

AUGUST 12, 2004

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY  
(618) 692-6240  
WWW.CO.MADISON.IL.US

ALIAS SUMMONS

HOLIDAY SHORES SANITARY DISTRICT INDIVIDUALLY AND ON BEHALF  
PLAINTIFF

VS.

CASE No. 2004 L 000710

GROWMARK INC  
C/O JAMES L. ANDERSON  
171 TOWANDA AVENUE  
BLOOMINGTON IL 61701  
DEFENDANT

TO EACH OF THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after this service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date.

Witness: MATT MELUCCI the Clerk of said Circuit Court and the seal thereof, at Edwardsville, Illinois, this AUGUST 12, 2004

MATT MELUCCI  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY: \_\_\_\_\_

*A. Faulkner*  
Deputy Clerk

=====  
(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

KOREIN TILLERY  
GATEWAY ONE ON THE MALL  
701 MARKET ST., SUITE 300  
ST. LOUIS, MO 63101-1820

Date of Service: 8-27-04, 20\_\_.

(To be inserted by officer on the copy left with the defendant or other person)

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004

CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )**

**Plaintiff, )**

**v. )**

**SYNGENTA CROP PROTECTION, INC. and )  
GROWMARK, INC., )**

**Defendants. )**

**Cause No. 2004-L-000710**

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Holiday Shores Sanitary District, by and through its undersigned attorneys, and for its First Amended Class Action Complaint against Defendants, Syngenta Crop Protection, Inc., and Growmark, Inc. states as follows:

1. At all times relevant hereto, Plaintiff Holiday Shores Sanitary District ("HSSD") was and is a sanitary district located and operating in Madison County, Illinois. For approximately the past twenty years, HSSD has owned and operated a water plant which provides water to the residents and businesses of Holiday Shores, a small community located west of Edwardsville, Illinois in Madison County. The community of Holiday Shores is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural industry is grain crops. HSSD's source of raw water is Holiday Shores Lake, located in the middle of the community.

2. Upon information and belief, at all times relevant, Defendant Syngenta Crop Protection, Inc. ("Syngenta") is a Delaware corporation with its principal place of business at 410

Swing Road, Greensboro, North Carolina 27419. Syngenta Crop Protection, Inc. is registered to do business in Illinois and manufactures, sells and supplies products containing atrazine to farmers, cooperatives and local atrazine dealers located throughout Illinois, including Madison County, Illinois. Syngenta Crop Protection, Inc. has transacted substantial and continuous business throughout Illinois and in Madison County, including soliciting, selling and supplying atrazine products to local dealers of agricultural products.

3. Syngenta is one of only six registered manufacturers of atrazine in the United States. Syngenta manufactures and sells atrazine to other manufacturers of atrazine products and also manufactures and sells its own line of atrazine products which are registered for sale in Illinois. The atrazine manufactured by Syngenta is identical to that made by other manufacturers. Once it is applied to crops and enters the environment, there is no way to distinguish Syngenta's atrazine, and its degradants, from the contaminants originating from any other manufacturer's atrazine. Syngenta's reported revenue from herbicides, including atrazine, exceeded \$1.6 billion in 2002.

4. Defendant Growmark, Inc. ("Growmark") is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, Inc. participates in the ownership and operation of local cooperatives under the "FS" name, including Madison Services FS located in Madison County, Illinois and other local cooperatives located throughout the State of Illinois for the purpose of selling agricultural products, including those products containing atrazine for use in Illinois.

5. Atrazine, whose chemical formula is 2-chloro-4-ethylamino-6-isopropylamino-s-triazine, is a herbicide which is used mainly by corn, sorghum, and sugar cane farmers for

pre-emergence broad leaf weed control. Atrazine is advantageous to farmers because it does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. However, these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs.

6. Atrazine is a widely used herbicide for control of broadleaf and grassy weeds.

Atrazine was estimated to be the most heavily used herbicide in the United States in 1987-89, with its most extensive use for corn and soybeans. Currently, about 60 million pounds of atrazine are applied in the United States annually and the herbicide has been found in groundwater and drinking water in many parts of the country where atrazine use is most prevalent.

7. Once released into the environment, atrazine is broken down into other chemicals known as “degradant chemicals”. Among these are deethylatrazine, deisopropylatrazine and diaminoatrazine. Atrazine degradant chemicals are believed to be hazardous if consumed by humans in any amount. Hereinafter, any reference to “atrazine” shall mean atrazine and its degradant products.

8. Recent scientific studies have been performed which identify new dangers associated with the consumption of atrazine. These adverse reactions are being found in humans at atrazine exposure levels less than three parts per billion. These include the development of

cancer<sup>1</sup> and reproductive problems<sup>2</sup> to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

9. Concerns regarding the adverse effects of atrazine residues in drinking water have resulted in the ban of atrazine in some European countries, including Germany, Italy, Austria, Slovenia and Denmark. Atrazine is subject to restrictions in several other European countries, including France and the United Kingdom.

10. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. In the past two years, these studies have concluded that atrazine is causing deformities in the reproductive organs of amphibians, has been linked to fertility problems, and fetal death in humans. Syngenta and the other suppliers of atrazine in the U.S. have in the past and continue to dispel the notion that atrazine is in fact a cancer causing agent. All of these adverse effects can occur at levels lower than the three parts per billion.

11. In the Summer of 2001, National Resource Defense Counsel learned that Syngenta had been tracking prostate cancer in its employees at its St. Gabriel, Louisiana atrazine plant. National Resource Defense Counsel alerted the United States Environmental Protection Agency (EPA) of this situation, which resulted in the submission of reports of numerous recent cancer cases to the agency by Syngenta. The study has since been published in the *Journal of*

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<sup>1</sup>Dezell, E. , *A follow-up study of cancer incidence among workers in triazine-related operations at the Novartis St. Gabriel plant.* Syngenta Number 2207-01.

<sup>2</sup> Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, Environmental Health Perspectives, May 2004, Vol. 112, No. 6.

*Occupational and Environmental Health*.<sup>3</sup> One of the most significant findings is that the exposed Syngenta employees had elevated rates of prostate cancer -- a rate more than three-and-a-half times higher than the Louisiana statewide average.

12. An April 2002 study, published in the *Proceedings* of the National Academy of Sciences, shows that atrazine has serious effects on the sexual organs of frogs.<sup>4</sup> The research concluded that atrazine at very low levels of concentration, much lower than 3 parts per billion (ppb), demasculinizes tadpoles and changes them to hermaphrodites, with males having ovaries in their testes, and with ten times lower levels of testosterone than normal male frogs.

13. An epidemiological study published in May 2004 found that parents working in areas of high pesticide application are at increased risk for adverse reproductive outcomes such as infertility, poor fertilization, fetal death, and congenital anomalies.<sup>5</sup> This is the first study to evidence reproductive problems in humans associated with atrazine exposure. This new scientific data is even more disturbing in view of the previously identified adverse effects on the reproductive systems of amphibians.

14. Despite these recent studies establishing links between atrazine and cancer in humans and animals and sexual development in frogs, Syngenta continues to publicly claim that there is no evidence that "atrazine causes cancer in humans" and that "[e]xperts have

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<sup>3</sup>MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. *Journal Occupational Environmental Health*. 2002 Nov ; 44 (11): 1048-58.

<sup>4</sup>Hayes TB, *Hermaphroditic, demasculinized frogs after exposure to the herbicide atrazine at low ecologically relevant doses*. *Proceedings, National Academy of Sciences USA* 99, 5476-5480 (2002).

<sup>5</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, *Environmental Health Perspectives*, May 2004, Vol. 112, No. 6.

concluded—based on epidemiological studies of the populations in areas where atrazine has been manufactured or used for 40 years, as well as long-term dietary studies using laboratory animals—that atrazine: does not cause adverse effects to reproductive systems; does not affect genetic development; does not cause birth defects; does not affect chromosome structure; is not estrogenic; does not disrupt endocrine function”. [www.syngentacropprotection-us.com](http://www.syngentacropprotection-us.com).

15. Syngenta and the other suppliers of atrazine in the U.S. have, for many years, continuously publicly denied any connection between the use of atrazine and adverse impact on human health. Further, they have vigorously fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

16. Defendants have knowingly and actively concealed the facts alleged herein. Defendants have affirmatively and deliberately represented that atrazine use is safe and does not present serious health consequences to humans and the environment, thereby fraudulently concealing atrazine’s true dangerous nature.

17. At all times relevant, Defendants have continuously and repeatedly sold and distributed products containing atrazine in the U.S. and Illinois, including Madison County, Illinois, resulting in continuous and repeated violations of Plaintiff’s rights, as set forth in the Counts below.

18. Defendants’ fraudulent concealment could not have been discovered by Plaintiff and the Class Members even in the exercise of due diligence. Plaintiff did not have the ability to challenge the assurances of Syngenta and the other suppliers of atrazine in the U.S. regarding atrazine’s safety. Only agencies capable of performing epidemiologic and scientific investigations

have the resources to uncover the truth about atrazine. Fortunately, independent scientific researchers have begun to unveil the impending devastating effects of this toxic chemical. It was reasonable for Plaintiff and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

19. Only shortly before the filing of this lawsuit did Plaintiff discover the hazardous nature of the atrazine degradant chemicals of atrazine when consumed by humans or that these chemicals remain in filtered drinking water at a level that is harmful to humans. Until shortly before the filing of this action, Plaintiff and Class Members were unaware that water levels containing atrazine at less than three parts per billion presented human health hazards. Without the knowledge of the harmful nature of atrazine at levels below three parts per billion (ppb), Plaintiff had no reason to believe the invasion of atrazine on its property was actionable.

20. Plaintiffs bring this action as a Class action against Defendants pursuant to 735 ILCS 5/2-801 *et seq.*, individually and on behalf of a Class consisting of all Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 *et seq.*, and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the

immediate family member of any such person. Also excluded is any judge who may preside over this cause.

21. Plaintiff is a member of the Class and it will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of other members of the Class. Plaintiff has retained attorneys who are experienced in Class action litigation.

22. Members of the Class are so numerous that joinder of all members is impracticable.

23. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. whether atrazine, as manufactured, sold or distributed by the Defendants, was a defective product due to its likelihood to contaminate water supplies;
- b. whether Defendants are strictly liable for the sale and distribution of atrazine;
- c. whether Defendants acted negligently in selling and supplying atrazine;
- d. whether atrazine is harmful to humans when consumed through dietary water;
- e. whether "atrazine degradant chemicals" of atrazine are harmful to humans when consumed through dietary water;
- f. whether Defendants failed to adequately test atrazine, prior to its manufacture, distribution and/or sale, for risks to contamination of dietary water;
- g. whether Defendants knew or should have known that atrazine is hazardous to groundwater aquifers and public water provider systems;
- h. whether Defendants made false, misleading, inaccurate and/or incomplete assertions regarding the threat posed by atrazine to public water provider systems.

24. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class; and

- b. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

25. The class action method is appropriate for the fair and efficient prosecution of this action.

26. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendants.

27. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

28. Accordingly, Plaintiff brings this action on behalf of itself and on behalf of all other members of the Class defined as follows:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as

well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

**COUNT I**  
**(TRESPASS)**

29. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows.

30. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

31. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as "atrazine degradant chemicals" and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the

atrazine products would run-off into such surface waters, contaminating these water sources.

32. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use, knowing to a substantial certainty that its products, when applied and used for their intended purpose, would invade Plaintiff's property and contaminate its waters.

33. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD.

34. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

35. As a direct and proximate cause of Defendants' continued trespass onto Plaintiff's property, including its surface waters, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

36. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants

be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

**PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued trespass of atrazine onto Plaintiff's property.

**COUNT II**  
**(NUISANCE)**

37. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

38. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

39. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

40. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use.

41. As a direct and proximate result of Defendants’ intentional and/or negligent actions set forth above, Defendants’ atrazine products have caused continuous, substantial and unreasonable invasion of the use and enjoyment of Plaintiff’s property, which is perceptible to the senses, and caused to be contaminated the Plaintiff’s property, namely the surface water of Holiday Shores Lake, the water source for HSSD. Defendants’ actions

invade the use and enjoyment of Plaintiff's property by Plaintiff and the public, because Plaintiff supplies water to residents within the Holiday Shores community.

42. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

43. As a direct and proximate cause of Defendants' actions set forth above, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

44. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;

- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiff's property.

**COUNT III**  
**(NEGLIGENCE)**

45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

46. Defendants owed a duty to Plaintiff to prevent invasion of atrazine onto Plaintiff's property and the continuous contamination of Plaintiff's property and water supply.

47. Defendants breached their duty to Plaintiff when they failed to take measures to prevent the invasion of atrazine onto Plaintiff's property. Specifically, Defendants breached their duty to Plaintiff and the Class in that they:

- a. failed to conduct meaningful research into the potential health effects of atrazine when consumed by humans despite their knowledge that atrazine would run off and infiltrate surface waters, including those for public water supplies, such as in Holiday Shores;

- b. Failed to clean up or abate contamination caused by their atrazine products which had run off and contaminated land and waters despite their knowledge that such contamination had occurred.

48. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff has sustained economic loss and severe and permanent damage to property, including its groundwater and lake.

49. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination .

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities

established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees; and
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- m) Cease and desist the continued invasion of atrazine onto Plaintiff's property.

**COUNT IV**  
**(STRICT LIABILITY)**

50. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

51. At the time Defendants placed their atrazine products into the stream of commerce in Illinois, they were in a defective condition unreasonably dangerous for their intended and foreseeable uses for the following reasons:

- (a) Atrazine is highly soluble in water and recalcitrant to biodegradation;
- (b) Herbicides containing atrazine have a tendency to mix with groundwater and migrate great distances;
- (c) Groundwater containing even small amounts of herbicides containing atrazine has a propensity to contaminate reservoirs and lakes providing supplies for public water providers;
- (d) Dietary ingestion of water containing atrazine is hazardous to human health;
- (e) Defendants failed to conduct reasonable and appropriate scientific research to evaluate the environmental fate and transport and potential human health effects of their atrazine products.

52. Defendants atrazine products were used in a manner in which they were intended and foreseeably certain to be used.

53. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiff and the Class have suffered severe and permanent damage to its property and the continuous contamination of its surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

54. As a direct and proximate result of the unreasonably dangerous and/or defective condition of atrazine or herbicides containing atrazine and its introduction into the stream of commerce by Defendants, Plaintiff's property, including its groundwater and lake, have continuously sustained severe and permanent damages by atrazine contamination.

55. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their

atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest.

**COUNT V**  
**(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)**

56. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

57. This count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/12, which provides in pertinent part:

No person shall . . .

- (a) cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act . . .
- (d) deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

58. Defendants are person pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiff's property with the specific knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Holiday Shores Sanitary District.

59. The damages to Plaintiff's property through atrazine contamination is precisely the sort of injury which 415 ILCS 5/1 et seq of the Illinois Environmental Protection Act was designed to prevent.

