

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS ex)
rel. LISA MADIGAN, Attorney General of the)
State of Illinois)

Plaintiff,)

v.)

SUNSET VILLAGE LIMITED)
PARTNERSHIP, an Illinois limited)
partnership)

Defendant.)

No. 10 CH 45639

**SUNSET VILLAGE LIMITED PARTNERSHIP'S
ANSWER TO COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

SUNSET VILLAGE LIMITED PARTNERSHIP, by and through its attorneys, WOLIN, KELTER & ROSEN, LTD., answers the Complaint of the PEOPLE OF THE STATE OF ILLINOIS as follows:

**COUNT I
FAILURE TO COMPLY WITH THE MAXIMUM
CONTAMINANT LEVEL FOR COMBINED RADIUM**

1. This Complaint is brought on behalf of the People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), ' 415 ILCS 5/42(d) and (e) (2010).

ANSWER: Defendant admits the allegations of Paragraph 1 of Plaintiff's Complaint.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 514 (2010), and charged, inter alia, with the duty of enforcing the Act.

ANSWER: Defendant admits the allegations of Paragraph 2 of Plaintiff's Complaint.

3. At all times relevant to this Complaint, the SUNSET VILLAGE, LIMITED PARTNERSHIP ("Sunset Village". or "Defendant") was and is an Illinois limited partnership registered in good standing with the State of Illinois Secretary of State.

ANSWER: Defendant admits the allegations of Paragraph 3 of Plaintiff's Complaint.

4. At all times relevant to this Complaint, Sunset Village was and is the owner and operator of the Sunset Village Manufactured Home Community ("Sunset Village Community") located at 2490, Waukegan Road, Northfield, Cook County, Illinois. The Sunset Village Community has a population of 1290 residents.

ANSWER: Defendant only admits the following: Defendant admits its ownership interest is in foreclosure and that, technically, it is still an owner, but, Defendant denies it is the operator of, and denies it is in possession of, the Sunset Village Community. Accordingly, except as is consistent with the foregoing, Defendant denies the allegations of Paragraph 4 of Plaintiff's Complaint.

5. At all times relevant to this Complaint, Sunset Village was and is the owner and operator of the Sunset Village public water supply ("Sunset Village PWS"). The Sunset Village PWS serves the residents of the Sunset Village Community, has two active wells and 400 service connections.

ANSWER: Defendant only admits the following: Defendant admits its ownership interest is in foreclosure and that, technically, it is still an owner, but, Defendant denies it is

the current operator of the Sunset Village PWS. Defendant admits that Sunset Village PWS serves the residents of the Sunset Village Community. Defendant admits that there are one or more active wells and numerous service connections, but whereas Defendant is not the operator of, and is not in possession of, the Sunset Village Community and/or the Sunset Village PWS, Defendant denies all allegations of Paragraph 5 which are inconsistent with the foregoing.

6. Defendant's operation of its Sunset Village PWS is subject to the Act and the rules and regulations promulgated 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 Public Water Supply Regulations"), and the Illinois EPA rules and regulations for public water supplies are found in Title 35, Subtitle F, Chapter II of the Illinois Administrative Code ("Illinois EPA Public Water Supply Regulations").

ANSWER: Defendant admits the applicability of the Act and the Rules and Regulations to the Sunset Village PWS, but denies that Defendant is the operator of the Sunset Village PWS and accordingly denies the remainder of Paragraph 6 of Plaintiff's Complaint.

7. Section 18(a) of the Act, 415 ILCS 5/18(a) (2010), provides in relevant part as follows:

(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...

ANSWER: Defendant makes no answer to Paragraph 7 of Plaintiff's Complaint as

Paragraph 7 consists solely of legal conclusions and contains no allegations of fact.

8. Section 601:101 of the Board Public Water Supply Regulations, 35 Ill. Adm,

Code 601.101, provides as follows:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection -Act 1415 ILCS 5] (Act), the Pollution Control Board (Board) Rules, and 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.

ANSWER: Defendant makes no answer to Paragraph 8 of Plaintiff's Complaint as Paragraph 8 consists solely of legal conclusions and contains no allegations of fact.

9. Sections 3.145, 3.315, and 3.365 of the Act; 415 ILCS 513.145, -5/3.315, and 513.365 (2010), respectively, provide the following definitions:

"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.

"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.

"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".

ANSWER: Defendant makes no answer to Paragraph 9 of Plaintiff's Complaint as Paragraph 9 consists solely of legal conclusions and contains no allegations of fact.

10. Sunset Village, an Illinois limited partnership, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 513.315 (2010).

ANSWER: Defendant admits it is a legal entity and as such a person.

11. The Sunset Village PWS is both a "public water supply" ("PWS") and a "community water supply" as those terms are defined in Sections 3.365 and 3.145 of the Act, 415 ILCS 513.365 and 513,145 (2010), respectively, because Sunset Village PWS serves at least 15 service connections and regularly serves at least twenty-five residents sixty days per year.

ANSWER: Defendant admits that the Sunset Village PWS serves at least 15 service connections and regularly serves at least 25 residences 60 days per year. Defendant makes no further answer to Paragraph 11 whereas the remainder of Paragraph 11 consists solely of legal conclusions and not allegations of fact.

12. Radium is a radionuclide that is naturally occurring in some ground water. Chronic exposure to drinking water with high radium levels can cause health problems, including anemia, teeth fractures, cataracts, and cancer.

