

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

These matters come before the Board as the result of three separate citizen complaints. The matter of PCB 84-149 was filed on September 24, 1984; the matter of PCB 84-152 was filed on October 5, 1984; the matter of PCB 84-153 was filed on October 4, 1985. By Order of the Board on October 25, 1984, the three complaints were found to be non-frivolous and were set for hearing. In the same Order the Board consolidated the actions.

At the time of the original filings, the several complainants were residents of, or had interest in, the area served by Eastwood Manor Water Company ("EMCO"). EMCO is an Illinois corporation engaged in the business of operating and maintaining a public water supply facility within McHenry County, Illinois. EMCO supplies water to residences, businesses, and at least one school. Respondent Matthew J. Stahl is President and owner of EMCO; Respondent Patricia M. Stahl is Secretary and owner of EMCO.

Hearing was held September 3, 1985, at the McHenry City Hall, McHenry County, Illinois. Complainants presented witnesses Cheryl Rudd, Kathryn Schacht, and Cheryl Lockwood, residents of EMCO's service area, John Nilles and Richard Farmer, McHenry Consolidated School District 15 officials, and Emmanuel Abad, environmental engineer with the Illinois Environmental Protection Agency. Respondent testimony was presented by Donald Sullivan, employee of EMCO, and Patricia M. Stahl. Two members of the public, Walter Kuck, resident of EMCO's service area, and Frances Larsen, District 15 School Board Member, also presented "comment" at the hearing*. An additional member of the public, Thomas J. Breen, Jr., resident of the EMCO service area, supplied written comment by letter filed September 5, 1985. Complainant Cheryl Lockwood filed a post hearing brief on November 26, 1985. A reply brief was filed by Respondents on January 21, 1986, which was several weeks after the date for submittal agreed to by Respondents at hearing. However, the Board grants Respondents' January 3, 1986 motion for extension of time to file reply brief. Complainant filed a response to the reply brief on February 3, 1986.

Disposition of PCB 84-149

In PCB 84-149, Complainant and Superintendent of McHenry Community Consolidated School District 15, 3926 W. Main, McHenry, Illinois, Dr. Richard F. Farmer, alleges that EMCO failed to

*The Board notes that there is no provision in its procedural rules allowing public comment per se at enforcement hearings. 35 Ill. Adm. Code 103.203 allows interested persons to either submit written statements prior to hearing, or to be sworn in as witnesses and give testimony relevant to the case.

advise any responsible person at Hilltop School, 2615 W. Lincoln Road, McHenry, Illinois, or the District Central Administration of a boil warning issued on Thursday September 6, 1984, or Friday September 7, 1984, and still in effect on Monday September 10, 1984. The complaint further alleges that EMCO's lack of advisement caused the school to jeopardize the health of 435 children for at least two days. Dr. Farmer seeks that EMCO properly warn school officials in the event of any subsequent similar events, and requests an Order of the Board to this effect, namely:

That the Eastwood Manor Water Company be directed to advise appropriate school authorities directly of all IEPA warnings or orders which could harm or affect the health of our students. (R. at 7).

Dr. Farmer stipulated that he seeks no additional relief beyond that specified in his requested Order of the Board (R. at 8). Mr. Matthew J. Stahl further stipulated that he takes no issue with Dr. Farmer's requested Order of the Board (R. at 7). The Board notes that notification of the type requested by Dr. Farmer is reasonable, given the intent of Board regulation 35 Ill. Adm. Code 607.103, and accordingly finds that complainant's request is fully appropriate. The Board accordingly will order that respondent Matthew J. Stahl and the EMCO Water Company comply with the requirements of 35 Ill. Adm. Code 607.103.

Disposition of PCB 84-152

In the matter of PCB 84-152, testimony presented at hearing indicates that Complainants Dale and Marcia Maule, who formerly resided at 1409 Fairview Lane, McHenry, Illinois, no longer reside in EMCO's service area. The Maules failed to appear at hearing and have made no contribution to the record subsequent to their original filing of October 5, 1984. Respondent Matthew J. Stahl moved at hearing that the complaint accordingly be dismissed for lack of prosecution. The motion is granted*.

