Supply Regulations, 35 Ill. Adm. Code 602.101(a), provides as follows:

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 Illinois Environmental Protection Agency (Agency).

20. By causing or allowing construction of the connection between Well #2 and the ion exchange system, Respondents caused or allowed the change of or addition to an existing public water supply.

21. By failing to obtain a construction permit before causing or allowing the change of or addition to an existing public water supply, Respondents violated Section 18(a) of the Act and Section 602.101(a) of the Board's Public Water Supply Regulations.

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondents, on Count II:

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

2. Finding that the Respondents violated Section 18(a) of the Act and Section 602.101(a) of the Board's Public Water Supply Regulations as alleged herein;

3. Ordering Respondents to cease and desist from further violations of Section 18(a) of the Act and Section 602.101(a) of

the Board's Public Water Supply Regulations;

4. Assessing a civil penalty against Respondents in the amount of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and regulations and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continues;

5. Ordering Respondents to pay Complainant's attorney, expert witness and consultant fees expended in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III

OPERATING A PUBLIC WATER SUPPLY WITHOUT A PERMIT

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count II as paragraphs 1 through 21 of this Count III.

22. Section 602.102 of the Board's Public Water Supply Regulations, 35 Ill. Adm. Code 602.102, provides as follows:

Operating Permits

No owner or operator of a public water supply shall cause or allow the use or operation of any new public water supply, or any new addition to an existing supply, for which a Construction Permit is required under this Part, without an Operating Permit issued by the Agency.

23. Section 652.201 of the Illinois EPA's Public Water Supply Regulations, 35 Ill. Adm. Code 652.201, provides as follows:

Operating Permit Requirements

The operating permit application shall be filed with the Division of Public Water Supplies Permit Section when construction is complete. An operating permit is required for all projects which require a construction permit. The operating permit shall be obtained before the project is placed in service.

24. The construction of the connection between Well #2 and the ion exchange system required a construction permit pursuant to Section 18(a) of the Act and Section 602.101(a) of the Board's Public Water Supply Regulations and, therefore, required an operating permit before the project was placed in service.

25. By failing to obtain an operating permit before the project was placed in service, Respondents violated Section 18(a) of the Act, Section 602.102 of the Board's Public Water Supply Regulations, and Section 652.201 of the Illinois EPA's Public Water Supply Regulations.

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondent, on Count III:

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

2. Finding that the Respondents violated Section 18(a) of the Act, Section 602.102 of the Board's Public Water Supply Regulations, and Section 652.201 of the Illinois EPA's Public Water Supply Regulations as alleged herein;

3. Ordering Respondents to cease and desist from further violations of Section 18(a) of the Act, Section 602.102 of the Board's Public Water Supply Regulations, and Section 652.201 of the Illinois EPA's Public Water Supply Regulations;

4. Assessing a civil penalty against Respondents in the amount of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and regulations and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continues;

5. Ordering Respondents to pay Complainant's attorney, expert witness and consultant fees expended in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

B. VIOLATIONS BY RESPONDENT VOLO

COUNT IV

CONSTRUCTING A COMMUNITY WATER SUPPLY WITHOUT A PERMIT

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count II as paragraphs 1 through 18 of this Count IV.

19. Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations, 35 Ill. Adm. Code 652.101(a), provides, in relevant part, as follows:

Construction Permit Requirements

- (a) Construction permits shall be obtained by the official custodian of a community water supply prior to beginning construction of any proposed community water supply and prior to all alterations, changes or additions to an existing community water supply which may affect the sanitary quality, mineral quality or adequacy of the supply . . .

20. Section 3.145 of the Act, 415 ILCS 5/3.145 (2004), provides as follows:

Community water supply. "Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.

21. The wells, ion exchange system for removing contaminants from the raw water, and all associated equipment, which are a public water supply used by more than 25 residents, are also a "community water supply" as that term is defined in Section 3.145 of the Act.

22. By causing or allowing construction of community water supply which may affect the sanitary quality, mineral quality or adequacy of the supply, Volo, the official custodian of the community water supply, caused or allowed the change of or addition to a community water supply.

23. By causing or allowing the change of or addition to a community water supply without a construction permit, Volo violated Section 18(a) of the Act and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations.

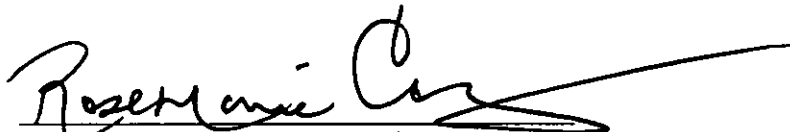
WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondents, on Count IV:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that the Respondents violated Section 18(a) of the Act and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations as alleged herein;
3. Ordering Respondents to cease and desist from further violations of Section 18(a) of the Act and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations;
4. Assessing a civil penalty against Respondents in the amount of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and regulations and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continues;
5. Ordering Respondents to pay Complainant's attorney, expert witness and consultant fees expended in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

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

BY:



ROSEMARIE CAZEAU, Chief
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