

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement – Water)
)	
CITY OF GENEVA,)	
an Illinois municipal corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the following Complaint, a copy of which is attached and hereby served on you.

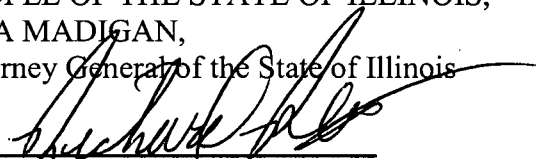
Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office or an attorney.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental facilities financing act [20 ILCS 3515/1 et seq.] to correct the alleged pollution.

Respectfully submitted,

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

By: 
 RICHARD A. PERRY
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Floor
 Chicago, Illinois 60602
 (312) 814-2069

SERVICE LIST

Charles A. Radovich
Radovich & Radovich
Attorneys at Law
312 W. State St.
P.O. Box 464
Geneva, IL 60134

the construction and operation of public water supply installations pursuant to Section 15(b) of the Act, 415 ILCS 5/15(b) (2006).

3. At all times relevant to this Complaint, Geneva was and is an Illinois municipal corporation, duly authorized and operating under the laws of the State of Illinois. Geneva is located in Kane County, Illinois, and has a population of approximately 23,975.

4. On May 10, 2007, the Illinois EPA sent a violation notice to the Respondent alleging the violations of the Act described herein, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006). On June 5, 2007 the Illinois EPA sent a notice to the Respondent rejecting its proposed compliance commitment agreement. On July 31, 2007, the Illinois EPA sent a notice of intent to pursue legal action to the Respondent.

5. The Kirk Road Business Center is located in the eastern part of the City of Geneva, at 429 North Kirk Road (the "Kirk Business Center").

6. On information and belief, on or about March 2006, Geneva began the construction and installation of a water main at the Kirk Business Center (the "Water Main").

7. On information and belief, the Water Main was intended to increase the supply of water to residents of the City of Geneva. The Water Main is an extension of and an addition to the larger water supply system for the City of Geneva (the "Geneva Water Supply"). The Geneva Water Supply and the Water Main serve or are intended to serve at least 15 service connections used by residents or regularly services at least 25 residents at least 60 days a year.

8. On information and belief, the operation of the Water Main would have affected the adequacy of the supply of water in the City of Geneva.

9. Geneva completed the construction and installation of the Water Main on May 4, 2006.

10. At no point prior to or during the construction or installation of the Water Main did Geneva or any administrator or custodian of the Water Main possess a permit from the Illinois EPA authorizing the construction or installation of the Water Main. The Illinois EPA issued an "as-built" construction permit to the Respondent on June 6, 2006, after the construction and installation of the Water Main had been fully completed.

11. The construction and installation of the Water Main as an addition to/extension of the Geneva Water Supply is subject to the Act and to the rules and regulations promulgated by the Illinois Pollution Control Board (the "Board") and the Illinois EPA. The Board's regulations governing public water supplies are found in Title 35, Subtitle F, Chapter I of the Illinois Administrative Code ("Board Public Water Supply Regulations"), and the Illinois EPA rules and regulations governing public water supplies are found in Title 35, Subtitle F, Chapter 11 of the Illinois Administrative Code ("Illinois EPA Public Water Supply Regulations").

12. Section 18(a) of the Act, 415 ILCS 5/18(a) (2006), provides, in pertinent part, as follows:

(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;

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.

* * * *

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition of the term "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.

14. Respondent, a municipal corporation and a political subdivision, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

15. Section 3.365 of the Act, 415 ILCS 5/3.365 (2006), provides, in pertinent part, the following definition of the term “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.

16. The Geneva Water Supply, including the Water Main, is a “public water supply” as that term is defined in Section 3.365 of the Act, 415 ILCS 5/3.365 (2006).

17. Section 3.145 of the Act, 415 ILCS 5/3.145 (2006), provides the following definition of the term “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 services at least 25 residents.