PCB 84-153

With these matters resolved, there remains the matter of PCB 84-153. In this action Complainant Cheryl Lockwood, who resides at 1319 Hillside Lane, McHenry, McHenry County, Illinois, alleges violation of sections of the Illinois Environmental Protection Act ("Act") and Pollution Control Board Rules and Regulations promulgated thereunder on the part of Respondents Matthew J. Stahl, Patricia M. Stahl, and EMCO Water Company.

*At hearing, the Hearing Officer in this matter incorrectly ruled on this motion. 35 Ill. Adm. Code 103.140 requires that all motions to dismiss or strike a claim be directed to the Board.

The first allegation (hereafter "Count I") asserts that since at least 1976 and continuing through the present time Respondents have engaged in a course of conduct which has been violative of Section 18 of the Act (Ill. Rev. Stat. ch. 111^{1/2}, §1018 (1983)) and of 35 Ill. Adm. Code 302.303 and 601.101. Section 18 of the Act and §601.101 contain language identical in substance, specifically that:

Owners and official custodians of public water supplies shall direct and maintain continuous operation and maintenance of water-supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral character for ordinary domestic consumption.

35 Ill. Adm. Code 302.303 specifies standards for Public and Food Processing Water Supplies, specifically:

Water shall be of such quality that with treatment consisting of coagulation, sedimentation, filtration, storage and chlorination, or other equivalent treatment processes, the treated water shall meet in all respects the requirements of Part 604.

The second allegation (hereafter "Count II") asserts that Respondents have violated 35 Ill. Adm. Code 604.201(a)*, which relates to the general chemical and physical character of finished water and states that:

"The finished water shall contain no impurity in concentrations that may be hazardous to the health of the consumer or excessively corrosive or otherwise deleterious to the water supply. Drinking water shall contain no impurity which could reasonably be expected to cause offense to the sense of sight, taste, or smell".

The third allegation (hereafter "Count III") asserts that Respondents have violated 35 Ill. Adm. Code 606.201, which requires that public notice be given within a maximum of three months to persons serviced when a community water supply fails to comply with an applicable maximum allowable concentration established in 35 Ill. Adm. Code 604.

*The Board notes that in its post hearing brief Complainant generalizes this allegation to include §604.201(b), as well as the originally cited §604.201(a). In as much as section (b) was not listed in the original complaint and no specific citation to this section was made at hearing, the Board declines to give further consideration to the matter of possible §604.201(b) violations.

The fourth allegation (hereafter "Count IV") asserts that Respondents have on at least two occasions violated 35 Ill. Adm. Code 607.103(b), which requires that a boil order be issued by the owner or official custodian of the water supply when water pressure falls below twenty pounds per square inch ("psi") on any portion of the distribution system, such requirement being exempted under specific conditions which Complainant argues have not been met.

The final allegation (hereafter "Count V") asserts that Respondents have on at least two occasions violated 35 Ill. Adm. Code 607.103(c), which requires that the Illinois Environmental Protection Agency ("Agency") be notified whenever the safety of a water supply is endangered for any reason.

At hearing, Respondents objected to the admission of Complainant's Exhibits F-R (R. at 150), as well as to the admissibility of the testimony of Emmanuel Abad, a witness who testified for Complainant (R. at 188). Respondents' objection to the admission of Exhibits F-R was based on their belief that these documents should have been submitted to them prior to hearing in response to the interrogatories served by them unto Complainant. Respondents also objected to the testimony of Emmanuel Abad being classified as "expert" testimony, arguing that he was not qualified to give testimony of that character. The Hearing Officer overruled both of these objections, finding that Exhibits F-R were admissible as business records pursuant to 35 Ill. Adm. Code 103.208 (R. at 147), and that Emmanuel Abad was sufficiently qualified to deliver testimony as an expert witness (R. at 160-1). The Board finds that the Hearing Officer acted correctly, and therefore affirms both of the rulings made at hearing.

Counts I and II

Because of their similar nature Counts I and II shall be discussed jointly; both deal with the character of the water supplied by EMCO.