60. Plaintiff has standing and is entitled to maintain a private right under the Environmental Protection Act, consistent with the underlying purpose of the Act, which is to alleviate the burden on enforcement agencies in the protection of the environment and to restore,

protect and enhance the quality of the environment, assuring that the cost for adverse effects upon the environment are borne by those who cause them.

61. A private right of action under the Illinois Environmental Protection Act is necessary to provide an adequate remedy for the Defendants' violations of that Act.

62. Defendants are jointly and severally liable to Plaintiff for this violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

63. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiff has sustained damages to its property, including the contamination of its groundwater and lake.

64. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;

- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 5/12(d).

## COUNT VI

### (VIOLATION OF ILLINOIS WATER POLLUTANT DISCHARGE ACT)

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

66. This count is brought pursuant to the Illinois Water Pollutant Discharge Act, 415 ILCS 25/0.01 *et seq.*, which provides in pertinent part:

It is hereby declared that it is the public policy of the State of Illinois that there should be no discharge of oil or other pollutants into or upon any waters which are or may be used for the purposes of providing a water supply for any city, town or village, or for purposes of recreation or navigation and that those persons responsible for such discharge shall bear the costs of removal.

415 ILCS 25/1.

67. The Illinois Water Pollutant Discharge Act further provides, in pertinent part, that:

The owner or operator of such facility from which oil or other pollutants are discharged in violation of Section 3 of this act, shall be liable to such governmental body for the actual costs incurred for the removal of such oil or other pollutants. Such governmental body may, if necessary, bring an action in the circuit court for the recovery of the actual costs of removal, plus reasonable attorneys fees, court costs and other expenses of litigation.

415 ILCS 25/5.

68. Plaintiff is a “governmental body” as that term is defined at 415 ILCS 25/2(g).

69. Defendant Growmark is a “person” as that term is defined at 415 ILCS 25/2(i) and an “owner or operator” as those terms are defined at 415 ILCS 25/2(h).

70. Atrazine is an “other pollutant” as that term is defined at 415 ILCS 25/2(b).

71. Defendant Growmark “discharged” atrazine into the waters of Holiday Shores Lake in violation of 415 ILCS 25/3.

72. Plaintiff has arranged for the removal of the atrazine from its waters, as it is authorized to do pursuant to 415 ILCS 25/4, and has incurred actual costs for such removal.

73. Plaintiff continues to incur actual costs for the removal of atrazine, which continues to contaminate Holiday Shores Lake.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et

seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 25/3.

**KOREIN TILLERY, LLC**

By: Courtney Buxner

STEPHEN M. TILLERY #2834995

COURTNEY BUXNER #06281678

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St. Louis, Missouri 63101

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**BARON & BUDD, P.C.**

SCOTT SUMMY, Esq.

3102 Oak Lawn Avenue, Suite 1100

Dallas, TX 75219-4281

Telephone: 214/521-3605

Facsimile: 214/520-1181

*Attorneys for Plaintiffs and the Class*

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

FILED  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

SYNGENTA CROP PROTECTION, INC.; and )  
GROWMARK, INC. )

Defendants, )

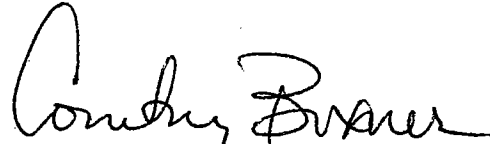
Cause No. 2004-L-000710

AFFIDAVIT OF COURTNEY BUXNER

I, Courtney Buxner, being first duly sworn upon my oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff filing the above-captioned cause of action.
2. That the total money damages sought by Plaintiff in this cause of action exceeds Fifty Thousand Dollars (\$50,000).

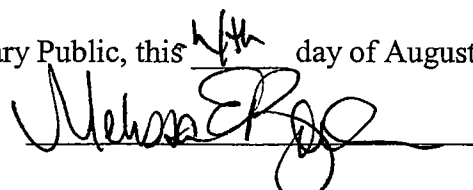
Further affiant sayeth naught.



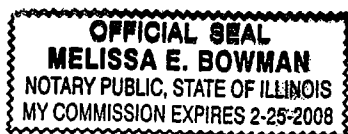
Courtney Buxner #06281678  
KOREIN TILLERY  
701 Market Street, Suite 300  
St. Louis, Missouri 63101  
Telephone: (314) 241-4844  
Facsimile: (314) 241-3525

STATE OF ILLINOIS )  
COUNTY Clinton )

Subscribed and sworn to before me, a Notary Public, this 4th day of August, 2004.



My commission expires:



AUGUST 12, 2004

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY  
(618) 692-6240  
WWW.CO.MADISON.IL.US

ALIAS SUMMONS

HOLIDAY SHORES SANITARY DISTRICT INDIVIDUALLY AND ON BEHALF

PLAINTIFF

VS.

CASE No. 2004 L 000709

GROWMARK INC  
C/O JAMES L. ANDERSON  
171 TOWANDA AVENUE  
BLOOMINGTON IL 61701  
DEFENDANT

TO EACH OF THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after this service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date.

Witness: MATT MELUCCI the Clerk of said Circuit Court and the seal thereof, at Edwardsville, Illinois, this AUGUST 12, 2004

MATT MELUCCI  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY: *A. Faulkner*  
Deputy Clerk

=====  
(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

KOREIN TILLERY  
GATEWAY ONE ON THE MALL  
701 MARKET ST., SUITE 300  
ST. LOUIS, MO 63101-1820

Date of Service: 8-27-04, 20\_\_.

(To be inserted by officer on the copy left with the defendant or other person)

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004

CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

DREXEL CHEMICAL CO.; and )  
GROWMARK, INC. )

Defendants, )

Cause No.2004-L-000709

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Holiday Shores Sanitary District, by and through its undersigned attorneys, and for its Class Action Complaint against Defendants, Drexel Chemical Co., and Growmark, Inc. states as follows:

1. At all times relevant hereto, Plaintiff Holiday Shores Sanitary District ("HSSD") was and is a sanitary district located and operating in Madison County, Illinois. For approximately the past twenty years, HSSD has owned and operated a water plant which provides water to the residents and businesses of Holiday Shores, a small community located west of Edwardsville, Illinois in Madison County. The community of Holiday Shores is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural industry is grain crops. HSSD's source of raw water is Holiday Shores Lake, located in the middle of the community.

2. Upon information and belief, at all times relevant, Defendant Drexel Chemical Co., is a Tennessee corporation, doing business in the state United States, including the State of

Illinois, with its principal place of business located at P.O. Box 13327, Memphis, TN 38113-0327. Drexel Chemical Co. has at all times relevant and currently engages in the activities of manufacturers, sells and supplies products containing atrazine to farmers, cooperatives and local atrazine dealers located throughout Illinois, including Madison County, Illinois. Drexel Chemical Co. has transacted substantial and continuous business throughout Illinois and in Madison County, including soliciting, selling and supplying atrazine product to local dealers of agricultural products. Hereinafter, Drexel Chemical Co. will be referred to as "Drexel" or "Manufacturing Defendant".

3. Drexel is one of only six registered manufacturers of atrazine in the United States. Drexel manufactures and sells atrazine to other manufacturers of atrazine products and also manufactures and sells its own line of atrazine products which are registered for sale in Illinois. The atrazine manufactured by Drexel is identical to that made by other manufacturers. Once it is applied to crops and enters the environment, there is no way to distinguish Drexel's atrazine, and its degradants, from the contaminants originating from any other manufacturer's atrazine.

4. Defendant Growmark, Inc. ("Growmark") is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, Inc. participates in the ownership and operation of local cooperatives under the "FS" name, including Madison Services FS located in Madison County, Illinois and other local cooperatives located throughout the State of Illinois for the purpose of selling agricultural products, including those products containing atrazine for use in Illinois.

5. Atrazine, whose chemical formula is 2-chloro4-ethylamino-6-isopropylamino-s-

triazine, is a herbicide which is used mainly by corn, sorghum, and sugar cane farmers for pre-emergence broad leaf weed control. Atrazine is advantageous to farmers because it does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. However, these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs.

6. Atrazine is a widely used herbicide for control of broadleaf and grassy weeds. Atrazine was estimated to be the most heavily used herbicide in the United States in 1987-89, with its most extensive use for corn and soybeans. Currently, about 60 million pounds of atrazine are applied in the United States annually and the herbicide has been found in groundwater and drinking water in many parts of the country where atrazine use is most prevalent.

7. Once released into the environment, atrazine is broken down into other chemicals known as "degradant chemicals". Among these are deethylatrazine, deisopropylatrazine and diaminoatrazine. Atrazine degradant chemicals are believed to be hazardous if consumed by humans in any amount. Hereinafter, any reference to "atrazine" shall mean atrazine and its degradant products.

8. Recent scientific studies have been performed which identify new dangers associated with the consumption of atrazine. These adverse reactions are being found in humans at atrazine exposure levels less than three parts per billion. These include the development of

cancer<sup>1</sup> and reproductive problems<sup>2</sup> to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

9. Concerns regarding the adverse effects of atrazine residues in drinking water have resulted in the ban of atrazine in some European countries, including Germany, Italy, Austria, Slovenia and Denmark. Atrazine is subject to restrictions in several other European countries, including France and the United Kingdom.

10. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. In the past two years, these studies have concluded that atrazine is causing deformities in the reproductive organs of amphibians, has been linked to fertility problems, and fetal death in humans. Drexel and the other suppliers of atrazine in the U.S. have in the past and continue to dispel the notion that atrazine is in fact a cancer causing agent. All of these adverse effects can occur at levels lower than the three parts per billion.

11. In the Summer of 2001, National Resource Defense Counsel learned that Syngenta Crop Protection Inc., one of the six manufacturers of atrazine, had been tracking prostate cancer in its employees at its St. Gabriel, Louisiana atrazine plant. National Resource Defense Counsel alerted the United States Environmental Protection Agency (EPA) of this situation, which resulted in the submission of reports of numerous recent cancer cases to the agency by Syngenta. The study

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<sup>1</sup>Dezell, E. , *A follow-up study of cancer incidence among workers in triazine-related operations at the Novartis St. Gabriel plant.* Syngenta Number 2207-01.

<sup>2</sup> Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, Environmental Health Perspectives, May 2004, Vol. 112, No. 6.

has since been published in the *Journal of Occupational and Environmental Health*.<sup>3</sup> One of the most significant findings is that the exposed Syngenta employees had elevated rates of prostate cancer -- a rate more than three-and-a-half times higher than the Louisiana statewide average.

12. An April 2002 study, published in the *Proceedings* of the National Academy of Sciences, shows that atrazine has serious effects on the sexual organs of frogs.<sup>4</sup> The research concluded that atrazine at very low levels of concentration, much lower than 3 parts per billion (ppb), demasculinizes tadpoles and changes them to hermaphrodites, with males having ovaries in their testes, and with ten times lower levels of testosterone than normal male frogs.

13. An epidemiological study published in May 2004 found that parents working in areas of high pesticide application are at increased risk for adverse reproductive outcomes such as infertility, poor fertilization, fetal death, and congenital anomalies.<sup>5</sup> This is the first study to evidence reproductive problems in humans associated with atrazine exposure. This new scientific data is even more disturbing in view of the previously identified adverse effects on the reproductive systems of amphibians.

14. Despite these recent studies establishing links between atrazine and cancer in

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<sup>3</sup>MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. *Journal Occupational Environmental Health*. 2002 Nov ; 44 (11): 1048-58.

<sup>4</sup>Hayes TB, *Hermaphroditic, demasculinized frogs after exposure to the herbicide atrazine at low ecologically relevant doses*. *Proceedings, National Academy of Sciences USA* 99, 5476-5480 (2002).

<sup>5</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, *Environmental Health Perspectives*, May 2004, Vol. 112, No. 6.

humans and animals and sexual development in frogs, even today, manufacturers of atrazine proclaim that atrazine is not carcinogenic and that atrazine is safe for both humans and the environment as used today.

15. The agrochemical industry, including Drexel and the other suppliers of atrazine in the U.S., have, for many years, continuously publicly denied any connection between the use of atrazine and adverse impact on human health. Further, they have vigorously fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

16. Defendants have knowingly and actively concealed the facts alleged herein. Defendants have affirmatively and deliberately represented that atrazine use is safe and does not present serious health consequences to humans and the environment, thereby fraudulently concealing atrazine's true dangerous nature.

17. At all times relevant, Defendants have continuously and repeatedly sold and distributed products containing atrazine in the U.S. and Illinois, including Madison County, Illinois, resulting in continuous and repeated violations of Plaintiff's rights, as set forth in the Counts below.

18. Defendants' fraudulent concealment could not have been discovered by Plaintiff and the Class Members even in the exercise of due diligence. Plaintiff did not have the ability to challenge the assurances of Drexel and the other suppliers of atrazine in the U.S. regarding atrazine's safety. Only agencies capable of performing epidemiologic and scientific investigations have the resources to uncover the truth about atrazine. Fortunately, independent scientific researchers have begun to unveil the impending devastating effects of this toxic chemical. It was reasonable for

Plaintiff and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

19. Only shortly before the filing of this lawsuit did Plaintiff discover the hazardous nature of the atrazine degradant chemicals of atrazine when consumed by humans or that these chemicals remain in filtered drinking water at a level that is harmful to humans. Until shortly before the filing of this action, Plaintiff and Class Members were unaware that water levels containing atrazine at less than three parts per billion presented human health hazards. Without the knowledge of the harmful nature of atrazine at levels below three parts per billion (ppb), Plaintiff had no reason to believe the invasion of atrazine on its property was actionable.

20. Plaintiff brings this action as a Class action against Defendants pursuant to 735 ILCS 5/2-801 *et seq.*, individually and on behalf of a Class consisting of all Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 *et seq.*, and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

21. Plaintiff is a member of the Class and it will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of other members of the Class. Plaintiff has retained attorneys who are experienced in Class action litigation.

22. Members of the Class are so numerous that joinder of all members is impracticable.

23. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. whether atrazine, as manufactured, sold or distributed by the Defendants, was a defective product due to its likelihood to contaminate water supplies;
- b. whether Defendants are strictly liable for the sale and distribution of atrazine;
- c. whether Defendants acted negligently in selling and supplying atrazine;
- d. whether atrazine is harmful to humans when consumed through dietary water;
- e. whether "atrazine degradant chemicals" of atrazine are harmful to humans when consumed through dietary water;
- f. whether Defendants failed to adequately test atrazine, prior to its manufacture, distribution and/or sale, for risks to contamination of dietary water;
- g. whether Defendants knew or should have known that atrazine is hazardous to groundwater aquifers and public water provider systems;
- h. whether Defendants made false, misleading, inaccurate and/or incomplete assertions regarding the threat posed by atrazine to public water provider systems.

24. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class; and
- b. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

25. The class action method is appropriate for the fair and efficient prosecution of this action.

26. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendants.

27. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

28. Accordingly, Plaintiff brings this action on behalf of itself and on behalf of all other members of the Class defined as follows:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

**COUNT I**  
**(TRESPASS)**

29. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows.

30. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

31. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

32. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use, knowing to a substantial certainty that its products, when applied and used for their intended purpose, would invade Plaintiff's property and contaminate its waters.

33. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD.

34. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

35. As a direct and proximate cause of Defendants' continued trespass onto Plaintiff's property, including its surface waters, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

36. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

**PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.

- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- I) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued trespass of atrazine onto Plaintiff's property.

**COUNT II**  
**(NUISANCE)**

37. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

38. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

39. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

40. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use.

41. As a direct and proximate result of Defendants’ intentional and/or negligent actions set forth above, Defendants’ atrazine products have caused continuous, substantial and unreasonable invasion of the use and enjoyment of Plaintiff’s property, which is perceptible to the senses, and caused to be contaminated the Plaintiff’s property, namely the

surface water of Holiday Shores Lake, the water source for HSSD. Defendants' actions invade the use and enjoyment of Plaintiff's property by Plaintiff and the public, because Plaintiff supplies water to residents within the Holiday Shores community.

42. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

43. As a direct and proximate cause of Defendants' actions set forth above, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

44. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with

- the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
  - f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
  - g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
  - h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
  - I) awarding Plaintiff punitive damages;
  - j) awarding Plaintiff costs of suit and attorneys' fees; and
  - k) awarding Plaintiff any other relief the Court deems just, proper and equitable.
  - l) prejudgment interest; and
  - m) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiff's property.

**COUNT III**  
**NEGLIGENCE**

45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

46. Defendants owed a duty to Plaintiff to prevent invasion of atrazine onto Plaintiff's property and the continuous contamination of Plaintiff's property and water supply.

47. Defendants breached their duty to Plaintiff when they failed to take measures to prevent the invasion of atrazine onto Plaintiff's property. Specifically, Defendants breached their duty to Plaintiff and the Class in that they:

- a. Failed to conduct meaningful research into the potential health effects of atrazine when consumed by humans despite their knowledge that atrazine would run off and infiltrate surface waters, including those for public water supplies, such as in Holiday Shores;
- b. Failed to clean up or abate contamination caused by their atrazine products which had run off and contaminated land and waters despite their knowledge that such contamination had occurred.

48. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff has sustained economic loss and severe and permanent damage to property, including its groundwater and lake.

49. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination .

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;

- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- I) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees; and
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued invasion of atrazine onto Plaintiff's property.

**COUNT IV**  
**STRICT LIABILITY**

50. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

51. At the time Defendants placed their atrazine products into the stream of commerce in Illinois, they were in a defective condition unreasonably dangerous for their intended and foreseeable uses for the following reasons:

- (a) Atrazine is highly soluble in water and recalcitrant to biodegradation;
- (b) Herbicides containing atrazine have a tendency to mix with groundwater and migrate great distances;
- (c) Groundwater containing even small amounts of herbicides containing atrazine has a propensity to contaminate reservoirs and lakes providing supplies for public water providers;
- (d) Dietary ingestion of water containing atrazine is hazardous to human health;
- (e) Defendants failed to conduct reasonable and appropriate scientific research to evaluate the environmental fate and transport and potential human health effects of their atrazine products.

52. Defendants atrazine products were used in a manner in which they were intended and foreseeably certain to be used.

53. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiff and the Class have suffered severe and permanent damage to its property and the continuous contamination of its surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

54. As a direct and proximate result of the unreasonably dangerous and/or defective condition of atrazine or herbicides containing atrazine and its introduction into the stream of commerce by Defendants, Plaintiff's property, including its groundwater and lake, have continuously sustained severe and permanent damages by atrazine contamination.

55. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;

- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- I) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable; and
- l) prejudgment interest.

#### **COUNT V**

#### **(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)**

56. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

57. This count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/12, which provides in pertinent part:

No person shall . . .

(a) cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act . . .

(d) deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

58. Defendants are person pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiff's property with the specific

knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Holiday Shores Sanitary District.

59. The damages to Plaintiff's property through atrazine contamination is precisely the sort of injury which 415 ILCS 5/1 et seq of the Illinois Environmental Protection Act was designed to prevent.

60. Plaintiff has standing and is entitled to maintain a private right under the Environmental Protection Act, consistent with the underlying purpose of the Act, which is to alleviate the burden on enforcement agencies in the protection of the environment and to restore, protect and enhance the quality of the environment, assuring that the cost for adverse effects upon the environment are borne by those who cause them.

61. A private right of action under the Illinois Environmental Protection Act is necessary to provide an adequate remedy for the Defendants' violations of that Act.

62. Defendants are jointly and severally liable to Plaintiff for this violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

63. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiff has sustained damages to its property, including the contamination of its groundwater and lake.

64. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;

- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- I) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 5/12(d).

### **COUNT VI**

#### **(VIOLATION OF ILLINOIS WATER POLLUTANT DISCHARGE ACT)**

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

66. This count is brought pursuant to the Illinois Water Pollutant Discharge Act, 415 ILCS 25/0.01 *et seq.*, which provides in pertinent part:

It is hereby declared that it is the public policy of the State of Illinois that there should be no discharge of oil or other pollutants into or upon any waters which are or may be used for the purposes of providing a water supply for any city, town or village, or for purposes of recreation or navigation and that those persons responsible for such discharge shall bear the costs of removal.

415 ILCS 25/1.

67. The Illinois Water Pollutant Discharge Act further provides, in pertinent part, that:

The owner or operator of such facility from which oil or other pollutants are discharged in violation of Section 3 of this act, shall be liable to such governmental body for the actual costs incurred for the removal of such oil or other pollutants. Such governmental body may, if necessary, bring an action in the circuit court for the recovery of the actual costs of removal, plus reasonable attorneys fees, court costs and other expenses of litigation.

415 ILCS 25/5.

68. Plaintiff is a “governmental body” as that term is defined at 415 ILCS 25/2(g).

69. Defendant Growmark is a “person” as that term is defined at 415 ILCS 25/2(I) and an “owner or operator” as those terms are defined at 415 ILCS 25/2(h).

70. Atrazine is an “other pollutant” as that term is defined at 415 ILCS 25/2(b).

71. Defendant Growmark “discharged” atrazine into the waters of Holiday Shores Lake in violation of 415 ILCS 25/3.

72. Plaintiff has arranged for the removal of the atrazine from its waters, as it is authorized to do pursuant to 415 ILCS 25/4, and has incurred actual costs for such removal.

73. Plaintiff continues to incur actual costs for the removal of atrazine, which continues to contaminate Holiday Shores Lake.

### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.

- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 25/3.

**KOREIN TILLERY, LLC**

By:   
STEPHEN M. TILLERY #2834995  
COURTNEY BUXNER #06281678  
701 Market Street, Suite 300  
St. Louis, Missouri 63101  
Telephone: (314) 241-4844  
Facsimile: (314) 241-3525

**BARON & BUDD, P.C.**

SCOTT SUMMY, Esq.

3102 Oak Lawn Avenue, Suite 1100

Dallas, TX 75219-4281

Telephone: 214/521-3605

Facsimile: 214/520-1181

***Attorneys for Plaintiffs and the Class***

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

DREXEL CHEMICAL CO.; and )  
GROWMARK, INC. )

Defendants, )

Cause No. 2004-L-000709

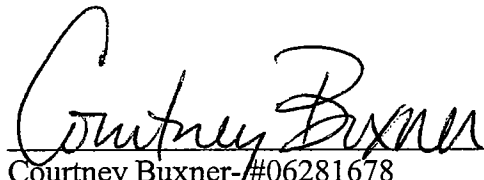
**AFFIDAVIT OF COURTNEY BUXNER**

I, Courtney Buxner, being first duly sworn upon my oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff filing the above-captioned cause of action.

2. That the total money damages sought by Plaintiff in this cause of action exceeds Fifty Thousand Dollars (\$50,000).

Further affiant sayeth naught.



Courtney Buxner-#06281678

KOREIN TILLERY

701 Market Street, Suite 300

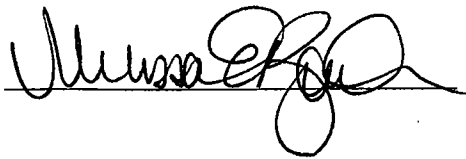
St. Louis, Missouri 63101

Telephone: (314) 241-4844

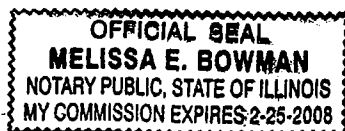
Facsimile: (314) 241-3525

STATE OF ILLINOIS )  
COUNTY Clinton )

Subscribed and sworn to before me, a Notary Public, this 4th day of August, 2004.



My commission expires:



AUGUST 12, 2004

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY  
(618) 692-6240  
WWW.CO.MADISON.IL.US

ALIAS SUMMONS

HOLIDAY SHORES SANITARY DISTRICT INDIVIDUALLY AND ON BEHALF  
PLAINTIFF

VS.

CASE No. 2004 L 000712

GROWMARK INC  
C/O JAMES L. ANDERSON  
171 TOWANDA AVENUE  
BLOOMINGTON IL 61701  
DEFENDANT

TO EACH OF THE ABOVE NAMED DEFENDANTS:

. You are hereby summoned and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after this service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date.

Witness: MATT MELUCCI the Clerk of said Circuit Court and the seal thereof, at Edwardsville, Illinois, this AUGUST 12, 2004

MATT MELUCCI  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY:   
Deputy Clerk

=====  
(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

KOREIN TILLERY  
GATEWAY ONE ON THE MALL  
701 MARKET ST., SUITE 300  
ST. LOUIS, MO 63101-1820

Date of Service: 8-27-04, 20  .

(To be inserted by officer on the copy left with the defendant or other person)

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

Cause No. 2004-L-000712

v. )

MAKHTESHIM-AGAN OF NORTH )  
AMERICA INC.; and )  
GROWMARK, INC. )

Defendants, )

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Holiday Shores Sanitary District, by and through its undersigned attorneys, and for its First Amended Class Action Complaint against Defendants, Makhteshim-Agan of North America Inc., and Growmark, Inc. states as follows:

1. At all times relevant hereto, Plaintiff Holiday Shores Sanitary District ("HSSD") was and is a sanitary district located and operating in Madison County, Illinois. For approximately the past twenty years, HSSD has owned and operated a water plant which provides water to the residents and businesses of Holiday Shores, a small community located west of Edwardsville, Illinois in Madison County. The community of Holiday Shores is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural industry is grain crops. HSSD's source of raw water is Holiday Shores Lake, located in the middle of the community.

2. Upon information and belief, at all times relevant, Defendant Makhteshim-Agan of North America Inc., is a Delaware corporation doing business in the United States, including the State of Illinois, with its principal place of business located at 551 Fifth Avenue, Suite 1100, New York, NY 10176. Makhteshim-Agan of North America Inc. has at all times relevant and currently engages in the activities of manufacturers, sells and supplies products containing atrazine to farmers, cooperatives and local atrazine dealers located throughout Illinois, including Madison County, Illinois. Makhteshim-Agan of North America Inc. has transacted substantial and continuous business throughout Illinois and in Madison County, including soliciting, selling and supplying atrazine product to local dealers of agricultural products. Hereinafter, Makhteshim-Agan of North America Inc. will be referred to as "Agan" or "Manufacturing Defendant".

3. Agan is one of only six registered manufacturers of atrazine in the United States. Agan manufactures and sells atrazine to other manufacturers of atrazine products and also manufactures and sells its own line of atrazine products which are registered for sale in Illinois. The atrazine manufactured by Agan is identical to that made by other manufacturers. Once it is applied to crops and enters the environment, there is no way to distinguish Agan's atrazine, and its degradants, from the contaminants originating from any other manufacturer's atrazine.

4. Defendant Growmark, Inc. ("Growmark") is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, Inc. participates in the ownership and operation of local cooperatives under the "FS" name, including Madison Services FS located in Madison County, Illinois and other local cooperatives located throughout the State of Illinois for the purpose of selling agricultural products, including

those products containing atrazine for use in Illinois.

5. Atrazine, whose chemical formula is 2-chloro-4-ethylamino-6-isopropylamino-s-triazine, is a herbicide which is used mainly by corn, sorghum, and sugar cane farmers for pre-emergence broad leaf weed control. Atrazine is advantageous to farmers because it does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. However, these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs.

6. Atrazine is a widely used herbicide for control of broadleaf and grassy weeds. Atrazine was estimated to be the most heavily used herbicide in the United States in 1987-89, with its most extensive use for corn and soybeans. Currently, about 60 million pounds of atrazine are applied in the United States annually and the herbicide has been found in groundwater and drinking water in many parts of the country where atrazine use is most prevalent.

7. Once released into the environment, atrazine is broken down into other chemicals known as "degradant chemicals". Among these are deethylatrazine, deisopropylatrazine and diaminoatrazine. Atrazine degradant chemicals are believed to be hazardous if consumed by humans in any amount. Hereinafter, any reference to "atrazine" shall mean atrazine and its degradant products.

8. Recent scientific studies have been performed which identify new dangers associated with the consumption of atrazine. These adverse reactions are being found in humans

at atrazine exposure levels less than three parts per billion. These include the development of cancer<sup>1</sup> and reproductive problems<sup>2</sup> to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

9. Concerns regarding the adverse effects of atrazine residues in drinking water have resulted in the ban of atrazine in some European countries, including Germany, Italy, Austria, Slovenia and Denmark. Atrazine is subject to restrictions in several other European countries, including France and the United Kingdom.

10. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. In the past two years, these studies have concluded that atrazine is causing deformities in the reproductive organs of amphibians, has been linked to fertility problems, and fetal death in humans. Agan and the other suppliers of atrazine in the U.S. have in the past and continue to dispel the notion that atrazine is in fact a cancer causing agent. All of these adverse effects can occur at levels lower than the three parts per billion.

11. In the Summer of 2001, National Resource Defense Counsel learned that Syngenta Crop Protection Inc., one of the six manufacturers of atrazine, had been tracking prostate cancer in its employees at its St. Gabriel, Louisiana atrazine plant. National Resource Defense Counsel alerted the United States Environmental Protection Agency (EPA) of this situation, which resulted in the submission of reports of numerous recent cancer cases to the agency by Syngenta. The study

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<sup>1</sup>Dezell, E. , *A follow-up study of cancer incidence among workers in triazine-related operations at the Novartis St. Gabriel plant.* Syngenta Number 2207-01.

<sup>2</sup> Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, Environmental Health Perspectives, May 2004, Vol. 112, No. 6.

has since been published in the *Journal of Occupational and Environmental Health*.<sup>3</sup> One of the most significant findings is that the exposed Syngenta employees had elevated rates of prostate cancer -- a rate more than three-and-a-half times higher than the Louisiana statewide average.

