

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT; CITY OF
CARLINVILLE, ILLINOIS; CITY OF FLORA, ILLINOIS;
CITY OF FAIRFIELD, ILLINOIS; CITY OF HILLSBORO,
ILLINOIS; CITY OF MATTOON, ILLINOIS; CITY OF
MOUNT OLIVE, ILLINOIS; AND CITY OF LITCHFIELD,
ILLINOIS; individually and on behalf of all others
similarly situated,

Plaintiff,

v.

SYNGENTA CROP PROTECTION, INC., AND
GROWMARK, INC.,

Defendants.

Cause No. 2004-L-000710

NOTICE OF VOLUNTARY DISMISSAL OF CERTAIN ALLEGATIONS

Now come the Plaintiffs, by and through their undersigned counsel, pursuant to 735 ILCS 5/2-1009(a), hereby voluntarily dismiss certain allegations as set forth herein.

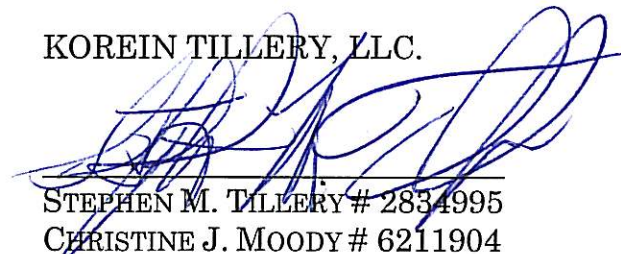
Plaintiffs seek the voluntary dismissal of certain allegations of the Second Amended Complaint which are highlighted in yellow and underlined in the attached copy of the current Second Amended Class Action Complaint. Plaintiffs seek the dismissal to clarify that:

- (a) they assert no claim for damage to real estate or to their physical plants but instead seek all money damages incurred and which will be incurred as a result of the contamination of raw drinking water supplies.

- (b) they assert no claims for private nuisance set out in Count II but continue to assert claims for public nuisance.
- (c) they assert no claim for damage to real estate, for the use and enjoyment of real estate, for the reduction in value of real estate, for stigma damages associated with any real estate or for any loss of commercial use of real estate.
- (d) they seek no claim for injunctive relief regarding the invasion of atrazine on their property or any order requiring defendants to prepare a remedial plan for plaintiffs' properties, per prior Order of this Court.

Respectfully submitted,

KOREIN TILLERY, LLC.



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THIRD JUDICIAL CIRCUIT
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HOLIDAY SHORES SANITARY DISTRICT; CITY OF)
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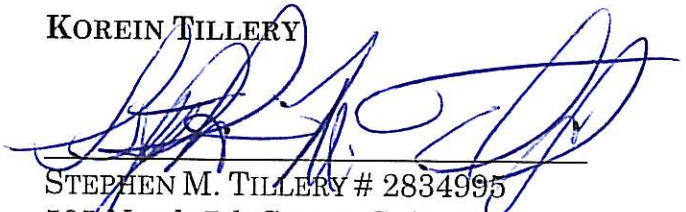
SYNGENTA CROP PROTECTION, INC., AND)
GROWMARK, INC.,)

Defendants.)

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of Plaintiff's Notice of Voluntary Dismissal was served upon the attorneys of record for the defendants in this cause by enclosing said copy in an envelope addressed to said attorney at his/her address as disclosed by the pleadings on file in this cause and by depositing said envelope in a U.S. Post Office mailbox at 5:00 p.m. on this 22nd day of February, 2010.

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IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT OF ILLINOIS
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HOLIDAY SHORES SANITARY DISTRICT;)
CITY OF CARLINVILLE, ILLINOIS; CITY)
OF FLORA, ILLINOIS; CITY OF FAIRFIELD,)
ILLINOIS; CITY OF HILLSBORO, ILLINOIS;)
and CITY OF MATTOON, ILLINOIS;)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

SYNGENTA CROP PROTECTION, INC.)
And GROWMARK, INC.,)

Defendants.)