Firstly, the Board notes that the intent of 35 Ill. Adm. Code 302.303 is to safeguard raw water supplies such that, with the specified processing, they are capable of providing a suitable finished water. As the "Scope and Applicability" section of the preceding §302.301 notes, the standards of §302 are to be met "at any point at which water is withdrawn for treatment and distribution as a potable supply or for food processing". In as much as there have been no allegations that the raw water is inherently unsuitable for use as a water supply or that Respondents have contributed to despoiling of the raw water such as to make it unsuitable for development into a finished water, the Board finds that there is no demonstration of violation of 35 Ill. Adm. Code 302.303.

Complainant asserts that there is a long-standing history of water problems in the EMCO service area including problems of odor, color, taste, and quantity, and presented several witnesses who testified in support thereof. Cheryl Rudd, whose home is serviced by EMCO, testified that at various times during the eight years she has lived in her home the water has had a strong chlorine smell, has been an off-color ranging from "light yellow to a dark rusty color", and has been "fizzy" and "cloudy" (R. at 24-5). Mrs. Rudd also noted that she has discovered sediment in water which has been allowed to sit, such as in the toilet bowls, and that her home has experienced periods of both low and no water pressure (R. at 25-6). Mrs. Rudd observed that these problems with the water supply occur "almost on a weekly basis" (R. at 25-6).

Kathy Schacht, also a resident of the EMCO service area, gave very similar testimony regarding the character of the water supplied to her home by EMCO. She stated that water delivered to her household has been orange (R. at 33), has had rust or cloudy whitish sediments in it (R. at 33), and has occasionally had a strong chlorine or "rotten egg" smell (R. at 33, 36). Ms. Schacht mentioned that she has also experienced low water pressure in her system (R. at 34), and has had clothing become yellowed after washing (R. at 34-5). Ms. Schacht admitted that changing the filter on her water softener did improve, for a time, the low pressure condition in her water system (R. at 37).

Complainant Cheryl Lockwood testified that during the time she has lived within the EMCO service area, water delivered to her home has been orange (R. at 43), had both chlorine and egg-type smells (R. at 43), and has had sediment material of a white or rust-colored nature in it (R. at 43). Complainant's home has also had periods of both low water pressure and a complete lack of water (R. at 44-5). Complainant also testified that the problems associated with the water delivered to her home have caused approximately 20 pieces of clothing and a set of sheets to become ruined in the wash (R. at 46). Unlike the other residents of the EMCO service area who testified in this matter, Complainant additionally noted that several years ago a "gaseous" odor emanated for a time from the water delivered to her home (R. at 50-4).

Walter Kuck, a resident of EMCO's service area, attended the hearing held in this case and made a statement for the record at the close of the hearing. Mr. Kuck stated that his water is "smelly", and said that the smell is not a rotten egg odor but rather more analogous to "a locker room of a gymnasium when it hasn't been aired out for a week" (R. at 291). Mr. Kuck has also experienced low water pressure, and water with a fizzy character (R. at 292, 294), and noted that the water problems occur "three, four, five times a week" (R. at 294).

The Board finds Respondents in violation of §18 of the Act and of 35 Ill. Adm. Code 601.101. Testimony presented at hearing by four witnesses conclusively showed that the water delivered by EMCO to its customers is frequently not clean, adequate in quantity, nor of sufficient mineral characteristic for ordinary domestic consumption. Although no chemical analysis of the water was undertaken by any of the witnesses, it is obvious that water which is fizzy, orange in color, or contains flakes of sediment does not meet the criteria established in §18 and 601.101. Similarly, the Board finds Respondents to have violated 35 Ill. Adm. Code 604.201(a) because, contrary to the requirements of that section, water provided by EMCO caused offense to the sight, taste, and/or smell of each of Respondent's customers who testified at hearing.

Count III

Complainant alleges that EMCO violated the provisions of 35 Ill. Adm. Code 606.201 by failing to notify its customers within the prescribed three month period that the company's delivered water had failed to meet the 1.0 mg/l maximum allowable concentration for iron. Testimony at hearing of Respondent Patricia M. Stahl indicated that EMCO received notice of the high iron level from the Illinois Environmental Protection Agency ("Agency") in a letter from the Agency dated May 9, 1984; Mrs. Stahl testified that receipt was made within a week or less thereafter (R. at 249). Mrs. Stahl indicated that she sent the required notices along with EMCO's August billing, but was "approximately a week or two late" and did not mail the notices until "probably the 21st or 25th" (R. at 251). Cheryl Lockwood stated that she received a copy of the notice sometime in September, 1984 (R. at 60).

