

ILLINOIS POLLUTION CONTROL BOARD  
December 4, 1980

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 78-37  
 )  
CITY OF OREGON, )  
 )  
Respondent. )

MS. JUDITH S. GOODIE APPEARED ON BEHALF OF THE COMPLAINANT.  
MR. DAVID SMITH APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

On February 7, 1978, the Environmental Protection Agency (Agency) filed a Complaint against the City of Oregon (Oregon). The Complaint alleged that, since December 9, 1977, Oregon had operated its public water supply system without chlorination treatment of the water before it enters the distribution system, in violation of Rule 305 of Chapter 6 - Public Water Supply Regulations. A hearing was held in this matter on May 9, 1978. Several citizen witnesses testified.

Rule 305 of Chapter 6 became effective on December 21, 1974. On December 22, 1975, Oregon filed a petition requesting a two-year variance from Rule 305 (75 PCB 497). The Board, on March 11, 1976, granted Oregon a variance for a period of 150 days, expiring on August 10, 1976. Oregon appealed the Board's decision, and the appellate court, based upon a motion by the Board, dismissed the appeal for the purpose of allowing the Board to conduct a hearing on the merits of Oregon's variance petition.

A hearing on the variance petition was held on April 15, 1977. Part IV of the Procedural Rules requires the Petitioner to furnish the Board with a transcript 15 days following completion of the hearing. On October 13, 1977, the Board ordered Oregon to submit by November 7, 1977, a transcript of the hearing held on April 15, 1977. Having received no transcript, the Board, on December 8, 1977, dismissed the proceeding.

The Complaint in this matter was filed on February 7, 1978. On March 7, 1978, the Agency served on Oregon a Request for Admission of Facts and Genuineness of Documents. Oregon failed to respond to this request within 20 days after service thereof.

Each of the matters of fact and the genuineness of each document of which admission was requested is, therefore, admitted, pursuant to Procedural Rule 314. Furthermore, the Board, on April 27, 1978, granted a Motion for Sanctions filed by the Agency based upon the City's failure to respond to Interrogatories and a Request for Production of Documents served upon it by the Agency. The Board's April 27, 1978, Order debarred Oregon from filing any pleading or introducing any testimony or evidence on various matters, including operation of the system, costs of chlorination and the presence or absence of contaminants.

Since the date of the hearing in this matter, the Board has delayed decision pending resolution of a regulatory proposal exempting ground water systems which have demonstrated the ability to provide safe drinking water. On October 30, 1980, the Board dismissed that proceeding (R78-8) and Rule 305 remains in effect.

The City of Oregon owns and operates a public water supply system which serves approximately 3800 people. The system includes three drilled wells, an equalizing reservoir, and a distribution system. The evidence, including the Request for Admission as well as testimony at the hearing, indicates that Oregon has not, since the effective date of Rule 305, chlorinated its water or purchased treated water containing chlorine for its public water supply system (R.15).

The only witness testifying on behalf of Oregon testified about the reasonableness of the chlorination requirement (R.51). He indicated that health hazards may be associated with the chlorination requirement and suggested other methods which may, in his opinion, be preferable to chlorination as a method of purifying drinking water (R.62). In addition, several citizen witnesses, four of whom were from cities other than Oregon, criticized the chlorination requirement.

The issue before the Board in an enforcement case in which a violation of a specific regulation is alleged is not the reasonableness of that regulations but simply whether or not the Respondent has complied. The Board finds that the City of Oregon did not comply with the chlorination requirement and, therefore, violated Rule 305 of Chapter 6. The proper forum for questioning the reasonableness of a regulation is in a regulatory proceeding or, if the source considers immediate compliance with the regulation to impose an unreasonable hardship, in a variance proceeding.

In fashioning a remedy in an enforcement case, the Board must consider the factors detailed in Section 33(c) of the Act. The City was debarred from introducing evidence on certain aspects of these factors, including information on the costs of modifying its system or installing chlorination equipment, the presence or absence of contaminants in the system, and the

availability of the funds to install chlorination equipment. Nevertheless, the record does contain some information on the Section 33(c) factors. The Rockford Regional Manager of the Agency's public water supply division testified that since 1975, when he was appointed to his present position, there has been no evidence of contamination of Oregon's water supply. However, the Agency did submit contrary evidence indicating some contamination from 1965 to 1970 (R.126-128). The Board does not question the value of a source of public water supply; however, that value is diminished when reasonable measures required for protection of the public health are not followed. Finally, although Oregon was debarred from introducing evidence of the economic reasonableness of compliance, the parties did stipulate (though for purposes of setting a performance bond only) that chlorination would cost the City \$24,000 (R.50). The Board notes that this figure appears quite high. See discussion of chlorination costs in R78-8 (Opinion and Order of October 30, 1980). However, no economic hardship was alleged and no issue relating to the technical feasibility of chlorination was raised.

The Board will not assess a penalty in this case. The Board will order that Oregon cease and desist from its violation of the Act and install and operate chlorination equipment within 6 months.

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

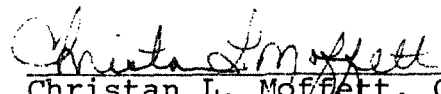
#### ORDER

It is the Order of the Pollution Control Board that:

- 1) The City of Oregon is found to have violated Rule 305 of the Public Water Supply Regulations, Chapter 6 of the Board's Rules and Regulations;
- 2) Within six months of the date of this Order, the City of Oregon shall provide chlorination treatment of its water before it enters the distribution system.
- 3) No penalty shall be assessed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 4<sup>th</sup> day of December, 1980 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board