ILLINOIS POLLUTION CONTROL BOARD
October 10, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
v.	)	PCB 72-197
LAKE IN THE HILLS WATER COMPANY	)	

Mr. Samuel Morgan, Special Assistant Attorney General, appearing for Environmental Protection Agency
Messrs. Glaeser, Burstein & Gates, by Mr. Edward A. Glaeser and Mr. Boyd L. Gates, appearing for Respondent

OPINION AND ORDER OF THE BOARD (by Mr. Currie):

Lake In The Hills Water Company ("Respondent") owns and operates a public water supply serving the Lake In The Hills Subdivision located in the City of Algonquin, McHenry County, Illinois.

On May 9, 1972, the Environmental Protection Agency ("Agency") filed a complaint against Respondent with the Board alleging that on various dates Respondent had violated Section 18 of the Environmental Protection Act, Ill. Rev. Stat., Ch. 111-1/2. §§1018 (Supp. 1970) by failing to direct and maintain the continuous operation of the supply to such an extent that the water had not been provided in adequate quantity of cleanliness or of a satisfactory mineral character for ordinary domestic consumption; and failing to provide adequate treatment for the iron content of the water and to provide adequate quantity, in violation of Rules 3.13, 3.03 and 3.14 of the Public Water Supply Systems Rules and Regulations ("Rules").

At the public hearing conducted on August 9, Respondent stipulated that water outages did in fact occur on August 8, 9 and 10, 1971 and on January 31, 1972; that on various occasions during the past three years the quantity and pressure of the water supplied to the company's customers have been inadequate; and that there was an excess of certain minerals in the water so as to violate Rule 3.13 of the Public Water Supply System Rules and Regulations on November 12, 1970, July 9, 1971, December 14, 1971, December 16, 1971, January 16, 1972, and February 1, 1972 (R.10-12). It was also stipulated, however, that there had been no bacterial pollution nor contamination violating State standards on any of these dates (R.12). In light of the stipulation, the Agency presented no witnesses and the remainder of the hearing was devoted to evidence offered in mitigation.

The secretary-treasurer of Respondent water company testified that he had become affiliated with the company in 1958 (R. 18), and that since 1958 a substantial increase in new customers had occurred. He noted that the following number of new services had been provided in recent years:

June, 1967 - June, 1968	= 6	
June, 1968 - June, 1969	= 27	
June, 1969 - June, 1970	= 44	
June, 1970 - June, 1971	= 126	
June, 1971 - June, 1972	= 165	(R. 20)

He testified that as a result of the great expansion of service, problems developed, and the company began to investigate ways to improve service (R. 32); that the Illinois Commerce Commission had conducted a hearing on June 7, 1971, and had entered a detailed order on February 9, 1972 requiring the installation of certain improvements to the system (R. 22, 58; Ex. A). He said the cost of the improvement program would be $83,483,36 (R. 59). But, he said, notwithstanding the frequent outages, the company was compelled to continue to accept new connections because "our franchise states that we must accept new connections to our system" (R. 36). He pointed out, however, that the company had asked the Village to suspend the issuance of building permits, but had been turned down (R. 36-37).

Confirming these remarks, the Village President testified that no measures, other than a sprinkling ban, had been taken by the Village to aid the company in its water shortage difficulties (R. 47), and that the Village "had no power to turn off building permits for connections to a water system." (R. 48). The Village Attorney later, amplified these comments, testifying that the Village had instituted a sprinkling ban every summer since 1960 to help alleviate the water shortage (R. 108). He added that it was the Village's belief that where homes were built on lots that had previously contracted for service from Respondent, the Village could not prevent the use of such lots (R. 109), and that prohibiting the Respondent from making further house connections would stunt the growth of the Village and cut off potential sources of revenue (R. 110). He noted that the Village had offered to purchase the water company for $225,000, which figure would include assumption of existing liabilities of $200,000 (R. 111-112).

A consulting engineer, retained by Respondent as its agent to negotiate and let contracts for improvements to Respondent's water supply system, testified that subsequent to the I. C. C. hearing of June 7, 1971, the I. C. C. had issued its order of February 9, 1972, requiring Respondent to embark upon an extensive two-phase improvement program (R. 71). He noted that the system was, in fact, inadequate during peak periods prior to June, 1971 (R. 102), and that, to the best of his knowledge, Respondent had taken no

action to attempt to improve the situation prior to the entry of the I. C. C. order (R.101). Counsel for Respondent added that the water company had been "in negotiations for three to six years for the sale of its assets," (R.137), and that, "(g)enerally in the business sense a man won't sell something that he is going to improve 10 days after he might make a contract for sale...our clients would have been imprudent as businessmen to contract, as they now have pursuant to an I. C. C. order, to expend $83,000, $84,000." (R.137-138).

The property which was being considered as a potential sale, however, was a public water supply system, serving the ordinary daily domestic needs of hundreds of families, and not a used-car. We cannot accept the possibility of sale as an adequate excuse for taking such liberties as are here admitted with the public's welfare.