12. An April 2002 study, published in the *Proceedings* of the National Academy of Sciences, shows that atrazine has serious effects on the sexual organs of frogs.<sup>4</sup> The research concluded that atrazine at very low levels of concentration, much lower than 3 parts per billion (ppb), demasculinizes tadpoles and changes them to hermaphrodites, with males having ovaries in their testes, and with ten times lower levels of testosterone than normal male frogs.

13. An epidemiological study published in May 2004 found that parents working in areas of high pesticide application are at increased risk for adverse reproductive outcomes such as infertility, poor fertilization, fetal death, and congenital anomalies.<sup>5</sup> This is the first study to evidence reproductive problems in humans associated with atrazine exposure. This new scientific data is even more disturbing in view of the previously identified adverse effects on the reproductive systems of amphibians.

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<sup>3</sup>MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. *Journal Occupational Environmental Health*. 2002 Nov ; 44 (11): 1048-58.

<sup>4</sup>Hayes TB, *Hermaphroditic, demasculinized frogs after exposure to the herbicide atrazine at low ecologically relevant doses*. *Proceedings, National Academy of Sciences USA* 99, 5476-5480 (2002).

<sup>5</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, *Environmental Health Perspectives*, May 2004, Vol. 112, No. 6.

14. Despite these recent studies establishing links between atrazine and cancer in humans and animals and sexual development in frogs, even today, manufacturers of atrazine proclaim that atrazine is not carcinogenic and that atrazine is safe for both humans and the environment as used today.

15. The agrochemical industry, including Agan and the other suppliers of atrazine in the U.S., have, for many years, continuously publicly denied any connection between the use of atrazine and adverse impact on human health. Further, they have vigorously fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

16. Defendants have knowingly and actively concealed the facts alleged herein. Defendants have affirmatively and deliberately represented that atrazine use is safe and does not present serious health consequences to humans and the environment, thereby fraudulently concealing atrazine's true dangerous nature.

17. At all times relevant, Defendants have continuously and repeatedly sold and distributed products containing atrazine in the U.S. and Illinois, including Madison County, Illinois, resulting in continuous and repeated violations of Plaintiff's rights, as set forth in the Counts below.

18. Defendants' fraudulent concealment could not have been discovered by Plaintiff and the Class Members even in the exercise of due diligence. Plaintiff did not have the ability to challenge the assurances of Agan and the other suppliers of atrazine in the U.S. regarding atrazine's safety. Only agencies capable of performing epidemiologic and scientific investigations have the resources to uncover the truth about atrazine. Fortunately, independent scientific researchers have

begun to unveil the impending devastating effects of this toxic chemical. It was reasonable for Plaintiff and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

19. Only shortly before the filing of this lawsuit did Plaintiff discover the hazardous nature of the atrazine degradant chemicals of atrazine when consumed by humans or that these chemicals remain in filtered drinking water at a level that is harmful to humans. Until shortly before the filing of this action, Plaintiff and Class Members were unaware that water levels containing atrazine at less than three parts per billion presented human health hazards. Without the knowledge of the harmful nature of atrazine at levels below three parts per billion (ppb), Plaintiff had no reason to believe the invasion of atrazine on its property was actionable.

20. Plaintiff brings this action as a Class action against Defendants pursuant to 735 ILCS 5/2-801 *et seq.*, individually and on behalf of a Class consisting of all Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 *et seq.*, and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

21. Plaintiff is a member of the Class and they will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of other members of the Class. Plaintiff has retained attorneys who are experienced in Class action litigation.

22. Members of the Class are so numerous that joinder of all members is impracticable.

23. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. whether atrazine, as manufactured, sold or distributed by the Defendants, was a defective product due to its likelihood to contaminate water supplies;
- b. whether Defendants are strictly liable for the sale and distribution of atrazine;
- c. whether Defendants acted negligently in selling and supplying atrazine;
- d. whether atrazine is harmful to humans when consumed through dietary water;
- e. whether "atrazine degradant chemicals" of atrazine are harmful to humans when consumed through dietary water;
- f. whether Defendants failed to adequately test atrazine, prior to its manufacture, distribution and/or sale, for risks to contamination of dietary water;
- g. whether Defendants knew or should have known that atrazine is hazardous to groundwater aquifers and public water provider systems;
- h. whether Defendants made false, misleading, inaccurate and/or incomplete assertions regarding the threat posed by atrazine to public water provider systems.

24. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class; and
- b. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

25. The class action method is appropriate for the fair and efficient prosecution of this action.

26. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendant.

27. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

28. Accordingly, Plaintiff brings this action on behalf of themselves and on behalf of all other members of the Class defined as follows:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

**COUNT I**  
**(TRESPASS)**

29. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows.

30. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

31. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as "atrazine degradant chemicals" and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

32. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural

use, knowing to a substantial certainty that its products, when applied and used for their intended purpose, would invade Plaintiff's property and contaminate its waters.

33. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD.

34. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

35. As a direct and proximate cause of Defendants' continued trespass onto Plaintiff's property, including its surface waters, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

36. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering

system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;

- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued trespass of atrazine onto Plaintiff's property.

## **COUNT II**

### **(NUISANCE)**

37. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

38. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

39. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants

and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

40. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use.

41. As a direct and proximate result of Defendants’ intentional and/or negligent actions set forth above, Defendants’ atrazine products have caused continuous, substantial and unreasonable invasion of the use and enjoyment of Plaintiff’s property, which is perceptible to the senses, and caused to be contaminated the Plaintiff’s property, namely the surface water of Holiday Shores Lake, the water source for HSSD. Defendants’ actions invade the use and enjoyment of Plaintiff’s property by Plaintiff and the public, because Plaintiff supplies water to residents within the Holiday Shores community.

42. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

43. As a direct and proximate cause of Defendants' actions set forth above, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

44. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;

- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees; and
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable.
- l) prejudgment interest; and
- m) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiff's property.

**COUNT III**  
**NEGLIGENCE**

45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

46. Defendants owed a duty to Plaintiff to prevent invasion of atrazine onto Plaintiff's property and the continuous contamination of Plaintiff's property and water supply.

47. Defendants breached their duty to Plaintiff when they failed to take measures to prevent the invasion of atrazine onto Plaintiff's property. Specifically, Defendants breached their duty to Plaintiff and the Class in that they:

- a. Failed to conduct meaningful research into the potential health effects of atrazine when consumed by humans despite their knowledge that atrazine would run off and infiltrate surface waters, including those for public water supplies, such as in Holiday Shores;

- b. Failed to clean up or abate contamination caused by their atrazine products which had run off and contaminated land and waters despite their knowledge that such contamination had occurred.

48. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff has sustained economic loss and severe and permanent damage to property, including its groundwater and lake.

49. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination .

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:
  - All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities

established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees; and
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- m) Cease and desist the continued invasion of atrazine onto Plaintiff's property.

**COUNT IV**  
**STRICT LIABILITY**

50. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

51. At the time Defendants placed their atrazine products into the stream of commerce in Illinois, they were in a defective condition unreasonably dangerous for their intended and foreseeable uses for the following reasons:

- (a) Atrazine is highly soluble in water and recalcitrant to biodegradation;
- (b) Herbicides containing atrazine have a tendency to mix with groundwater and migrate great distances;
- (c) Groundwater containing even small amounts of herbicides containing atrazine has a propensity to contaminate reservoirs and lakes providing supplies for public water providers;
- (d) Dietary ingestion of water containing atrazine is hazardous to human health;
- (e) Defendants failed to conduct reasonable and appropriate scientific research to evaluate the environmental fate and transport and potential human health effects of their atrazine products.

52. Defendants atrazine products were used in a manner in which they were intended and foreseeably certain to be used.

53. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiff and the Class have suffered severe and permanent damage to its property and the continuous contamination of its surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

54. As a direct and proximate result of the unreasonably dangerous and/or defective condition of atrazine or herbicides containing atrazine and its introduction into the stream of commerce by Defendants, Plaintiff's property, including its groundwater and lake, have continuously sustained severe and permanent damages by atrazine contamination.

55. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable; and
- l) prejudgment interest.

#### **COUNT V**

#### **(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)**

56. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

57. This count is brought pursuant to the Illinois Environmental Protection Act, 415

ILCS 5/12, which provides in pertinent part:

No person shall . . .

(a) cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act . . .

(d) deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

58. Defendants are person pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiff's property with the specific knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Holiday Shores Sanitary District.

59. The damages to Plaintiff's property through atrazine contamination is precisely the sort of injury which 415 ILCS 5/1 et seq of the Illinois Environmental Protection Act was designed to prevent.

60. Plaintiff has standing and is entitled to maintain a private right under the Environmental Protection Act, consistent with the underlying purpose of the Act, which is to alleviate the burden on enforcement agencies in the protection of the environment and to restore, protect and enhance the quality of the environment, assuring that the cost for adverse effects upon the environment are borne by those who cause them.

61. A private right of action under the Illinois Environmental Protection Act is necessary to provide an adequate remedy for the Defendants' violations of that Act.

62. Defendants are jointly and severally liable to Plaintiff for this violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

63. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiff has sustained damages to its property, including the contamination of its groundwater and lake.

64. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

**PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- l) Cease and desist the continued violation of 415 ILCS 5/12(d).

#### **COUNT VI**

#### **(VIOLATION OF ILLINOIS WATER POLLUTANT DISCHARGE ACT)**

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of

this Complaint as if fully set forth herein, and further alleges as follows:

66. This count is brought pursuant to the Illinois Water Pollutant Discharge Act, 415

ILCS 25/0.01 *et seq.*, which provides in pertinent part:

It is hereby declared that it is the public policy of the State of Illinois that there should be no discharge of oil or other pollutants into or upon any waters which are or may be used for the purposes of providing a water supply for any city, town or village, or for purposes of recreation or navigation and that those persons responsible for such discharge shall bear the costs of removal.

415 ILCS 25/1.

67. The Illinois Water Pollutant Discharge Act further provides, in pertinent part, that:

The owner or operator of such facility from which oil or other pollutants are discharged in violation of Section 3 of this act, shall be liable to such governmental body for the actual costs incurred for the removal of such oil or other pollutants. Such governmental body may, if necessary, bring an action in the circuit court for the recovery of the actual costs of removal, plus reasonable attorneys fees, court costs and other expenses of litigation.

415 ILCS 25/5.

68. Plaintiff is a “governmental body” as that term is defined at 415 ILCS 25/2(g).

69. Defendant Growmark is a “person” as that term is defined at 415 ILCS 25/2(f) and an “owner or operator” as those terms are defined at 415 ILCS 25/2(h).

70. Atrazine is an “other pollutant” as that term is defined at 415 ILCS 25/2(b).

71. Defendant Growmark “discharged” atrazine into the waters of Holiday Shores Lake in violation of 415 ILCS 25/3.

72. Plaintiff has arranged for the removal of the atrazine from its waters, as it is authorized to do pursuant to 415 ILCS 25/4, and has incurred actual costs for such removal.

73. Plaintiff continues to incur actual costs for the removal of atrazine, which continues to contaminate Holiday Shores Lake.

**PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 25/3.

**KOREIN TILLERY, LLC**

By: 

STEPHEN M. TILLERY #2834995

COURTNEY BUXNER #06281678

701 Market Street, Suite 300

St. Louis, Missouri 63101

Telephone: (314) 241-4844

Facsimile: (314) 241-3525

**BARON & BUDD, P.C.**

SCOTT SUMMY, Esq.

3102 Oak Lawn Avenue, Suite 1100

Dallas, TX 75219-4281

Telephone: 214/521-3605

Facsimile: 214/520-1181

*Attorneys for Plaintiffs and the Class*

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

FILED  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

MAKHTESHIM-AGAN OF NORTH )  
AMERICA INC.; and )  
GROWMARK, INC. )

Defendants, )

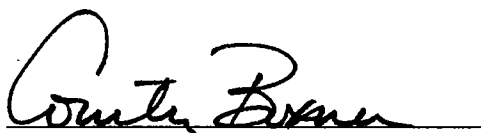
Cause No. 2004-L-000712

AFFIDAVIT OF COURTNEY BUXNER

I, Courtney Buxner, being first duly sworn upon my oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff filing the above-captioned cause of action.
2. That the total money damages sought by Plaintiff in this cause of action exceeds Fifty Thousand Dollars (\$50,000).

Further affiant sayeth naught.



Courtney Buxner- #06281678

KOREIN TILLERY

701 Market Street, Suite 300

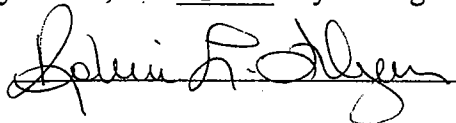
St. Louis, Missouri 63101

Telephone: (314) 241-4844

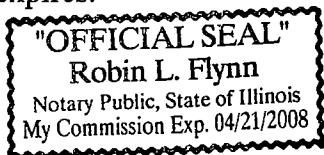
Facsimile: (314) 241-3525

STATE OF ILLINOIS )  
COUNTY Madison )

Subscribed and sworn to before me, a Notary Public, this 5<sup>th</sup> day of August, 2004.



My commission expires:



AUGUST 12, 2004

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY  
(618) 692-6240  
WWW.CO.MADISON.IL.US

ALIAS SUMMONS

HOLIDAY SHORES SANITARY DISTRICT INDIVIDUALLY AND ON BEHALF  
PLAINTIFF

VS.

CASE No. 2004 L 000713

GROWMARK INC  
C/O JAMES L. ANDERSON  
171 TOWANDA AVENUE  
BLOOMINGTON IL 61701  
DEFENDANT

TO EACH OF THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after this service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date.

Witness: MATT MELUCCI the Clerk of said Circuit Court and the seal thereof, at Edwardsville, Illinois, this AUGUST 12, 2004

MATT MELUCCI  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY: *A. Faulkner*

Deputy Clerk

=====  
(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

KOREIN TILLERY  
GATEWAY ONE ON THE MALL  
701 MARKET ST., SUITE 300  
ST. LOUIS, MO 63101-1820

Date of Service: 8-27-04, 20\_\_.

(To be inserted by officer on the copy left with the defendant or other person)

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

DOW AGROSCIENCES LLC.; and )  
GROWMARK, INC. )

Defendants, )

Cause No. 2004-L-000713

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Holiday Shores Sanitary District, by and through its undersigned attorneys, and for its First Amended Class Action Complaint against Defendants, Dow AgroSciences LLC., and Growmark, Inc. states as follows:

1. At all times relevant hereto, Plaintiff Holiday Shores Sanitary District ("HSSD") was and is a sanitary district located and operating in Madison County, Illinois. For approximately the past twenty years, HSSD has owned and operated a water plant which provides water to the residents and businesses of Holiday Shores, a small community located west of Edwardsville, Illinois in Madison County. The community of Holiday Shores is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural industry is grain crops. HSSD's source of raw water is Holiday Shores Lake, located in the middle of the community.