Cause No. 2004-L-000710

SECOND AMENDED CLASS ACTION COMPLAINT

COME NOW Plaintiffs, HOLIDAY SHORES SANITARY DISTRICT; CITY OF CARLINVILLE, ILLINOIS; CITY OF FLORA, ILLINOIS; CITY OF FAIRFIELD, ILLINOIS; CITY OF HILLSBORO, ILLINOIS; and CITY OF MATTOON, ILLINOIS, individually and on behalf of all others similarly situated, by and through their undersigned attorneys, and for their Second Amended Class Action Complaint against Defendants, SYNGENTA CROP PROTECTION, INC., and GROWMARK, INC., state 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. At all times relevant hereto, Plaintiff CITY OF CARLINVILLE, ILLINOIS ("Carlinville") has owned and operated a water plant which provides water to the residents and businesses in and around Carlinville, located in Macoupin County. Carlinville also sells bulk treated water to the Lake Williamson Christian Center in Macoupin County and to the Central Macoupin County Rural Water District, which provides water to customers in parts of Macoupin and Jersey Counties. Carlinville is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural activity in the area is the growing of grain crops, including corn. Carlinville's sources of raw water are Carlinville Lake I and Carlinville Lake II, both located near Carlinville.

3. At all times relevant hereto, Plaintiff CITY OF FAIRFIELD, ILLINOIS ("Fairfield") has owned and operated a water plant which provides water to the residents and business in and around Fairfield, located in Wayne County. Fairfield sells bulk treated water to Jasper Waterworks Corp., New Hope Waterworks Corp., and Boyleston Waterworks Corp., all of which provide water to customers in Wayne County. Fairfield is essentially surrounded on all sides by lands utilized for agriculture purposes. The major agriculture in the area is the growing of grain

crops, including corn. Fairfield's sources of raw water are the Little Wabash River and a side channel reservoir created with water from the Little Wabash River, both located near Fairfield.

4. At all times relevant hereto, Plaintiff CITY OF FLORA, ILLINOIS ("Flora") has owned and operated a water plant which provides water to the residents and businesses in and around Flora, located in Clay County. Flora is essentially surrounded on all sides by land utilized for agricultural purposes. The major agricultural activity in the area is the growing of grain crops, including corn. Prior to September 1, 2008, Flora's source of raw water was the Little Wabash River. On or about September 1, 2008, Flora began purchasing treated water from the Gateway Regional Water Company, whose source of raw water is Lake Carlyle.

5. At all times relevant hereto, Plaintiff CITY OF HILLSBORO, ILLINOIS ("Hillsboro"), an Illinois municipal corporation located in Montgomery County, has owned and operated a water plant which provides water to the residents and businesses in and around Hillsboro, including the Graham Correctional Center. Hillsboro sells bulk finished water to the Montgomery County Water Company, the Village of Schram City, and the City of Coffeen, all located in Montgomery County. Hillsboro is essentially surrounded on all sides by land utilized for agricultural purposes. The main agricultural activity in the area is the growing of grain crops, including corn. Hillsboro's sources of raw water are Lake Glenn Shoals and Lake Hillsboro, both located within corporate limits of Hillsboro.

6. At all times relevant hereto, Plaintiff CITY OF MATTOON, ILLINOIS ("Mattoon") has owned and operated a water plant which provides water to the residents and businesses in and around Mattoon in Coles County. Mattoon sells bulk finished water to the Village of Humboldt, the Village of Neoga, the Clear Water Service Corp. and Embarras Area Water District, all located in Coles County. Mattoon is essentially surrounded on all sides by land utilized for agricultural purposes. The main agricultural activity in the area is the growing of grain crops, including corn. Mattoon's sources of raw water are Lake Mattoon and Paradise Lake, both located near Mattoon.

7. 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 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 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.

8. 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.

9. Defendant GROWMARK, INC. ("Growmark") is a Delaware corporation with its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois 61701. Growmark, 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. At all times relevant to this complaint, Defendant Growmark distributed atrazine manufactured, sold, and/or distributed by Defendant Syngenta Crop Protection, Inc.

10. 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 public water providers whose source of raw water is surface waters such as lakes and reservoirs.

11. 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.

12. Once released into the environment, atrazine is broken down into other chemicals known as "degradant chemicals." Degradant chemicals include, but are not limited to, chlorotriazines and hydroxyl triazines. Chlorotriazines include, but are not limited to, deethylatrazine, deisopropylatrazine and diaminoatrazine. Hydroxyl triazine breakdown products, include, but not limited to, ammeline, ammelide, cyanuric acid, hydroxyatrazine, hydroxydeisopropylatrazine, and hydroxydeethylatrazine. 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.