Though the dates testified to by Patricia Stahl and Cheryl Lockwood are somewhat contradictory, and the period of time in which notice was delayed rather short, the Board must nevertheless find Respondents to have violated §606.201. That section clearly delineates the responsibility of a community water supply in this situation, and EMCO failed to fulfill that responsibility by neglecting to provide the required notice to its customers within the allowable three month period.

Count IV

Complainant further alleges that Respondents violated 35 Ill. Adm. Code 607.103(b) by failing on April 8, 1982* and September 6, 1984 to issue boil orders to its customers as a consequence of water pressure in the EMCO system falling below 20 psi. Donald Sullivan, an EMCO employee, testified that water

*This is the date which appears in paragraph 8 of the complaint, but paragraph 9 of the complaint, as well as Complainant's Exhibits H and J, indicate that the correct date should be April 8, 1983.

pressure in a portion of the system dropped to 18-20 psi in April, 1983 (R. at 231). Notwithstanding this admission, Respondents did not issue a boil order as a result of the April, 1983 incident. Complainant's Exhibit J is a letter from Mr. Wayne Wiemerslage, an Agency attorney, to personnel of the Agency, the Illinois Commerce Commission, and the McHenry County Health Department. In this letter Mr. Wiemerslage discusses a conversation he had with Mrs. Stahl on August 25, 1983, in which she admitted EMCO did not issue a boil order on April 8, 1983. As persons affiliated with EMCO have admitted that a boil order was not issued on April 8, 1983, when conditions warranting such an order were in existence, the Board finds that on that occasion EMCO violated §607.103(b).

Mr. Sullivan further testified that on September 6, 1984 pressure in the system did not drop below 20 psi (R. at 227). However, Cheryl Lockwood testified that on September 6, 1984 the water pressure at her home was zero (i.e., that no water was being delivered to the home whatsoever). She further stated that Mr. Leonard Lindstrom of the Agency came out to the area the next day to conduct sampling, and while there told her that a boil order was in effect for users of the EMCO system (R. at 66).

Dr. Richard Farmer, Superintendent of McHenry Community Consolidated School District 15, testified that he first heard of the September 6, 1984 boil order from Mr. John Nilles, who was then principal of a grade school located in the EMCO service area. Mr. Nilles became aware of the situation through a conversation with a student who said a police car had driven through his neighborhood the previous day announcing the order (R. at 114-5). Neither Dr. Farmer nor Mr. Nilles received any notice from EMCO that a boil order was in effect.

The Board finds Respondents to have violated §607.103(b) on September 6, 1984. Although Complainant failed to offer or elicit any evidence of a scientific measurement showing less than 20 psi of pressure in the EMCO system on the date in question, the conclusion that such a condition occurred can easily be drawn when it is shown, as was done here, that homes in the service area had no water pressure at the time. Moreover, the Board may infer from the boil order implemented by the Agency that pressure in the system fell below 20 psi. It should be noted that §607.103(b) provides that a boil order need not be issued under the circumstances of this case if three conditions, set out in §607.103(b)(1)-(3), are met. Respondents have offered no evidence in this case, however, indicating that these conditions were or could have been complied with on September 6, 1984. Thus, EMCO was obligated to issue a boil order as a result of the September 6, 1984 occurrence of low pressure in its system.

Count V

Finally, Complainant contends that Respondents violated 35 Ill. Adm. Code 607.103(c) by failing on April 8, 1983 and on September 6, 1984 to notify the Agency that the safety of the water supply was endangered. In both of the instances noted, it was not EMCO or any of its employees who notified the Agency, but rather users of the EMCO system who directly or indirectly caused the Agency to become aware and consequently involved. Regarding the April 1983 incident, residents first complained of low pressure to an official of the McHenry County Health Department, who in turn notified the Agency (Complainant's Ex. H). The Agency first became aware of the September 1984 incident as a result of a call placed by Marcia Maule to the Agency (R. at 63). The Board finds that Respondents violated §607.103(c) by failing to give proper notice to the Agency regarding the April 8, 1983 and September 6, 1984 incidents.