ANSWER: Defendant admits the allegations of Paragraph 12 of Plaintiff's Complaint but denies that the radium content of the water at Sunset Village was ever "High" in the sense of being elevated to a point where it would cause the health problems alleged.

13. Section 611.330(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 611.330(b), defines the Maximum Contaminant Level ("MCL") for radium as follows:

(b) MCL for combined radium-226 and -228. The maximum contaminant level for combined radium-226 and radium-228 is 5 pCi/l. The combined radium:226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

ANSWER: Defendant makes no answer to Paragraph 13 of Plaintiff's Complaint as Paragraph 13 consists solely of legal conclusions and contains no allegations of fact.

14. For compliance purposes, the Illinois EPA measures combined radium as a running annual average. The Illinois EPA calculate's the running annual average for combined radium in water by averaging the combined radium value for each of the four most recent consecutive quarters of sampling and then rounding to the nearest whole number.

ANSWER: Defendant admits the allegations of Paragraph 14 of Plaintiff's Complaint.

15. The running quarterly averages for the Sunset Village PWS since October 1, 2008, are as follows:

Quarter Period	Combined Radium
	Running Annual
October 1, 2008 — December 31, 2008	5.0 pCi/l
January 1, 2009 — March 31, 2009	5.0 pCi/l
April 1, 2009 — June 30, 2009	5.0 pCi/l
July 1, 2009 — September 30, 2009	6.0 pCi/l
October 1, 2009 — December 31, 2009	6.0 pCi/l
January 1, 2010 — March 31, 2010	6.0 pCi/l
April 1, 2010 — June 30, 2010	6.0 pCi/l

ANSWER: Defendant only admits the following: Defendant admits that the Illinois EPA calculates the running annual average for combined radium in water by averaging the combined radium value for each of the four most recent consecutive quarters of sampling and then rounding to the nearest whole number. Defendant admits that the Illinois EPA calculations for the Sunset Village PWS are set forth in Paragraph 15 of Plaintiff's

Complaint, but Defendant does not admit the accuracy of data used or results of calculations and denies all allegations which are inconsistent with the foregoing limitation.

16. Since September 2009, the Sunset Village PWS has had a running annual average of combined radium higher than 5 pCi/ l.

ANSWER: Defendant denies the allegations of Paragraph 16 of Plaintiff's Complaint on information and belief.

17. By having a combined radium level higher than the MCL of 5 pCi/ l, Sunset Village violated Section 611.330(b) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 611.330(b), and failed to adequately assure the safety of Sunset Village Community's drinking water.

ANSWER: Defendant admits that on one or more occasions the radium level in the Sunset Village water exceeded 5.0 pCi/ l, but denies that it failed to adequately assure the safety of Sunset Village's drinking water and therefore denies the remaining allegations of Paragraph 17.

18. By its actions and omissions as alleged herein, Defendant Sunset Village, violated Section 18(a)(1) of the Act, 415 ILCS 5/18(a)(1) (2010) and Sections 601.101 and 611.330(b) of the Board Public Water Supply Regulations, 35 111. Adm. Code 601.101 and 611.330(b).

ANSWER: Defendant makes no answer to Paragraph 18, whereas Paragraph 18 consists solely of legal conclusions.

19. By violating regulations adopted by the Board pursuant to the Act, Sunset village violated Section 18(a)(2) of the Act, 415 ILCS 5/18(a)(2) (2010).

ANSWER: Defendant makes no answer to Paragraph 19, whereas Paragraph 18 consists solely of legal conclusions.

20. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

ANSWER: Defendant denies the allegations of Paragraph 20 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. Defendant is not in possession or control of the Sunset Village Community and/or the Sunset Village PWS, and has no power to violate the Act and/or the Board Public Water Supply Regulations. Defendant also does not have the power to undertake any necessary corrective action, if any, to abate violations. Therefore, the injunctive relief sought against Defendant is not appropriate.

2. When Defendant was in control, Defendant submitted a remediation plan which was reasonable and would have been effective as corrective action, but the Plaintiff delayed responding and then unreasonably refused to accept it. Accordingly, Plaintiff has unclean hands.

3. This action was commenced and continued during the pendency of a bankruptcy proceeding concerning the Defendant. Defendant's use of cash was strictly limited while the bankruptcy was pending as a result of the fact that all of its cash was collateral of the first mortgage lender, Jefferson Pilot Investments and it was cash strapped before, which is why it needed to seek bankruptcy protection in the first place. Defendant did not have the cash to take any corrective action beyond that which it proposed to the Plaintiff and Plaintiff rejected. The equities are with the Defendant.

4. Although the bankruptcy proceedings concerning the Defendant were dismissed, Jefferson Pilot Investments commenced a foreclosure action shortly after the dismissal of the bankruptcy and was awarded a restraining order against Defendant's use of funds, which was followed by an Order Appointing a Receiver for the Property. Therefore, Sunset Village had no opportunity to satisfy the Plaintiff after the dismissal of its bankruptcy.

5. Defendant is a pauper and cannot satisfy a substantial fine and/or costs, attorneys fees, expert witness fees and consultants fees expended by the State in its pursuit of this action against the Defendant.

WHEREFORE, the Defendant prays that the State's prayers for relief against the Defendant shall be denied.

Respectfully submitted,

Sunset Village Limited Partnership

By: 

One of its Attorneys

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