Since various violations have been admitted as true, our only task is to determine the extent of the penalty, if any, which should be assessed, and the affirmative orders which should be applied to assure that Respondent improves the existing unsatisfactory condition.

Phase I of the I. C. C. order called for the installation of additional deep well water supply and pumping equipment. The engineer stated that digging had been accomplished at a rate of five feet per hour, and that they had already reached a depth of 360 feet (R.78). He added that he believed another three weeks would be necessary to finish the job (R.79-80).

Noting that another 400 gallons of water per minute was needed (R.82), the engineer stated that the contracts for the installation of adequate pumping equipment to comply with the I. C. C. order would be let upon completion of the well (R.83-84).

The second stage of Phase I calls for the installation of additional means to improve the grid pattern of the distribution system (R.84), and the engineer testified that work on these improvements is approximately 60-65% completed (R.85).

Under Phase II of the I. C. C. order, the company is to install another deep well (R.87-88), a water storage standpipe, or water tower, (R.89), and to forward progress reports to the I. C. C. (R.90).

It is unclear from the record whether or not compliance with all the provisions of the I. C. C. order will indeed allow the Respondent to achieve compliance with applicable state pollution laws, rules and regulations. Furthermore, it is unclear when work on both Phase I and Phase II of the

orders will be completed, and the order itself contains no firm completion dates or interim time schedules. Therefore, we will ask Respondent to provide us, within twenty days of the date of receipt of this order, with a written submission indicating the dates by which construction and installation of the improvements called for by the I. C. C. will be completed, and an assessment of how serious the situation will be upon completion of each phase. We are primarily interested in determining to what extent the situation which led to the institution of the present case will be alleviated by completion of first Phase I, and then Phase II of the order, and we would like assurances from Respondent that the situation will not only substantially improve, but also that the service will be in compliance with applicable State laws and regulations by a reasonable date certain. Upon receipt of such information and of such response as the Agency may submit, we shall take what further measures appear desirable.

Additional connections to the service during the installation of the improvement measures may well have an aggravating effect on what is already an unacceptable situation. However, we find no evidence that the requisite notice was given under Section 33(a) of the Act regarding cases in which an order of the Board may affect the right of the public to the use of water facilities provided by a municipally owned or publicly regulated company. We will ask the Agency to submit, within five days of receipt hereof, a statement describing the notice previously given in this case to determine if in fact adequate notice was given. If the requirements of Section 33(a) were not met, and if upon receipt of information as to the dates on which compliance is expected it appears that there is reason to believe a ban on new connections might be desirable, we will arrange to have proper notice published, and will conduct a new hearing solely on the question of a connection ban as a remedial interim measure in this case.[1]

As stipulated, we find violations of Section 18 of the Act on August 8, 9 and 10, 1971 and on January 31, 1972. In addition, and also as stipulated, we find violations of Rule 3.13 of the Public Water Supply System Rules and Regulations occurred on November 12, 1970, July 9, 1971, December 14 and 16, 1971, January 16, 1972 and February 1, 1972. We will assess a penalty in the amount of $250.00 for each of these offenses, or a total penalty of $2,500.00.

A final note regarding the involvement of the Hearing Officer in this case. Notwithstanding the fact that Hearing Officers are not required or requested to submit findings of fact or recommendations, and are, in fact, specifically directed not to do so, or to take any part whatsoever in the

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1] We urge parties requesting relief that falls within the special notice requirement relating to the right to use public or public-utility services to give such notice at the outset so that a single hearing can be held on all issues.

decision making process, the Hearing Officer in this case submitted a lengthy and detailed nine-page recommendation, entitled "Hearing Officer's Report." In addition, he engaged in post-hearing written colloquy with the Village Attorney on the merits of the case and his report. We think the Officer acted zealously, but beyond his authority, and we again urge Hearing Officers to act more as referees authorized simply to receive evidence, and not as advocates or judges. We did not take the Hearing Officer's "Report" in the present case into consideration in arriving at our determination.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

IT IS HEREBY ORDERED:

1. Respondent shall pay to the State of Illinois within thirty-five (35) days from the date hereof, the sum of $2,500.00 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to "Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

2. Respondent shall, within twenty (20) days of this Order, submit to the Agency and Board a written statement indicating the progress already made on the work required under the Order of February 9, 1972 issued by the Illinois Commerce Commission, the dates by which all work on Phases I and II of said Order will be completed, the extent to which the violative conditions and the situation which led to such conditions will be improved upon completion of Phase I and Phase II, and such further information as is relevant and necessary.

3. All provisions of the order of February 9, 1972, of the Illinois Commerce Commission are hereby adopted by this Board and incorporated in the present Order herein. The Board reserves the right, upon receipt of the written submissions required herein, to enter as a supplementary order setting interim and final completion dates for the improvement projects specified in said I. C. C. Order, and to set appropriate bond to assure compliance thereto.

4. The Agency is directed, within five days of the receipt of this order, to submit a written statement to Respondent and Board,

describing the notice procedures that were followed in this case, and to explain whether or not the notice requirements of Section 33(a) of the Act were complied with.

5. This case remains open for such further proceedings as are contemplated by this opinion and order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 16th day of October, 1972 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board