2. Upon information and belief, at all times relevant, Defendant Dow AgroSciences LLC., is a Delaware corporation doing business in the United States, including the State of

Illinois, with its principal place of business located at 9930 Zionsville Rd., Indianapolis, IN 46268. Dow AgroSciences LLC has at all times relevant and currently engages in the activities of manufacturers, sells and supplies products containing atrazine to farmers, cooperatives and local atrazine dealers located throughout Illinois, including Madison County, Illinois. Dow AgroSciences LLC has transacted substantial and continuous business throughout Illinois and in Madison County, including soliciting, selling and supplying atrazine product to local dealers of agricultural products. Hereinafter, Dow AgroSciences LLC will be referred to as "Dow" or "Manufacturing Defendant".

3. Dow is one of only six registered manufacturers of atrazine in the United States. Dow manufactures and sells atrazine to other manufacturers of atrazine products and also manufacturers and sells its own line of atrazine products which are registered for sale in Illinois. The atrazine manufactured by Dow is identical to that made by other manufacturers. Once it is applied to crops and enters the environment, there is no way to distinguish Dow's atrazine, and its degradants, from the contaminants originating from any other manufacturer's atrazine.

4. Defendant Growmark, Inc. ("Growmark") is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, Inc. participates in the ownership and operation of local cooperatives under the "FS" name, including Madison Services FS located in Madison County, Illinois and other local cooperatives located throughout the State of Illinois for the purpose of selling agricultural products, including those products containing atrazine for use in Illinois.

5. Atrazine, whose chemical formula is 2-chloro-4-ethylamino-6-isopropylamino-s-triazine, is a herbicide which is used mainly by corn, sorghum, and sugar cane farmers for

pre-emergence broad leaf weed control. Atrazine is advantageous to farmers because it does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. However, these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs.

6. Atrazine is a widely used herbicide for control of broadleaf and grassy weeds. Atrazine was estimated to be the most heavily used herbicide in the United States in 1987-89, with its most extensive use for corn and soybeans. Currently, about 60 million pounds of atrazine are applied in the United States annually and the herbicide has been found in groundwater and drinking water in many parts of the country where atrazine use is most prevalent.

7. Once released into the environment, atrazine is broken down into other chemicals known as "degradant chemicals". Among these are deethylatrazine, deisopropylatrazine and diaminoatrazine. Atrazine degradant chemicals are believed to be hazardous if consumed by humans in any amount. Hereinafter, any reference to "atrazine" shall mean atrazine and its degradant products.

8. Recent scientific studies have been performed which identify new dangers associated with the consumption of atrazine. These adverse reactions are being found in humans at atrazine exposure levels less than three parts per billion. These include the development of

cancer<sup>1</sup> and reproductive problems<sup>2</sup> to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

9. Concerns regarding the adverse effects of atrazine residues in drinking water have resulted in the ban of atrazine in some European countries, including Germany, Italy, Austria, Slovenia and Denmark. Atrazine is subject to restrictions in several other European countries, including France and the United Kingdom.

10. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. In the past two years, these studies have concluded that atrazine is causing deformities in the reproductive organs of amphibians, has been linked to fertility problems, and fetal death in humans. Dow and the other suppliers of atrazine in the U.S. have in the past and continue to dispel the notion that atrazine is in fact a cancer causing agent. All of these adverse effects can occur at levels lower than the three parts per billion.

11. In the Summer of 2001, National Resource Defense Counsel learned that Syngenta Crop Protection Inc., one of the six manufacturers of atrazine, had been tracking prostate cancer in its employees at its St. Gabriel, Louisiana atrazine plant. National Resource Defense Counsel alerted the United States Environmental Protection Agency (EPA) of this situation, which resulted in the submission of reports of numerous recent cancer cases to the agency by Syngenta. The study

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<sup>1</sup>Dezell, E. , *A follow-up study of cancer incidence among workers in triazine-related operations at the Novartis St. Gabriel plant.* Syngenta Number 2207-01.

<sup>2</sup> Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, Environmental Health Perspectives, May 2004, Vol. 112, No. 6.

has since been published in the *Journal of Occupational and Environmental Health*.<sup>3</sup> One of the most significant findings is that the exposed Syngenta employees had elevated rates of prostate cancer -- a rate more than three-and-a-half times higher than the Louisiana statewide average.

12. An April 2002 study, published in the *Proceedings* of the National Academy of Sciences, shows that atrazine has serious effects on the sexual organs of frogs.<sup>4</sup> The research concluded that atrazine at very low levels of concentration, much lower than 3 parts per billion (ppb), demasculinizes tadpoles and changes them to hermaphrodites, with males having ovaries in their testes, and with ten times lower levels of testosterone than normal male frogs.

13. An epidemiological study published in May 2004 found that parents working in areas of high pesticide application are at increased risk for adverse reproductive outcomes such as infertility, poor fertilization, fetal death, and congenital anomalies.<sup>5</sup> This is the first study to evidence reproductive problems in humans associated with atrazine exposure. This new scientific data is even more disturbing in view of the previously identified adverse effects on the reproductive systems of amphibians.

14. Despite these recent studies establishing links between atrazine and cancer in

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<sup>3</sup>MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. *Journal Occupational Environmental Health*. 2002 Nov ; 44 (11): 1048-58.

<sup>4</sup>Hayes TB, *Hermaphroditic, demasculinized frogs after exposure to the herbicide atrazine at low ecologically relevant doses*. *Proceedings, National Academy of Sciences USA* 99, 5476-5480 (2002).

<sup>5</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, *Environmental Health Perspectives*, May 2004, Vol. 112, No. 6.

humans and animals and sexual development in frogs, even today, manufacturers of atrazine proclaim that atrazine is not carcinogenic and that atrazine is safe for both humans and the environment as used today.

15. The agrochemical industry, including Dow and the other suppliers of atrazine in the U.S., have, for many years, continuously publicly denied any connection between the use of atrazine and adverse impact on human health. Further, they have vigorously fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

16. Defendants have knowingly and actively concealed the facts alleged herein. Defendants have affirmatively and deliberately represented that atrazine use is safe and does not present serious health consequences to humans and the environment, thereby fraudulently concealing atrazine's true dangerous nature.

17. At all times relevant, Defendants have continuously and repeatedly sold and distributed products containing atrazine in the U.S. and Illinois, including Madison County, Illinois, resulting in continuous and repeated violations of Plaintiff's rights, as set forth in the Counts below.

18. Defendants' fraudulent concealment could not have been discovered by Plaintiff and the Class Members even in the exercise of due diligence. Plaintiff did not have the ability to challenge the assurances of Dow and the other suppliers of atrazine in the U.S. regarding atrazine's safety. Only agencies capable of performing epidemiologic and scientific investigations have the resources to uncover the truth about atrazine. Fortunately, independent scientific researchers have begun to unveil the impending devastating effects of this toxic chemical. It was reasonable for

Plaintiff and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

19. Only shortly before the filing of this lawsuit did Plaintiff discover the hazardous nature of the atrazine degradant chemicals of atrazine when consumed by humans or that these chemicals remain in filtered drinking water at a level that is harmful to humans. Until shortly before the filing of this action, Plaintiff and Class Members were unaware that water levels containing atrazine at less than three parts per billion presented human health hazards. Without the knowledge of the harmful nature of atrazine at levels below three parts per billion (ppb), Plaintiff had no reason to believe the invasion of atrazine on its property was actionable.

20. Plaintiff brings this action as a Class action against Defendants pursuant to 735 ILCS 5/2-801 *et seq.*, individually and on behalf of a Class consisting of all Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 *et seq.*, and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

21. Plaintiff is a member of the Class and it will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of other members of the Class. Plaintiff has retained attorneys who are experienced in Class action litigation.

22. Members of the Class are so numerous that joinder of all members is impracticable.

23. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. whether atrazine, as manufactured, sold or distributed by the Defendants, was a defective product due to its likelihood to contaminate water supplies;
- b. whether Defendants are strictly liable for the sale and distribution of atrazine;
- c. whether Defendants acted negligently in selling and supplying atrazine;
- d. whether atrazine is harmful to humans when consumed through dietary water;
- e. whether "atrazine degradant chemicals" of atrazine are harmful to humans when consumed through dietary water;
- f. whether Defendants failed to adequately test atrazine, prior to its manufacture, distribution and/or sale, for risks to contamination of dietary water;
- g. whether Defendants knew or should have known that atrazine is hazardous to groundwater aquifers and public water provider systems;
- h. whether Defendants made false, misleading, inaccurate and/or incomplete assertions regarding the threat posed by atrazine to public water provider systems.

24. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class; and
- b. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

25. The class action method is appropriate for the fair and efficient prosecution of this action.

26. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendant.

27. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

28. Accordingly, Plaintiff brings this action on behalf of themselves and on behalf of all other members of the Class defined as follows:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

**COUNT I**  
**(TRESPASS)**

29. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows.

30. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

31. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as "atrazine degradant chemicals" and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

32. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural

use, knowing to a substantial certainty that its products, when applied and used for their intended purpose, would invade Plaintiff's property and contaminate its waters.

33. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD.

34. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

35. As a direct and proximate cause of Defendants' continued trespass onto Plaintiff's property, including its surface waters, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

36. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendant be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering

system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;

- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued trespass of atrazine onto Plaintiff's property.

## COUNT II (NUISANCE)

37. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

38. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

39. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants

and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as "atrazine degradant chemicals" and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

40. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use.

41. As a direct and proximate result of Defendants' intentional and/or negligent actions set forth above, Defendants' atrazine products have caused continuous, substantial and unreasonable invasion of the use and enjoyment of Plaintiff's property, which is perceptible to the senses, and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD. Defendants' actions invade the use and enjoyment of Plaintiff's property by Plaintiff and the public, because Plaintiff supplies water to residents within the Holiday Shores community.

42. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

43. As a direct and proximate cause of Defendants' actions set forth above, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

44. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;

- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees; and
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable.
- l) prejudgment interest; and
- m) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiff's property.

**COUNT III**  
**NEGLIGENCE**

45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

46. Defendants owed a duty to Plaintiff to prevent invasion of atrazine onto Plaintiff's property and the continuous contamination of Plaintiff's property and water supply.

47. Defendants breached their duty to Plaintiff when they failed to take measures to prevent the invasion of atrazine onto Plaintiff's property. Specifically, Defendants breached their duty to Plaintiff and the Class in that they:

- a. failed to conduct meaningful research into the potential health effects of atrazine when consumed by humans despite their knowledge that atrazine would run off and infiltrate surface waters, including those for public water supplies, such as in Holiday Shores;

- b. Failed to clean up or abate contamination caused by their atrazine products which had run off and contaminated land and waters despite their knowledge that such contamination had occurred.

48. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff has sustained economic loss and severe and permanent damage to property, including its groundwater and lake.

49. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination .

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities

established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees; and
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- m) Cease and desist the continued invasion of atrazine onto Plaintiff's property.

**COUNT IV**  
**STRICT LIABILITY**

50. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

51. At the time Defendants placed their atrazine products into the stream of commerce in Illinois, they were in a defective condition unreasonably dangerous for their intended and foreseeable uses for the following reasons:

- (a) Atrazine is highly soluble in water and recalcitrant to biodegradation;
- (b) Herbicides containing atrazine have a tendency to mix with groundwater and migrate great distances;
- (c) Groundwater containing even small amounts of herbicides containing atrazine has a propensity to contaminate reservoirs and lakes providing supplies for public water providers;
- (d) Dietary ingestion of water containing atrazine is hazardous to human health;
- (e) Defendants failed to conduct reasonable and appropriate scientific research to evaluate the environmental fate and transport and potential human health effects of their atrazine products.

52. Defendants atrazine products were used in a manner in which they were intended and foreseeably certain to be used.

53. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiff and the Class have suffered severe and permanent damage to its property and the continuous contamination of its surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

54. As a direct and proximate result of the unreasonably dangerous and/or defective condition of atrazine or herbicides containing atrazine and its introduction into the stream of commerce by Defendants, Plaintiff's property, including its groundwater and lake, have continuously sustained severe and permanent damages by atrazine contamination.

55. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

**PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered

atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable; and
- l) prejudgment interest.

**COUNT V**  
**(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)**

56. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

57. This count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/12, which provides in pertinent part:

No person shall . . .

(a) cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act . . .

(d) deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

58. Defendants are person pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiff's property with the specific knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Holiday Shores Sanitary District.

59. The damages to Plaintiff's property through atrazine contamination is precisely the sort of injury which 415 ILCS 5/1 et seq of the Illinois Environmental Protection Act was designed to prevent.

60. Plaintiff has standing and is entitled to maintain a private right under the Environmental Protection Act, consistent with the underlying purpose of the Act, which is to alleviate the burden on enforcement agencies in the protection of the environment and to restore,

protect and enhance the quality of the environment, assuring that the cost for adverse effects upon the environment are borne by those who cause them.

61. A private right of action under the Illinois Environmental Protection Act is necessary to provide an adequate remedy for the Defendants' violations of that Act.

62. Defendants are jointly and severally liable to Plaintiff for this violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

63. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiff has sustained damages to its property, including the contamination of its groundwater and lake.

64. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;

- l) prejudgment interest; and
- l) Cease and desist the continued violation of 415 ILCS 5/12(d).

### **COUNT VI**

#### **(VIOLATION OF ILLINOIS WATER POLLUTANT DISCHARGE ACT )**

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of

this Complaint as if fully set forth herein, and further alleges as follows:

66. This count is brought pursuant to the Illinois Water Pollutant Discharge Act, 415

ILCS 25/0.01 *et seq.*, which provides in pertinent part:

It is hereby declared that it is the public policy of the State of Illinois that there should be no discharge of oil or other pollutants into or upon any waters which are or may be used for the purposes of providing a water supply for any city, town or village, or for purposes of recreation or navigation and that those persons responsible for such discharge shall bear the costs of removal.

415 ILCS 25/1.

67. The Illinois Water Pollutant Discharge Act further provides, in pertinent part, that:

The owner or operator of such facility from which oil or other pollutants are discharged in violation of Section 3 of this act, shall be liable to such governmental body for the actual costs incurred for the removal of such oil or other pollutants. Such governmental body may, if necessary, bring an action in the circuit court for the recovery of the actual costs of removal, plus reasonable attorneys fees, court costs and other expenses of litigation.

415 ILCS 25/5.

68. Plaintiff is a "governmental body" as that term is defined at 415 ILCS 25/2(g).

69. Defendant Growmark is a “person” as that term is defined at 415 ILCS 25/2(I) and an “owner or operator” as those terms are defined at 415 ILCS 25/2(h).

