

ILLINOIS POLLUTION CONTROL BOARD
November 16, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-82
)
CITY OF ZEIGLER,)
a municipal corporation,)
)
Respondent.)

MR. REED W. NEUMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. REA F. JONES, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the March 20, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency") alleging that the City of Zeigler operated its public water supply system without a certified operator from October 10, 1975 until March 20, 1978 in violation of Section 1 of an Act to Regulate the Operating of a Public Water Supply, Ill. Rev. Stat. 1975, ch. 111-1/2, par. 501. A hearing was held on July 11, 1978.

At the hearing, a stipulated set of facts was read into the record. These stipulated facts indicate that the City of Zeigler is a municipal corporation in Franklin County, Illinois which owns and operates a public water supply system that serves approximately 1,800 people. (R. 4). The City's public water supply facility includes an elevated storage tank and distribution system. The Respondent's public water supply system employs no chemical treatment for its water, since it receives treated water from the Rend Lake Intercity water system. (R. 4; R. 10).

The parties have also stipulated that during the period from October 10, 1975 until March 20, 1978, the Respondent did not have a certified public water supply operator in its employ. (R. 4-5). From May 9, 1975 to May 3, 1976, Mr. Harvey Ensinger was employed as operator for the Respondent's public water supply facility at a

salary of \$625 a month. Mr. Ensinger at that time was not a certified water supply operator. (R. 5). From May 3, 1976 to July 29, 1976, Mr. Joe Payne served as a temporary water supply operator for the City of Zeigler at a salary which at present cannot be determined. Mr. Payne likewise did not possess a Class A, B, C, or D certification as a water supply operator. (R. 5). From May 18, 1976 to November 1, 1976, Mr. Randall Orlandini was employed at the Respondent's public water supply facility (first as an apprentice operator under Joe Payne and then as official operator for the supply). Mr. Orlandini's salary was \$480.00 a month with \$2.75 an hour for any overtime, and also possessed no certification as a water supply operator. (R. 5). From November 1, 1976 to January 29, 1978, Francis Calonne served as general supervisor of the Respondent's public water supply facility at a salary of \$600.00 a month with \$3.46 an hour for any overtime. Mr. Calonne possessed no certification as a water supply operator. (R. 5-6). On January 29, 1978, Mr. Calonne suffered a heart attack which forced him to leave his position as operator. From January 29, 1978 to April 1, 1978, the Respondent's public water supply facility was without a water supply operator. (R. 6).

On April 1, 1978, Mr. Lawrence Peila was hired and commenced his duties as water supply operator at the City's public water supply facility. Mr. Peila is a properly certified Class A public water supply operator. He will be paid \$100.00 a month and will work as many hours per week as the City may require and will be employed until such time when the city can obtain a full-time certified operator of its own. (R. 6).

The City of Zeigler currently employs Mr. David Sims in its water department. Mr. Sims is attending classes for certification and will be hired by the City for its public water supply facility upon his obtaining certification (i.e., after completion of the necessary classes and passing the certification exam). (R. 6-7).

On May 7, 1976, after learning of Joe Payne's appointment on May 3, 1976 as water supply operator, the Agency sent the necessary "Certified Operator in Responsible Charge" form to the Respondent to fill out and return to the Agency as an official notice of compliance. No official notice of Mr. Payne's hiring and qualifications was ever received by the Agency. (R. 7).

On April 1, 1977, the Agency sent a formal Notice of Violation to the City of Zeigler which pertained to the lack of a properly certified water supply operator. (Complainant's Exhibit No. 1; R. 7). No response to this Notice was ever received by the Agency. (R. 8). However, the Respondent is now

in compliance with the Public Water Supply Act, as evidenced by the Agency's letter of May 18, 1978. (Respondent's Exhibit No. 1; R. 8-9).

At the hearing, the Respondent's attorney asked that the Board consider various mitigating factors in this case. The Respondent's attorney stated that: (1) the local government of the City of Zeigler had been in a highly unstable condition during the last 3 years due to the death of the Mayor and resignations of the City Clerk and City councilmen (R. 10-11); (2) since "the City of Zeigler's governing body has been in a state of instability during this time," the "business of the City has not been too well managed..." (R. 14); and (3) the City of Zeigler is financially limited in its income (i.e., the City's income is primarily based on property taxes and the total assessed valuation of all property within the City limits is \$2,400,816). (R. 10, R. 14). On the other hand, the Assistant Attorney General requested that the Board take into consideration "the fact that the Agency has been involved with the Respondent for quite some time in an effort to achieve compliance" and that "the Agency's difficulties in achieving compliance and in getting cooperation from the City has been notable, at least in the past couple of years..." (R. 13).

In evaluating this enforcement action, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). On the basis of the record, the Board finds that the City of Zeigler operated its public water supply system without a properly certified operator from October 10, 1975 until March 20, 1978 in violation of Section 1 of an Act to Regulate the Operating of a Public Water Supply, Ill. Rev. Stat. 1975, ch. 111-1/2, par. 501. Consequently, a penalty of \$300.00 is assessed in accordance with Section 1 of an Act to Regulate the Operating of a Public Water Supply.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

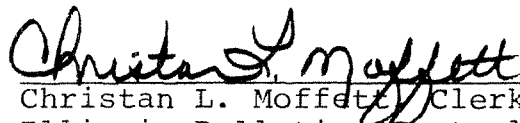
1. The City of Zeigler has violated Section 1 of an Act to Regulate the Operating of a Public Water Supply (Ill. Rev. Stat., 1975, ch. 111-1/2, par. 501) from October 10, 1975 until March 20, 1978.

2. The City of Zeigler shall cease and desist from all further violations of Section 1 of an Act to Regulate the Operating of a Public Water Supply (Ill. Rev. Stat. 1975, ch. 111-1/2, par. 501).

3. Within 35 days of the date of this Order, the City of Zeigler shall pay a penalty of \$300.00 , payment to be made by certified check or money order to:

State of Illinois
Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

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 November, 1978 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board