Findings and Penalty

The Board finds that the nature of violations of the Act and the Board's regulations as committed by the Respondents are of such nature as to offer a potentially serious threat to the health and welfare of the citizens served by EMCO. Accordingly, the Board will order that Respondents take immediate operational steps to prevent additional violations. Additionally, the Board finds that it is necessary that EMCO immediately begin a program to identify and implement permanent remedial measures designed to ensure continued compliance with the Act and the Board's regulations. Such program shall address all areas in which Respondents have been found herein to be in violation. A schedule for this program is set out in the following Order. The Board will retain jurisdiction in this matter to assure that the program obligation is met.

In reflecting on the question of the penalty to be imposed on EMCO, the Board has considered the factors enumerated in §33(c) of the Act. These are the character and degree of injury to, or interference with the protection of the health, general welfare, and physical property of the people; the social and economic value of the pollution source; the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved; and the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source.

The Board weighed several other factors before arriving at a final resolution of the penalty issue. Among these is the fact that EMCO is a small, family-owned community water supply which serves fewer than 500 customers (Respondent's Post Hearing Reply Brief, p. 1). Second, there is the question of whether a penalty is necessary in this situation to aid in the enforcement of the Act, or whether a series of conditions imposed upon Respondents, without penalty, would accomplish the same purpose.

The Board finds that due to the varied and repetitious character of the violations committed by Respondents, imposition of a \$1,000 penalty is necessary to aid in the enforcement of the Act.

The additional obligations the Board today imposes on EMCO will necessitate Agency involvement in this matter, as Agency expertise and oversight will be needed to insure that the tasks imposed on EMCO will achieve fruitful results. The Board is therefore adding the Agency as a necessary party pursuant to 35 Ill. Adm. Code 103.121. As provided by 35 Ill. Adm. Code 103.240, the Agency will have 35 days from the date of this Order to file a motion, if it so desires, requesting modification of the role it is being asked to assume by the Board.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board finds that the Eastwood Manor Water Company has violated section 18 of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 601.101, 604.201(a), 606.201, 607.103(b), and 607.103(c).
2. The Eastwood Manor Water Company shall cease and desist from additional violations of the Act and the Board's regulations, and shall take immediate operational steps to prevent additional violations.
3. Per stipulation of the parties, the Eastwood Manor Water Company is ordered to advise authorities of McHenry Community Consolidated School District No. 15 directly of all Illinois Environmental Protection Agency warnings or orders which could harm or affect the health of the District's students.
4. The Illinois Environmental Protection Agency is hereby added as a necessary party to this matter pursuant to 35 Ill. Adm. Code 103.121.
5. Within 90 days from the date of this Order Respondents shall submit a written plan addressing remedial actions to be undertaken in each of the areas which resulted in violation of the Illinois Environmental Protection Act or the Board's regulations.

Respondents shall submit the plan to Complainant Cheryl Lockwood and the following persons:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Mr. Wayne Wiemerslage
Attorney
Illinois Environmental Protection Agency
Springfield, IL 62706

6. After receipt of Respondent's remedial plan, the Illinois Environmental Protection Agency shall, within 90 days after receiving such plan, submit a response to the plan. The response may, in the Agency's discretion, contain any revisions which the Agency determines to be necessary in order to prevent the occurrence of future violations on the part of Eastwood Manor Water Company. The Agency shall submit copies of its response to the Board, Complainant Cheryl Lockwood and Respondents in this matter.
7. Within 60 days after Respondents' receipt of the Agency comments, the matter shall come before the Board for final disposition of this matter. At that time the parties may submit written comments regarding the appropriateness of Respondents' remedial plan and/or the changes made by the Agency to the plan.
8. Within six months after issuance of the Board's final Opinion and Order in this matter, Respondents shall implement the provisions of the plan as approved by the Board.
9. Within 60 days of the date of this Order, the Eastwood Manor Water Company shall, by certified check or money order, pay a civil penalty of \$1,000 payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706
10. The Board retains jurisdiction in this matter.
11. PCB 84-152 is dismissed.

IT IS SO ORDERED.

Joan Anderson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14th day of MARCH, 1986, by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board