13. Atrazine can react with other chemicals commonly found in water supplies to form chemical compounds which are hazardous to humans. For instance, a 2006 study by the U.S. Department of Health and Human Services concluded that when atrazine is combined with nitrates, which are commonly found

in public drinking water sources, the resulting degradant product, N-nitrosoatrazine, is more genotoxic than the parent triazine compound.¹

14. 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 cancer² and reproductive problems³ to, not only those exposed to the chemical, but also to those digesting the chemical through dietary water supply.

15. 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.

16. Recently, scientific studies have begun to unmask the true dangers associated with exposure of atrazine through consumption of dietary water. 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

¹ Agency for Toxic Substances and Disease Registry, U.S. Dep't of Health and Human Servs., *Interaction Profile for: Atrazine, Deethylatrazine, Diazinon, Nitrate, and Simazine* (Aug. 2006).

² 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.

³ 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.

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.

17. 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 Occupational and Environmental Health*.⁴ 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.

18. 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.⁵ 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.

⁴MacLennan PA, *Cancer incidence among triazine herbicide manufacturing workers*. Journal Occupational Environmental Health. 2002 Nov; 44 (11): 1048-58.

⁵Hayes 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).

19. 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.⁶ 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.

20. 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 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.

21. 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

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

fought against the performance of safety studies and further restrictions on the use of atrazine products during every re-registration of the chemical agent.

22. 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.

23. 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 Plaintiffs' rights, as set forth in the Counts below.

24. Defendants' fraudulent concealment could not have been discovered by Plaintiffs and the Class Members even in the exercise of due diligence. Plaintiffs 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 Plaintiffs and Class Members to rely on Defendants' representation that atrazine is not harmful to humans.

25. Only shortly before the filing of this lawsuit did Plaintiffs 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, Plaintiffs 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), Plaintiffs had no reason to believe the invasion of atrazine on their properties was actionable.

26. 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 public water providers, the number in the aggregate being less than one hundred, 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.

27. Plaintiffs are members of the Class and they will fairly and adequately assert and protect the interests of the Class. The interests of the Plaintiffs 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.

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

29. 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.

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

City of Ashley, Illinois;
Village of Blandinsville, Illinois;
City of Bloomington, Illinois;
City of Breese, Illinois;
City of Canton, Illinois;
City of Carlinville, Illinois;
City of Carlyle, Illinois;
City of Carthage, Illinois;
City of Centralia, Illinois;
City of Chester, Illinois;
Clearview Subdivision, Illinois;
Village of Coulterville, Illinois;
City of Decatur, Illinois;
City of East Moline, Illinois;
City of Effingham, Illinois;
City of Evansville, Illinois;
City of Fairfield, Illinois;
Village of Farina, Illinois;
City of Flora, Illinois;
Gateway Regional Water Company;
City of Gillespie, Illinois;
City of Greenfield, Illinois;
Village of Hettick, Illinois;
City of Highland, Illinois;
City of Hillsboro, Illinois;
Holiday Shores Sanitary District;
Illinois-American Water Company;
Kaskaskia Water District;
Village of Keyesport, Illinois;
Kinkaid Area Water System;
City of Kinmundy, Illinois;
City of Litchfield, Illinois;

City of Macomb, Illinois;
City of Marion, Illinois;
City of Mattoon, Illinois;
City of Mount Olive, Illinois;
City of Nauvoo, Illinois;
Village of New Berlin, Illinois;
Village of Oakwood
City of Olney, Illinois;
Otter Lake Water Commission;
Palmyra-Modesto Water Commission;
City of Paris, Illinois;
City of Patoka, Illinois;
City of Pinckneyville, Illinois;
City of Pittsfield, Illinois;
City of Quincy, Illinois;
Rend Lake Inter-City Water Company;
City of Salem, Illinois;
S L M Water Commission;
Town of Shipman, Illinois
Village of Sorento, Illinois;
City of Sparta, Illinois;
City of Springfield, Illinois;
City of Staunton, Illinois;
City of Vandalia, Illinois;
Vienna Correctional Center
City of Warsaw, Illinois;
City of Waverly, Illinois;
Village of Wayne City, Illinois;
Village of West Salem, Illinois;
City of Wilmington, Illinois.

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.

35. The Plaintiffs are not seeking and will not seek to represent a Class containing more than ninety-nine class members in this action.

COUNT I
(TRESPASS)

36. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 35 of this Complaint as if fully set forth herein, and further allege as follows:

37. Plaintiffs are the lawful possessor of certain property, specifically the sources of their raw water, with all rights incidental thereto.

38. 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 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.