70. Atrazine is an “other pollutant” as that term is defined at 415 ILCS 25/2(b).

71. Defendant Growmark “discharged” atrazine into the waters of Holiday Shores Lake in violation of 415 ILCS 25/3.

72. Plaintiff has arranged for the removal of the atrazine from its waters, as it is authorized to do pursuant to 415 ILCS 25/4, and has incurred actual costs for such removal.

73. Plaintiff continues to incur actual costs for the removal of atrazine, which continues to contaminate Holiday Shores Lake.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 25/3.

**KOREIN TILLERY, LLC**

By: Courtney Buxner  
STEPHEN M. TILLERY #2834995  
COURTNEY BUXNER #06281678  
701 Market Street, Suite 300  
St. Louis, Missouri 63101  
Telephone: (314) 241-4844  
Facsimile: (314) 241-3525

**BARON & BUDD, P.C.**

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3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219-4281  
Telephone: 214/521-3605  
Facsimile: 214/520-1181

*Attorneys for Plaintiffs and the Class*

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004

CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

DOW AGROSCIENCES LLC.; and )  
GROWMARK, INC. )

Defendants, )

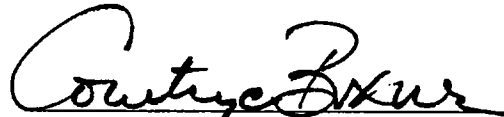
Cause No. 2004-L-000713

**AFFIDAVIT OF COURTNEY BUXNER**

I, Courtney Buxner, being first duly sworn upon my oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff filing the above-captioned cause of action.
2. That the total money damages sought by Plaintiff in this cause of action exceeds Fifty Thousand Dollars (\$50,000).

Further affiant sayeth naught.



Courtney Buxner- #06281678

KOREIN TILLERY

701 Market Street, Suite 300

St. Louis, Missouri 63101

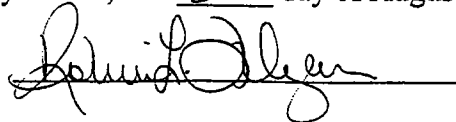
Telephone: (314) 241-4844

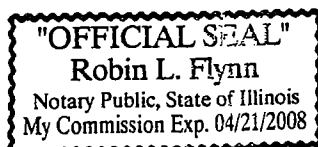
Facsimile: (314) 241-3525

STATE OF ILLINOIS )  
COUNTY Madison )

Subscribed and sworn to before me, a Notary Public, this 5<sup>th</sup> day of August, 2004.

My commission expires:





AUGUST 12, 2004

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY  
(618) 692-6240  
WWW.CO.MADISON.IL.US

ALIAS SUMMONS

HOLIDAY SHORES SANITARY DISTRICT INDIVIDUALLY AND ON BEHALF  
PLAINTIFF

VS.

CASE No. 2004 L 000711

GROWMARK INC  
C/O JAMES L. ANDERSON  
1701 TOWANDA AVENUE  
BLOOMINGTON IL 61701  
DEFENDANT

TO EACH OF THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after this service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date.

Witness: MATT MELUCCI the Clerk of said Circuit Court and the seal thereof, at Edwardsville, Illinois, this AUGUST 12, 2004

MATT MELUCCI  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY: \_\_\_\_\_

*A. Faulkner*  
Deputy Clerk

=====  
(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

KOREIN TILLERY  
GATEWAY ONE ON THE MALL  
701 MARKET ST., SUITE 300  
ST. LOUIS, MO 63101-1820

Date of Service: 8-27-04, 20\_\_.

(To be inserted by officer on the copy left with the defendant or other person)

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )**

**Plaintiff,**

**v.**

**UNITED AGRI PRODUCTS, INC., )  
D/B/A UAP LOVELAND PRODUCTS INC.; )  
and )  
GROWMARK, INC. )**

**Defendants,**

**Cause No. 2004-L-000711**

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Holiday Shores Sanitary District, by and through its undersigned attorneys, and for its First Amended Class Action Complaint against Defendants, United Agri Products, Inc., d/b/a UAP Loveland Products Inc., and Growmark, Inc. states as follows:

1. At all times relevant hereto, Plaintiff Holiday Shores Sanitary District ("HSSD") was and is a sanitary district located and operating in Madison County, Illinois. For approximately the past twenty years, HSSD has owned and operated a water plant which provides water to the residents and businesses of Holiday Shores, a small community located west of Edwardsville, Illinois in Madison County. The community of Holiday Shores is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural industry is grain crops. HSSD's source of raw water is Holiday Shores Lake, located in the middle of the community.

2. Upon information and belief, at all times relevant, Defendant United Agri

Products, Inc., d/b/a UAP Loveland Products Inc., is a Colorado corporation, doing business in the state United States, including the State of Illinois, with its principal place of business located at 7251 W. 4<sup>th</sup> Street, Greeley, CO 80634. United Agri Products, Inc. has at all times relevant and currently engages in the activities of manufacturers, sells and supplies products containing atrazine to farmers, cooperatives and local atrazine dealers located throughout Illinois, including Madison County, Illinois. United Agri Products, Inc. has transacted substantial and continuous business throughout Illinois and in Madison County, including soliciting, selling and supplying atrazine product to local dealers of agricultural products. Hereinafter, United Agri Products, Inc., d/b/a UAP Loveland Products Inc. will be referred to as “UAP” or “Manufacturing Defendant”.

3. UAP is one of only six registered manufacturers of atrazine in the United States. UAP manufactures and sells atrazine to other manufacturers of atrazine products and also manufactures and sells its own line of atrazine products which are registered for sale in Illinois. The atrazine manufactured by UAP is identical to that made by other manufacturers. Once it is applied to crops and enters the environment, there is no way to distinguish UAP’s atrazine, and its degradants, from the contaminants originating from any other manufacturer’s atrazine.

4. Defendant Growmark, Inc. (“Growmark”) is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, Inc. participates in the ownership and operation of local cooperatives under the “FS” name, including Madison Services FS located in Madison County, Illinois and other local cooperatives located throughout the State of Illinois for the purpose of selling agricultural products, including those products containing atrazine for use in Illinois.

5. Atrazine, whose chemical formula is 2-chloro4-ethylamino-6-isopropylamino-s-triazine, is a herbicide which is used mainly by corn, sorghum, and sugar cane farmers for pre-emergence broad leaf weed control. Atrazine is advantageous to farmers because it does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. However, these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs.

6. Atrazine is a widely used herbicide for control of broadleaf and grassy weeds. Atrazine was estimated to be the most heavily used herbicide in the United States in 1987-89, with its most extensive use for corn and soybeans. Currently, about 60 million pounds of atrazine are applied in the United States annually and the herbicide has been found in groundwater and drinking water in many parts of the country where atrazine use is most prevalent.

7. Once released into the environment, atrazine is broken down into other chemicals known as "degradant chemicals". Among these are deethylatrazine, deisopropylatrazine and diaminoatrazine. Atrazine degradant chemicals are believed to be hazardous if consumed by humans in any amount. Hereinafter, any reference to "atrazine" shall mean atrazine and its degradant products.

8. Recent scientific studies have been performed which identify new dangers associated with the consumption of atrazine. These adverse reactions are being found in humans at atrazine exposure levels less than three parts per billion. These include the development of

cancer<sup>1</sup> and reproductive problems<sup>2</sup> to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

9. Concerns regarding the adverse effects of atrazine residues in drinking water have resulted in the ban of atrazine in some European countries, including Germany, Italy, Austria, Slovenia and Denmark. Atrazine is subject to restrictions in several other European countries, including France and the United Kingdom.

10. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. In the past two years, these studies have concluded that atrazine is causing deformities in the reproductive organs of amphibians, has been linked to fertility problems, and fetal death in humans. UAP and the other suppliers of atrazine in the U.S. have in the past and continue to dispel the notion that atrazine is in fact a cancer causing agent. All of these adverse effects can occur at levels lower than the three parts per billion.

11. In the Summer of 2001, National Resource Defense Counsel learned that Syngenta Crop Protection Inc., one of the six manufacturers of atrazine, had been tracking prostate cancer in its employees at its St. Gabriel, Louisiana atrazine plant. National Resource Defense Counsel alerted the United States Environmental Protection Agency (EPA) of this situation, which resulted in the submission of reports of numerous recent cancer cases to the agency by Syngenta. The study

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<sup>1</sup>Dezell, E. , *A follow-up study of cancer incidence among workers in triazine-related operations at the Novartis St. Gabriel plant*. Syngenta Number 2207-01.

<sup>2</sup> Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, Environmental Health Perspectives, May 2004, Vol. 112, No. 6.

has since been published in the *Journal of Occupational and Environmental Health*.<sup>3</sup> One of the most significant findings is that the exposed Syngenta employees had elevated rates of prostate cancer -- a rate more than three-and-a-half times higher than the Louisiana statewide average.

12. An April 2002 study, published in the *Proceedings* of the National Academy of Sciences, shows that atrazine has serious effects on the sexual organs of frogs.<sup>4</sup> The research concluded that atrazine at very low levels of concentration, much lower than 3 parts per billion (ppb), demasculinizes tadpoles and changes them to hermaphrodites, with males having ovaries in their testes, and with ten times lower levels of testosterone than normal male frogs.

13. An epidemiological study published in May 2004 found that parents working in areas of high pesticide application are at increased risk for adverse reproductive outcomes such as infertility, poor fertilization, fetal death, and congenital anomalies.<sup>5</sup> This is the first study to evidence reproductive problems in humans associated with atrazine exposure. This new scientific data is even more disturbing in view of the previously identified adverse effects on the reproductive systems of amphibians.

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<sup>3</sup>MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. *Journal Occupational Environmental Health*. 2002 Nov ; 44 (11): 1048-58.

<sup>4</sup>Hayes TB, *Hermaphroditic, demasculinized frogs after exposure to the herbicide atrazine at low ecologically relevant doses*. *Proceedings, National Academy of Sciences USA* 99, 5476-5480 (2002).

<sup>5</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, *Environmental Health Perspectives*, May 2004, Vol. 112, No. 6.

14. Despite these recent studies establishing links between atrazine and cancer in humans and animals and sexual development in frogs, even today, manufacturers of atrazine proclaim that atrazine is not carcinogenic and that atrazine is safe for both humans and the environment as used today.

15. The agrochemical industry, including UAP and the other suppliers of atrazine in the U.S., have, for many years, continuously publicly denied any connection between the use of atrazine and adverse impact on human health. Further, they have vigorously fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

16. Defendants have knowingly and actively concealed the facts alleged herein. Defendants have affirmatively and deliberately represented that atrazine use is safe and does not present serious health consequences to humans and the environment, thereby fraudulently concealing atrazine's true dangerous nature.

17. At all times relevant, Defendants have continuously and repeatedly sold and distributed products containing atrazine in the U.S. and Illinois, including Madison County, Illinois, resulting in continuous and repeated violations of Plaintiff's rights, as set forth in the Counts below.

18. Defendants' fraudulent concealment could not have been discovered by Plaintiff and the Class Members even in the exercise of due diligence. Plaintiff did not have the ability to challenge the assurances of UAP and the other suppliers of atrazine in the U.S. regarding atrazine's safety. Only agencies capable of performing epidemiologic and scientific investigations have the resources to uncover the truth about atrazine. Fortunately, independent scientific researchers have

begun to unveil the impending devastating effects of this toxic chemical. It was reasonable for Plaintiff and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

19. Only shortly before the filing of this lawsuit did Plaintiff discover the hazardous nature of the atrazine degradant chemicals of atrazine when consumed by humans or that these chemicals remain in filtered drinking water at a level that is harmful to humans. Until shortly before the filing of this action, Plaintiff and Class Members were unaware that water levels containing atrazine at less than three parts per billion presented human health hazards. Without the knowledge of the harmful nature of atrazine at levels below three parts per billion (ppb), Plaintiff had no reason to believe the invasion of atrazine on its property was actionable.

20. Plaintiff brings this action as a Class action against Defendants pursuant to 735 ILCS 5/2-801 *et seq.*, individually and on behalf of a Class consisting of all Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 *et seq.*, and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

21. Plaintiff is a member of the Class and they will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of other members of the Class. Plaintiff has retained attorneys who are experienced in Class action litigation.

22. Members of the Class are so numerous that joinder of all members is impracticable.

23. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. whether atrazine, as manufactured, sold or distributed by the Defendants, was a defective product due to its likelihood to contaminate water supplies;
- b. whether Defendants are strictly liable for the sale and distribution of atrazine;
- c. whether Defendants acted negligently in selling and supplying atrazine;
- e. whether atrazine is harmful to humans when consumed through dietary water;
- f. whether "atrazine degradant chemicals" of atrazine are harmful to humans when consumed through dietary water;
- g. whether Defendants failed to adequately test atrazine, prior to its manufacture, distribution and/or sale, for risks to contamination of dietary water;
- h. whether Defendants knew or should have known that atrazine is hazardous to groundwater aquifers and public water provider systems;
- i. whether Defendants made false, misleading, inaccurate and/or incomplete assertions regarding the threat posed by atrazine to public water provider systems.

24. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class; and
- b. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

25. The class action method is appropriate for the fair and efficient prosecution of this action.

26. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendant.

27. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

28. Accordingly, Plaintiff brings this action on behalf of themselves and on behalf of all other members of the Class defined as follows:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

**COUNT I**  
**(TRESPASS)**

29. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows.

30. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

31. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

32. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural

use, knowing to a substantial certainty that its products, when applied and used for their intended purpose, would invade Plaintiff's property and contaminate its waters.

33. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD.

34. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

35. As a direct and proximate cause of Defendants' continued trespass onto Plaintiff's property, including its surface waters, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

36. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering

system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;

- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued trespass of atrazine onto Plaintiff's property.

## **COUNT II**

### **(NUISANCE)**

37. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

38. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

39. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants

and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

40. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use.

41. As a direct and proximate result of Defendants’ intentional and/or negligent actions set forth above, Defendants’ atrazine products have caused continuous, substantial and unreasonable invasion of the use and enjoyment of Plaintiff’s property, which is perceptible to the senses, and caused to be contaminated the Plaintiff’s property, namely the surface water of Holiday Shores Lake, the water source for HSSD. Defendants’ actions invade the use and enjoyment of Plaintiff’s property by Plaintiff and the public, because Plaintiff supplies water to residents within the Holiday Shores community.

42. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants has aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

43. As a direct and proximate cause of Defendants' actions set forth above, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

44. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;

- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees; and
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable.
- l) prejudgment interest; and
- m) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiff's property.

**COUNT III**  
**NEGLIGENCE**

45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

46. Defendants owed a duty to Plaintiff to prevent invasion of atrazine onto Plaintiff's property and the continuous contamination of Plaintiff's property and water supply.

47. Defendants breached their duty to Plaintiff when they failed to take measures to prevent the invasion of atrazine onto Plaintiff's property. Specifically, Defendants breached their duty to Plaintiff and the Class in that they:

- a. Failed to conduct meaningful research into the potential health effects of atrazine when consumed by humans despite their knowledge that atrazine would run off and infiltrate surface waters, including those for public water supplies, such as in Holiday Shores;

- b. Failed to clean up or abate contamination caused by their atrazine products which had run off and contaminated land and waters despite their knowledge that such contamination had occurred.

48. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff has sustained economic loss and severe and permanent damage to property, including its groundwater and lake.

49. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination .

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities

established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees; and
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- m) Cease and desist the continued invasion of atrazine onto Plaintiff's property.

**COUNT IV**  
**STRICT LIABILITY**

50. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

51. At the time Defendants placed their atrazine products into the stream of commerce in Illinois, they were in a defective condition unreasonably dangerous for their intended and foreseeable uses for the following reasons:

- (a) Atrazine is highly soluble in water and recalcitrant to biodegradation;
- (b) Herbicides containing atrazine have a tendency to mix with groundwater and migrate great distances;
- (c) Groundwater containing even small amounts of herbicides containing atrazine has a propensity to contaminate reservoirs and lakes providing supplies for public water providers;
- (d) Dietary ingestion of water containing atrazine is hazardous to human health;
- (e) Defendants failed to conduct reasonable and appropriate scientific research to evaluate the environmental fate and transport and potential human health effects of their atrazine products.

52. Defendants atrazine products were used in a manner in which they were intended and foreseeably certain to be used.

53. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiff and the Class have suffered severe and permanent damage to its property and the continuous contamination of its surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

54. As a direct and proximate result of the unreasonably dangerous and/or defective condition of atrazine or herbicides containing atrazine and its introduction into the stream of commerce by Defendants, Plaintiff's property, including its groundwater and lake, have continuously sustained severe and permanent damages by atrazine contamination.

55. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their

atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable; and
- l) prejudgment interest.

**COUNT V**  
**(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)**

56. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

57. This count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/12, which provides in pertinent part:

No person shall . . .

(a) cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act . . .

(d) deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

58. Defendants are person pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiff's property with the specific knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Holiday Shores Sanitary District.

59. The damages to Plaintiff's property through atrazine contamination is precisely the sort of injury which 415 ILCS 5/1 et seq of the Illinois Environmental Protection Act was designed to prevent.

60. Plaintiff has standing and is entitled to maintain a private right under the Environmental Protection Act, consistent with the underlying purpose of the Act, which is to alleviate the burden on enforcement agencies in the protection of the environment and to restore,

protect and enhance the quality of the environment, assuring that the cost for adverse effects upon the environment are borne by those who cause them.

61. A private right of action under the Illinois Environmental Protection Act is necessary to provide an adequate remedy for the Defendants' violations of that Act.

62. Defendants are jointly and severally liable to Plaintiff for this violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

63. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiff has sustained damages to its property, including the contamination of its groundwater and lake.

64. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- l) Cease and desist the continued violation of 415 ILCS 5/12(d).

**COUNT VI**  
**(VIOLATION OF ILLINOIS WATER POLLUTANT DISCHARGE ACT )**

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

66. This count is brought pursuant to the Illinois Water Pollutant Discharge Act, 415 ILCS 25/0.01 *et seq.*, which provides in pertinent part:

It is hereby declared that it is the public policy of the State of Illinois that there should be no discharge of oil or other pollutants into or upon any waters which are or may be used for the purposes of providing a water supply for any city, town or village, or for purposes of recreation or navigation and that those persons responsible for such discharge shall bear the costs of removal.

415 ILCS 25/1.

67. The Illinois Water Pollutant Discharge Act further provides, in pertinent part, that:

The owner or operator of such facility from which oil or other pollutants are discharged in violation of Section 3 of this act, shall be liable to such governmental body for the actual costs incurred for the removal of such oil or other pollutants. Such governmental body may, if necessary, bring an action in the circuit court for the recovery of the actual costs of removal, plus reasonable attorneys fees, court costs and other expenses of litigation.

415 ILCS 25/5.

68. Plaintiff is a “governmental body” as that term is defined at 415 ILCS 25/2(g).

69. Defendant Growmark is a “person” as that term is defined at 415 ILCS 25/2(I) and an “owner or operator” as those terms are defined at 415 ILCS 25/2(h).

70. Atrazine is an “other pollutant” as that term is defined at 415 ILCS 25/2(b).

71. Defendant Growmark “discharged” atrazine into the waters of Holiday Shores Lake in violation of 415 ILCS 25/3.

72. Plaintiff has arranged for the removal of the atrazine from its waters, as it is authorized to do pursuant to 415 ILCS 25/4, and has incurred actual costs for such removal.

73. Plaintiff continues to incur actual costs for the removal of atrazine, which continues to contaminate Holiday Shores Lake.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

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Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 25/3.

**KOREIN TILLERY, LLC**

By: 

STEPHEN M. TILLERY #2834995

COURTNEY BUXNER #06281678

701 Market Street, Suite 300

St. Louis, Missouri 63101

Telephone: (314) 241-4844

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**BARON & BUDD, P.C.**

SCOTT SUMMY, Esq.

3102 Oak Lawn Avenue, Suite 1100

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Telephone: 214/521-3605

Facsimile: 214/520-1181

*Attorneys for Plaintiffs and the Class*

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

**FILED**  
AUG 05 2004  
CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

UNITED AGRI PRODUCTS, INC., )  
D/B/A UAP LOVELAND PRODUCTS INC.; )  
and )  
GROWMARK, INC. )

Defendants, )

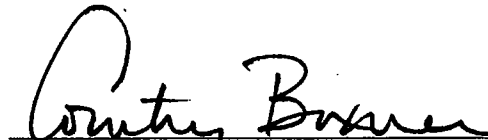
Cause No. 2004-L-000711

**AFFIDAVIT OF COURTNEY BUXNER**

I, Courtney Buxner, being first duly sworn upon my oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff filing the above-captioned cause of action.
2. That the total money damages sought by Plaintiff in this cause of action exceeds Fifty Thousand Dollars (\$50,000).

Further affiant sayeth naught.

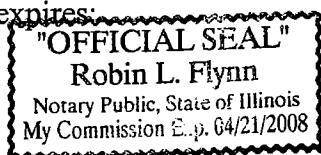


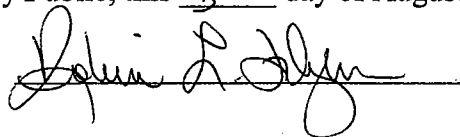
Courtney Buxner- #06281678  
KOREIN TILLERY  
701 Market Street, Suite 300  
St. Louis, Missouri 63101  
Telephone: (314) 241-4844  
Facsimile: (314) 241-3525

STATE OF ILLINOIS )  
COUNTY Madison )

Subscribed and sworn to before me, a Notary Public, this 5th day of August, 2004.

My commission expires:





AUGUST 12, 2004

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY  
(618) 692-6240  
WWW.CO.MADISON.IL.US

ALIAS SUMMONS

HOLIDAY SHORES SANITARY DISTRICT INDIVIDUALLY AND ON BEHALF  
PLAINTIFF

VS.

CASE No. 2004 L 000708

GROWMARK INC  
C/O JAMES L. ANDERSON  
171 TOWANDA AVENUE  
BLOOMINGTON IL 61701  
DEFENDANT

TO EACH OF THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this Court, within 30 days after this service of this summons, exclusive of the day of service. If you fail to do so, a judgment or decree by default may be taken against you for the relief prayed in the complaint.

This summons must be returned by the officer or other person to whom it was given for service, with endorsement thereon of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

This summons may not be served later than 30 days after its date.

Witness: MATT MELUCCI the Clerk of said Circuit Court and the seal thereof, at Edwardsville, Illinois, this AUGUST 12, 2004

MATT MELUCCI  
CLERK OF THE CIRCUIT COURT

(SEAL)

BY: J. Faulkner  
Deputy Clerk

=====

(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

KOREIN TILLERY  
GATEWAY ONE ON THE MALL  
701 MARKET ST., SUITE 300  
ST. LOUIS, MO 63101-1820

Date of Service: 8-27-04, 2004.

(To be inserted by officer on the copy left with the defendant or other person)

**IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY**

**FILED**  
4116 05 2004

CLERK OF CIRCUIT COURT #14  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )**

**Plaintiff, )**

**Cause No. 2004-L-000708**

**v. )**

**SIPCAM AGRO USA INC.; and )  
GROWMARK, INC. )**

**Defendants, )**

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW Plaintiff Holiday Shores Sanitary District, by and through its undersigned attorneys, and for its First Amended Class Action Complaint against Defendants, Sipcam Agro U.S.A. Inc., and Growmark, Inc. states as follows:

1. At all times relevant hereto, Plaintiff Holiday Shores Sanitary District ("HSSD") was and is a sanitary district located and operating in Madison County, Illinois. For approximately the past twenty years, HSSD has owned and operated a water plant which provides water to the residents and businesses of Holiday Shores, a small community located west of Edwardsville, Illinois in Madison County. The community of Holiday Shores is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural industry is grain crops. HSSD's source of raw water is Holiday Shores Lake, located in the middle of the community.

2. Upon information and belief, at all times relevant, Defendant Sipcam Agro USA Inc., a wholly owned subsidiary of Oxon Italia S.P.A., is a Georgia corporation doing business

in the state United States, including the State of Illinois, with its principal place of business located at 300 Colonial Center Parkway, Suite 230, Roswell, GA 30076. Sipcam Agro USA Inc. has at all times relevant and currently engages in the activities of manufacturers, sells and supplies products containing atrazine to farmers, cooperatives and local atrazine dealers located throughout Illinois, including Madison County, Illinois. Sipcam Agro USA Inc. has transacted substantial and continuous business throughout Illinois and in Madison County, including soliciting, selling and supplying atrazine product to local dealers of agricultural products. Hereinafter, Sipcam Agro USA Inc. will be referred to as "Sipcam" or "Manufacturing Defendant".

3. Sipcam is one of only six registered manufacturers of atrazine in the United States. Sipcam manufactures and sells atrazine to other manufacturers of atrazine products and also manufactures and sells its own line of atrazine products which are registered for sale in Illinois. The atrazine manufactured by Sipcam is identical to that made by other manufacturers. Once it is applied to crops and enters the environment, there is no way to distinguish Sipcam's atrazine, and its degradants, from the contaminants originating from any other manufacturer's atrazine.

4. Defendant Growmark, Inc. ("Growmark") is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, Inc. participates in the ownership and operation of local cooperatives under the "FS" name, including Madison Services FS located in Madison County, Illinois and other local cooperatives located throughout the State of Illinois for the purpose of selling agricultural products, including those products containing atrazine for use in Illinois.

5. Atrazine, whose chemical formula is 2-chloro4-ethylamino-6-isopropylamino-s-triazine, is a herbicide which is used mainly by corn, sorghum, and sugar cane farmers for pre-emergence broad leaf weed control. Atrazine is advantageous to farmers because it does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. However, these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs.

6. Atrazine is a widely used herbicide for control of broadleaf and grassy weeds. Atrazine was estimated to be the most heavily used herbicide in the United States in 1987-89, with its most extensive use for corn and soybeans. Currently, about 60 million pounds of atrazine are applied in the United States annually and the herbicide has been found in groundwater and drinking water in many parts of the country where atrazine use is most prevalent.

7. Once released into the environment, atrazine is broken down into other chemicals known as "degradant chemicals". Among these are deethylatrazine, deisopropylatrazine and diaminoatrazine. Atrazine degradant chemicals are believed to be hazardous if consumed by humans in any amount. Hereinafter, any reference to "atrazine" shall mean atrazine and its degradant products.

8. Recent scientific studies have been performed which identify new dangers associated with the consumption of atrazine. These adverse reactions are being found in humans at atrazine exposure levels less than three parts per billion. These include the development of

cancer<sup>1</sup> and reproductive problems<sup>2</sup> to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

9. Concerns regarding the adverse effects of atrazine residues in drinking water have resulted in the ban of atrazine in some European countries, including Germany, Italy, Austria, Slovenia and Denmark. Atrazine is subject to restrictions in several other European countries, including France and the United Kingdom.

10. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. In the past two years, these studies have concluded that atrazine is causing deformities in the reproductive organs of amphibians, has been linked to fertility problems, and fetal death in humans. Sipcam and the other suppliers of atrazine in the U.S. have in the past and continue to dispel the notion that atrazine is in fact a cancer causing agent. All of these adverse effects can occur at levels lower than the three parts per billion.

11. In the Summer of 2001, National Resource Defense Counsel learned that Syngenta Crop Protection Inc., one of the six manufacturers of atrazine, had been tracking prostate cancer in its employees at its St. Gabriel, Louisiana atrazine plant. National Resource Defense Counsel alerted the United States Environmental Protection Agency (EPA) of this situation, which resulted in the submission of reports of numerous recent cancer cases to the agency by Syngenta. The study

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<sup>1</sup>Dezell, E. , *A follow-up study of cancer incidence among workers in triazine-related operations at the Novartis St. Gabriel plant*. Syngenta Number 2207-01.

<sup>2</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, Environmental Health Perspectives, May 2004, Vol. 112, No. 6.

has since been published in the *Journal of Occupational and Environmental Health*.<sup>3</sup> One of the most significant findings is that the exposed Syngenta employees had elevated rates of prostate cancer -- a rate more than three-and-a-half times higher than the Louisiana statewide average.

12. An April 2002 study, published in the *Proceedings* of the National Academy of Sciences, shows that atrazine has serious effects on the sexual organs of frogs.<sup>4</sup> The research concluded that atrazine at very low levels of concentration, much lower than 3 parts per billion (ppb), demasculinizes tadpoles and changes them to hermaphrodites, with males having ovaries in their testes, and with ten times lower levels of testosterone than normal male frogs.

13. An epidemiological study published in May 2004 found that parents working in areas of high pesticide application are at increased risk for adverse reproductive outcomes such as infertility, poor fertilization, fetal death, and congenital anomalies.<sup>5</sup> This is the first study to evidence reproductive problems in humans associated with atrazine exposure. This new scientific data is even more disturbing in view of the previously identified adverse effects on the reproductive systems of amphibians.

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<sup>3</sup>MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. *Journal Occupational Environmental Health*. 2002 Nov ; 44 (11): 1048-58.

<sup>4</sup>Hayes TB, *Hermaphroditic, demasculinized frogs after exposure to the herbicide atrazine at low ecologically relevant doses*. *Proceedings, National Academy of Sciences USA* 99, 5476-5480 (2002).

<sup>5</sup>Greenlee, A. *Low-Dose Agrochemicals and Lawn-Care Pesticides Induce Developmental Toxicity in Murine Preimplantation Embryos*, *Environmental Health Perspectives*, May 2004, Vol. 112, No. 6.

14. Despite these recent studies establishing links between atrazine and cancer in humans and animals and sexual development in frogs, even today, manufacturers of atrazine proclaim that atrazine is not carcinogenic and that atrazine is safe for both humans and the environment as used today.