18. Section 602.101(a) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 602.101(a), provides, in pertinent part, 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 Environmental Protection Agency. . . .

19. Section 652.101(a) of the Illinois EPA Public Water Supply Regulations, 35 Ill. Adm. Code 652.101(a), provides 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 including changes pursuant to 35 Ill. Adm. Code 653.115.

20. The Geneva Water Supply, as a public water supply that serves or is intended to serve at least 15 service connections used by residents or regularly services at least 25 residents, is thereby a "community water supply" as that term is defined in Section 3.145 of the Act, 415 ILCS 5/3.145 (2006).

21. Section 15(a) of the Act, 415 ILCS 5/15(a) (2006), provides, in pertinent part, as follows:

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.

22. At no point prior to or during the construction of the Water Main did the Respondent, as the owner of the public water supply, or an authorized representative or legal custodian of the Water Main receive written approval from the Illinois EPA for the construction of the Water Main. By failing to obtain written approval from the Illinois EPA before starting the construction of the Water Main, a proposed public water supply installation, Geneva violated Section 15(a) of the Act, 415 ILCS 5/15(a) (2006).

23. By failing to obtain a construction permit before constructing and installing the Water Main, Geneva constructed and installed a public water supply without a permit granted by the Illinois EPA, in violation of Section 18(a)(3) of the Act, 415 ILCS 5/18(a)(3) (2006).

24. By failing to obtain a construction permit before constructing and installing the Water Main, Geneva caused or allowed a change of or addition to an existing public water supply without a permit granted by the Illinois EPA, in violation of Section 602.101(a) of the Board's regulations governing public water supplies, 35 Ill. Adm. Code 602.101(a), and thereby also violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2006).

25. By failing to obtain a construction permit before beginning construction of the Water Main, Geneva altered, changed or added to an existing community water supply that may affect the adequacy of the water supply without a permit issued by the Illinois EPA, in violation of Section 652.101(a) of the Illinois EPA's regulations governing public water supplies, 35 Ill. Adm. Code 652.101(a), and thereby also violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2)(2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of the Complainant and against the Respondent, GENEVA, on this Count I:

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 violated Sections 18(a)(2), 18(a)(3), and 15(a) of the Act, 415 ILCS 5/18(a)(2)-(3) (2006), and 35 Ill. Adm. Code 602.101(a) and 652.101(a);

C. Ordering the Respondent to cease and desist from any future violations of Sections 18(a)(2), 18(a)(3), and 15(a) of the Act, 415 ILCS 5/18(a)(2)-(3) (2006), and 35 Ill. Adm. Code 602.101(a) and 652.101(a);

D. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand

Dollars (\$10,000) for each day of violation;

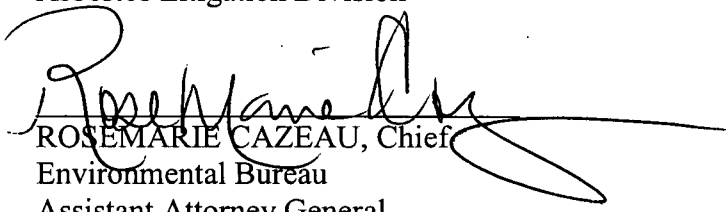
E. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

F. 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:

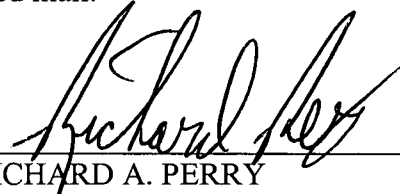

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

RICHARD A. PERRY
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602
Tel: (312) 814-2069
Fax: (312) 814-2347
Email: rperry@atg.state.il.us

CERTIFICATE OF SERVICE

I, RICHARD A. PERRY, an Assistant Attorney General, do certify that I caused to be mailed this 25th day of June, 2008, the foregoing Complaint and Notice of Filing upon the person listed on said notice, by certified mail.



RICHARD A. PERRY
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
312-814-2069