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

40. As a direct and proximate result of Defendants' actions set forth above, Defendants' atrazine products have continuously invaded and caused to be contaminated the Plaintiffs' properties, namely the surface water which is the source of their raw water.

41. In addition, acting in concert with other manufacturers, sellers, distributors and applicators of atrazine products, Defendants have aided and

abetted the continuous contamination of Plaintiffs' property by those other manufacturers, sellers, distributors and applicators.

42. As a direct and proximate cause of Defendants' continued trespass onto Plaintiffs' property, including their surface waters, Plaintiffs have sustained severe and permanent damage to their properties and the contamination of their surface waters by atrazine.

43. Plaintiffs bring this action for all monetary damages associated with their atrazine contamination, including damages for reduction of value of their properties, and request that Defendants be required to pay all costs associated with a filtration system into the future until atrazine no longer poses a risk. Finally, Plaintiffs request that Defendants be required to pay the costs associated with remediating all atrazine contamination that is located on or threatens their properties.

PRAYER FOR RELIEF

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

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801.
- b) an order appointing Plaintiffs as class representatives and Plaintiffs' counsel as Class Counsel.
- c) awarding Plaintiffs costs for the purchase, installation, maintenance and operation of Plaintiffs' active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiffs' property.

- d) ordering Defendants to prepare a remedial plan for the Plaintiffs' properties, including groundwater and surface waters consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiffs 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 Plaintiffs a sum of money that represents the diminution in the market value of Plaintiffs' property;
- g) awarding Plaintiffs a sum of money in compensation for the market stigma now attached to Plaintiffs' property;
- h) awarding Plaintiffs a sum of money for the loss of commercial use of Plaintiffs' property;
- i) awarding Plaintiffs costs of suit and attorneys' fees;
- j) awarding Plaintiffs any other relief the Court deems just, proper and equitable;
- k) prejudgment interest; and
- l) cease and desist the continued trespass of atrazine onto Plaintiffs' property.

COUNT II
(NUISANCE)

44. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 35 of this Complaint as if fully set forth herein, and further allege as follows:

45. Plaintiffs are the lawful possessors of certain property, specifically the surface waters from which serves as the sources of raw water for the Plaintiffs, with all rights incidental thereto.

46. 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 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.

47. 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.

48. 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 Plaintiffs' property, which is perceptible to the senses, and caused to be contaminated the Plaintiffs' property, namely the surface waters that are the sources of Plaintiffs' raw water. Defendants' actions invade the use and enjoyment of Plaintiffs' property by Plaintiffs and the public, because Plaintiffs supply water to residents and businesses within their communities.

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

50. As a direct and proximate cause of Defendants' actions set forth above, Plaintiffs have sustained severe and permanent damage to their property and the contamination of their surface waters by atrazine.

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

PRAYER FOR RELIEF

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

- a) order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801;
- b) an order appointing Plaintiffs as class representatives and Plaintiffs' counsel as Class Counsel.
- c) awarding Plaintiffs costs for the purchase, installation, maintenance and operation of Plaintiffs' active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiffs' property;
- d) ordering Defendants to prepare a remedial plan for the Plaintiffs' properties, including groundwater and surface waters, consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiffs 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 Plaintiffs a sum of money that represents the diminution in the market value of Plaintiffs' property;
- g) awarding Plaintiffs a sum of money in compensation for the market stigma now attached to Plaintiffs' property;
- h) awarding Plaintiffs a sum of money for the loss of commercial use of Plaintiffs' property;
- i) awarding Plaintiffs costs of suit and attorneys' fees;
- j) awarding Plaintiffs any other relief the Court deems just, proper and equitable;
- k) prejudgment interest; and
- l) cease and desist the continued invasion of atrazine creating a nuisance onto Plaintiffs' property.

COUNT III
(NEGLIGENCE)

52. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 35 of this Complaint as if fully set forth herein, and further allege as follows:

53. Defendants owed a duty to Plaintiffs to prevent invasion of atrazine onto Plaintiffs' property and the continuous contamination of Plaintiffs' property and water supply.

54. Defendants breached their duty to Plaintiffs when they failed to take measures to prevent the invasion of atrazine onto Plaintiffs' property. Specifically, Defendants breached their duty to Plaintiffs 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;

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.

55. As a direct and proximate result of Defendants' negligence, as set forth above, Plaintiffs have sustained economic loss and severe and permanent damage to property, including their groundwater and surface water.

56. Plaintiffs bring this action for all monetary damages associated with their atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

PRAYER FOR RELIEF

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

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801;
- b) An order appointing Plaintiffs as class representatives and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiffs costs for the purchase, installation, maintenance and operation of Plaintiffs' active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiffs' property;
- d) Ordering Defendants to prepare a remedial plan for the Plaintiffs' properties, including groundwater and surface waters, consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiffs 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 Plaintiffs a sum of money that represents the diminution in the market value of Plaintiffs' property;
- g) Awarding Plaintiffs a sum of money in compensation for the market stigma now attached to Plaintiffs' property;
- h) Awarding Plaintiffs a sum of money for the loss of commercial use of Plaintiffs' property;
- i) Awarding Plaintiffs costs of suit and attorneys' fees; and
- j) Awarding Plaintiffs any other relief the Court deems just, proper and equitable;
- k) Prejudgment interest; and
- l) Cease and desist the continued invasion of atrazine onto Plaintiffs' property.

COUNT IV
(STRICT LIABILITY)

57. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 35 of this Complaint as if fully set forth herein, and further allege as follows:

58. 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 rivers, 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.

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

60. As a direct and proximate result of the defective condition of Defendants' atrazine products, as set forth above, Plaintiffs and the Class have suffered severe and permanent damage to their properties and the continuous

contamination of their surface waters by atrazine, including contamination by all degradants formed through the breakdown of atrazine.

61. 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, Plaintiffs' property, including their groundwater and surface waters, have continuously sustained severe and permanent damages by atrazine contamination.

62. Plaintiffs bring this action for all monetary damages associated with their atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

PRAYER FOR RELIEF

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

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801.
- b) An order appointing Plaintiffs as class representatives and Plaintiff's counsel as Class Counsel.
- c) Awarding Plaintiffs costs for the purchase, installation, maintenance and operation of Plaintiffs' active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiffs' property;
- d) Ordering Defendants to prepare a remedial plan for the Plaintiffs' properties, including groundwater and surface waters consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiffs 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 Plaintiffs a sum of money that represents the diminution in the market value of Plaintiffs' property;
- g) Awarding Plaintiffs a sum of money in compensation for the market stigma now attached to Plaintiffs' property;
- h) Awarding Plaintiffs a sum of money for the loss of commercial use of Plaintiffs' property;
- i) Awarding Plaintiffs costs of suit and attorneys' fees;
- j) Awarding Plaintiffs any other relief the Court deems just, proper and equitable;
- k) Prejudgment interest.

COUNT V

(VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT)

63. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 35 of this Complaint as if fully set forth herein, and further allege as follows:

64. 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.

65. Defendants are persons pursuant to this Act and as such have continually, through their sale and supply of atrazine, caused contamination of Plaintiffs' property with the specific knowledge that atrazine was a water pollution hazard, including continuously contaminating the raw and finished water of the Plaintiffs.

66. The damages to Plaintiffs' 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.

67. Plaintiffs have standing and are 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.

68. 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.

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

70. As a direct and proximate result of Defendants' violation of the Illinois Environmental Protection Act, Plaintiffs have sustained damages to their properties, including the contamination of their groundwater and surface waters.

71. Plaintiffs bring this action for all monetary damages associated with their atrazine contamination, including all costs associated with the remediation of the atrazine contamination.

PRAYER FOR RELIEF

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

- a) Order that the action be maintained as a class action pursuant to 735 ILCS 5/2-801.
- b) An order appointing Plaintiffs as class representatives and Plaintiffs' counsel as Class Counsel.
- c) Awarding Plaintiffs costs for the purchase, installation, maintenance and operation of Plaintiffs' active charcoal filtering system and any new filtering system which may be deemed necessary by this Court to remove the atrazine from Plaintiffs' property;
- d) Ordering Defendants to prepare a remedial plan for the Plaintiffs' properties, including groundwater and surface waters, consistent with the RI/FS and all federal and state requirements, subject to approval by the Plaintiffs 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 Plaintiffs a sum of money that represents the diminution in the market value of Plaintiffs' property;
- g) Awarding Plaintiffs a sum of money in compensation for the market stigma now attached to Plaintiffs' property;

- h) Awarding Plaintiffs a sum of money for the loss of commercial use of Plaintiffs' property;
- i) Awarding Plaintiffs costs of suit and attorneys' fees;
- j) Awarding Plaintiffs any other relief the Court deems just, proper and equitable;
- k) Prejudgment interest; and
- l) Cease and desist the continued violation of 415 ILCS 5/12(d).

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