15. The agrochemical industry, including Sipcam and the other suppliers of atrazine in the U.S., have, for many years, continuously publicly denied any connection between the use of atrazine and adverse impact on human health. Further, they have vigorously fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

16. Defendants have knowingly and actively concealed the facts alleged herein. Defendants have affirmatively and deliberately represented that atrazine use is safe and does not present serious health consequences to humans and the environment, thereby fraudulently concealing atrazine's true dangerous nature.

17. At all times relevant, Defendants have continuously and repeatedly sold and distributed products containing atrazine in the U.S. and Illinois, including Madison County, Illinois, resulting in continuous and repeated violations of Plaintiff's rights, as set forth in the Counts below.

18. Defendants' fraudulent concealment could not have been discovered by Plaintiff and the Class Members even in the exercise of due diligence. Plaintiff did not have the ability to challenge the assurances of Sipcam and the other suppliers of atrazine in the U.S. regarding atrazine's safety. Only agencies capable of performing epidemiologic and scientific investigations have the resources to uncover the truth about atrazine. Fortunately, independent scientific researchers have

begun to unveil the impending devastating effects of this toxic chemical. It was reasonable for Plaintiff and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

19. Only shortly before the filing of this lawsuit did Plaintiff discover the hazardous nature of the atrazine degradant chemicals of atrazine when consumed by humans or that these chemicals remain in filtered drinking water at a level that is harmful to humans. Until shortly before the filing of this action, Plaintiff and Class Members were unaware that water levels containing atrazine at less than three parts per billion presented human health hazards. Without the knowledge of the harmful nature of atrazine at levels below three parts per billion (ppb), Plaintiff had no reason to believe the invasion of atrazine on its property was actionable.

20. Plaintiff brings this action as a Class action against Defendants pursuant to 735 ILCS 5/2-801 *et seq.*, individually and on behalf of a Class consisting of all Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 *et seq.*, all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 *et seq.*, and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*, who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

21. Plaintiff is a member of the Class and it will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of other members of the Class. Plaintiffs have retained attorneys who are experienced in Class action litigation.

22. Members of the Class are so numerous that joinder of all members is impracticable.

23. Common questions of law or fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

- a. whether atrazine, as manufactured, sold or distributed by the Defendants, was a defective product due to its likelihood to contaminate water supplies;
- b. whether Defendants are strictly liable for the sale and distribution of atrazine;
- c. whether Defendants acted negligently in selling and supplying atrazine;
- d. whether atrazine is harmful to humans when consumed through dietary water;
- e. whether "atrazine degradant chemicals" of atrazine are harmful to humans when consumed through dietary water;
- f. whether Defendants failed to adequately test atrazine, prior to its manufacture, distribution and/or sale, for risks to contamination of dietary water;
- g. whether Defendants knew or should have known that atrazine is hazardous to groundwater aquifers and public water provider systems;
- h. whether Defendants made false, misleading, inaccurate and/or incomplete assertions regarding the threat posed by atrazine to public water provider systems.

24. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class; and
- b. adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

25. The class action method is appropriate for the fair and efficient prosecution of this action.

26. Individual litigation of all claims which might be assessed by all Class Members would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendant.

27. The certification of a Class would allow litigation of claims that, in view of the expense of the litigation, may be insufficient in amount to support separate actions.

28. Accordingly, Plaintiff brings this action on behalf of themselves and on behalf of all other members of the Class defined as follows:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

**COUNT I**  
**(TRESPASS)**

29. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows.

30. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

31. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

32. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural

use, knowing to a substantial certainty that its products, when applied and used for their intended purpose, would invade Plaintiff's property and contaminate its waters.

33. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiff's property, namely the surface water of Holiday Shores Lake, the water source for HSSD.

34. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

35. As a direct and proximate cause of Defendants' continued trespass onto Plaintiff's property, including its surface waters, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

36. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering

system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;

- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees;
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) cease and desist the continued trespass of atrazine onto Plaintiff's property.

## COUNT II (NUISANCE)

37. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

38. HSSD is the lawful possessor of certain property, specifically the waters of Holiday Shores Lake, with all rights incidental thereto.

39. At all times relevant hereto, Defendants and the other suppliers of atrazine in the U.S. knew that atrazine does not readily bind to soil, has limited solubility in water, and is not easily broken down by biological or photo-decomposition. Moreover, Defendants

and the other suppliers of atrazine in the U.S. knew that these same characteristics give atrazine great potential for run-off, particularly problematic for Sanitary Districts and other public water providers whose source of raw water is surface waters such as lakes and reservoirs. Defendants and the other suppliers of atrazine in the U.S. also knew that once released into the environment, atrazine breaks down into other chemicals known as “atrazine degradant chemicals” and that among these degradant chemicals are deethylatrazine, deisopropylatrazine, diaminoatrazine and others. These degradant chemicals are believed to be hazardous if consumed by humans in any amount. In addition to the allegations above, Defendants and the other suppliers of atrazine in the U.S. knew that its atrazine products were used by farmers near surface water, including community water sources, and that the atrazine products would run-off into such surface waters, contaminating these water sources.

40. Despite its knowledge set forth above, Defendants and the other suppliers of atrazine in the U.S. manufactured, distributed, and sold its atrazine products for agricultural use.

41. As a direct and proximate result of Defendants’ intentional and/or negligent actions set forth above, Defendants’ atrazine products have caused continuous, substantial and unreasonable invasion of the use and enjoyment of Plaintiff’s property, which is perceptible to the senses, and caused to be contaminated the Plaintiff’s property, namely the surface water of Holiday Shores Lake, the water source for HSSD. Defendants’ actions invade the use and enjoyment of Plaintiff’s property by Plaintiff and the public, because Plaintiff supplies water to residents within the Holiday Shores community.

42. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and abetted the continuous contamination of Plaintiff's property by those other manufacturers, sellers, distributors and applicators.

43. As a direct and proximate cause of Defendants' actions set forth above, Plaintiff has sustained severe and permanent damage to its property and the contamination of its surface waters by atrazine.

44. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including damages for reduction of value of its property, and requests that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiff requests that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their property.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) an order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;

- f) awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) awarding Plaintiff punitive damages;
- j) awarding Plaintiff costs of suit and attorneys' fees; and
- k) awarding Plaintiff any other relief the Court deems just, proper and equitable.
- l) prejudgment interest; and
- m) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiff's property.

**COUNT III**  
**NEGLIGENCE**

45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

46. Defendants owed a duty to Plaintiff to prevent invasion of atrazine onto Plaintiff's property and the continuous contamination of Plaintiff's property and water supply.

47. Defendants breached their duty to Plaintiff when they failed to take measures to prevent the invasion of atrazine onto Plaintiff's property. Specifically, Defendants breached their duty to Plaintiff and the Class in that they:

- a. Failed to conduct meaningful research into the potential health effects of atrazine when consumed by humans despite their knowledge that atrazine would run off and infiltrate surface waters, including those for public water supplies, such as in Holiday Shores;

- b. Failed to clean up or abate contamination caused by their atrazine products which had run off and contaminated land and waters despite their knowledge that such contamination had occurred.

48. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiff has sustained economic loss and severe and permanent damage to property, including its groundwater and lake.

49. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination .

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:
  - All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities

established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees; and
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- m) Cease and desist the continued invasion of atrazine onto Plaintiff's property.

**COUNT IV**  
**STRICT LIABILITY**

50. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

51. At the time Defendants placed their atrazine products into the stream of commerce in Illinois, they were in a defective condition unreasonably dangerous for their intended and foreseeable uses for the following reasons:

- (a) Atrazine is highly soluble in water and recalcitrant to biodegradation;
- (b) Herbicides containing atrazine have a tendency to mix with groundwater and migrate great distances;
- (c) Groundwater containing even small amounts of herbicides containing atrazine has a propensity to contaminate reservoirs and lakes providing supplies for public water providers;
- (d) Dietary ingestion of water containing atrazine is hazardous to human health;
- (e) Defendants failed to conduct reasonable and appropriate scientific research to evaluate the environmental fate and transport and potential human health effects of their atrazine products.

52. Defendants atrazine products were used in a manner in which they were intended and foreseeably certain to be used.

53. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiff and the Class have suffered severe and permanent damage to its property and the continuous contamination of its surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

54. As a direct and proximate result of the unreasonably dangerous and/or defective condition of atrazine or herbicides containing atrazine and its introduction into the stream of commerce by Defendants, Plaintiff's property, including its groundwater and lake, have continuously sustained severe and permanent damages by atrazine contamination.

55. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their

atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable; and
- l) prejudgment interest.

**COUNT V**  
**(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)**

56. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

57. This count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/12, which provides in pertinent part:

No person shall . . .

(a) cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act . . .

(d) deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

58. Defendants are person pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiff's property with the specific knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Holiday Shores Sanitary District.

59. The damages to Plaintiff's property through atrazine contamination is precisely the sort of injury which 415 ILCS 5/1 et seq of the Illinois Environmental Protection Act was designed to prevent.

60. Plaintiff has standing and is entitled to maintain a private right under the Environmental Protection Act, consistent with the underlying purpose of the Act, which is to alleviate the burden on enforcement agencies in the protection of the environment and to restore,

protect and enhance the quality of the environment, assuring that the cost for adverse effects upon the environment are borne by those who cause them.

61. A private right of action under the Illinois Environmental Protection Act is necessary to provide an adequate remedy for the Defendants' violations of that Act.

62. Defendants are jointly and severally liable to Plaintiff for this violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

63. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiff has sustained damages to its property, including the contamination of its groundwater and lake.

64. Plaintiff brings this action for all monetary damages associated with its atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and

- 1) Cease and desist the continued violation of 415 ILCS 5/12(d).

**COUNT VI**

**(VIOLATION OF ILLINOIS WATER POLLUTANT DISCHARGE ACT)**

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein, and further alleges as follows:

66. This count is brought pursuant to the Illinois Water Pollutant Discharge Act, 415 ILCS 25/0.01 *et seq.*, which provides in pertinent part:

It is hereby declared that it is the public policy of the State of Illinois that there should be no discharge of oil or other pollutants into or upon any waters which are or may be used for the purposes of providing a water supply for any city, town or village, or for purposes of recreation or navigation and that those persons responsible for such discharge shall bear the costs of removal.

415 ILCS 25/1.

67. The Illinois Water Pollutant Discharge Act further provides, in pertinent part, that:

The owner or operator of such facility from which oil or other pollutants are discharged in violation of Section 3 of this act, shall be liable to such governmental body for the actual costs incurred for the removal of such oil or other pollutants. Such governmental body may, if necessary, bring an action in the circuit court for the recovery of the actual costs of removal, plus reasonable attorneys fees, court costs and other expenses of litigation.

415 ILCS 25/5.

68. Plaintiff is a “governmental body” as that term is defined at 415 ILCS 25/2(g).

69. Defendant Growmark is a “person” as that term is defined at 415 ILCS 25/2(I) and an “owner or operator” as those terms are defined at 415 ILCS 25/2(h).

70. Atrazine is an “other pollutant” as that term is defined at 415 ILCS 25/2(b).

71. Defendant Growmark “discharged” atrazine into the waters of Holiday Shores Lake in violation of 415 ILCS 25/3.

72. Plaintiff has arranged for the removal of the atrazine from its waters, as it is authorized to do pursuant to 415 ILCS 25/4, and has incurred actual costs for such removal.

73. Plaintiff continues to incur actual costs for the removal of atrazine, which continues to contaminate Holiday Shores Lake.

#### **PRAYER FOR EQUITABLE RELIEF**

WHEREFORE, Plaintiff prays the Court enter a declaratory judgment pursuant to 735 ILCS 5/2-701, determining the following:

- a) Atrazine is harmful to humans as consumed through dietary water.
- b) Atrazine is harmful to humans as consumed through dietary water at a level of less than three parts per billion.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court enter judgment against Defendants, jointly and individually, and in favor of Plaintiff as follows:

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801 and the following Class be certified:

All Public Water Districts established pursuant to the Illinois Public Water District Act, 70 ILCS 3705/0.01 et seq., all Water Service Districts established pursuant to the Water Service District Act, 70 ILCS 3710/0.01 et seq., and/or all Water Authorities established pursuant to the Illinois Water Authorities Act, 70 ILCS 3715/0.01 et seq., who have suffered atrazine contamination of their water source(s) at any measurable level. The class period commences on the first date the Defendants placed their atrazine

products into the stream of commerce through the date the Court certifies this suit as a class action.

Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this cause.

- b) An order appointing Plaintiff as class representative and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiff costs for the purchase, installation, maintenance and operation of Plaintiff's active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiff's property;
- d) Ordering Defendants to prepare a remedial plan for the Sanitary District's property, including groundwater and lake of Holiday Shores consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiff and the Court, to be implemented by Defendants at their cost;
- e) Declaring Defendants jointly and severally liable for all future maintenance, upgrades, replacements and remediation costs necessary to maintain the proper filtering system for drinking water supplied by Plaintiff;
- f) Awarding Plaintiff a sum of money that represents the diminution in the market value of Plaintiff's property;
- g) Awarding Plaintiff a sum of money in compensation for the market stigma now attached to Plaintiff's property;
- h) Awarding Plaintiff a sum of money for the loss of commercial use of Plaintiff's property;
- i) Awarding Plaintiff punitive damages;
- j) Awarding Plaintiff costs of suit and attorneys' fees;
- k) Awarding Plaintiff any other relief the Court deems just, proper and equitable;
- l) prejudgment interest; and
- m) Cease and desist the continued violation of 415 ILCS 25/3.

**KOREIN TILLERY, LLC**

By: 

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*Attorneys for Plaintiffs and the Class*

IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT OF ILLINOIS  
MADISON COUNTY

HOLIDAY SHORES SANITARY DISTRICT, )  
individually and on behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

SIPCAM AGRO USA INC.; and )  
GROWMARK, INC. )

Defendants, )

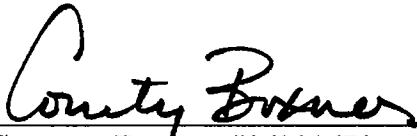
Cause No. 2004-L-000708

AFFIDAVIT OF COURTNEY BUXNER

I, Courtney Buxner, being first duly sworn upon my oath, depose and state as follows:

1. That I am one of the attorneys representing the Plaintiff filing the above-captioned cause of action.
2. That the total money damages sought by Plaintiff in this cause of action exceeds Fifty Thousand Dollars (\$50,000).

Further affiant sayeth naught.



Courtney Buxner- #06281678

KOREIN TILLERY

701 Market Street, Suite 300

St. Louis, Missouri 63101

Telephone: (314) 241-4844

Facsimile: (314) 241-3525

STATE OF ILLINOIS )  
COUNTY Madison )

Subscribed and sworn to before me, a Notary Public, this 5<sup>th</sup> day of August, 2004.

My commission expires:

