

ILLINOIS POLLUTION CONTROL BOARD  
November 14, 1972

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 )  
 v. ) #72-179  
 )  
 EASTLAWN WATER COMPANY; JACK BROTMAN, )  
 RONALD BROTMAN and W. I. BROTMAN, )  
 a/k/a BROTMAN'S EASTLAWN ADDITION; )  
 LARRY HILL; and RONALD W. K. LUCAS )

LARRY R. EATON, SPECIAL ASST. ATTORNEY GENERAL, APPEARED ON  
BEHALF OF ENVIRONMENTAL PROTECTION AGENCY  
BRUCE L. BALCH, APPEARED ON BEHALF OF W. I. BROTMAN AND  
RONALD BROTMAN  
WILLIAM M. WALKER, III, APPEARED ON BEHALF OF LARRY HILL  
RONALD W. K. LUCAS, PRO SE, AND ON BEHALF OF EASTLAWN WATER  
COMPANY

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

Complaint was filed against Eastlawn Water Company, a corpora-  
tion and Jack Brotman, Ronald Brotman, W. I. Brotman, Larry Hill  
and Ronald W. K. Lucas, as past or present owners of Eastlawn  
Water Company, alleging that on, before and at all times since  
July 1, 1970, one or more Respondents have been owners and opera-  
tors of a public water supply facility serving the Eastlawn  
Subdivision, in an unincorporated portion of Rock Island County,  
Illinois, and that during the period between July 1, 1970 and the  
filing of the complaint, Respondents failed to direct and maintain  
the continuous operation and maintenance of said water supply facility  
so that water would be assuredly safe in quality, clean, adequate  
in quantity and of adequate mineral character for ordinary domestic  
consumption. The suggestion of death of Jack Brotman in 1965 was  
received.

Specifically charged is the allowance of inundation of flood  
waters into and about the wells and other public water supply facil-  
ities including (by amendment) February 22, 23 and 24, 1971. The  
Environmental Protection Agency contends that the foregoing acts by  
Respondents constituted violation of Section 18 of the Environmental  
Protection Act. Penalties in the maximum statutory amount are sought,  
together with a cease and desist order against the Company and Ronald  
W. K. Lucas, the present owner, and a direction that Respondents  
bring the operation into compliance with all statutory and regulatory

provisions. For reasons more fully set forth below, we find that the Agency has failed to state a cause of action against any of the Respondents Brotman because by July 1, 1970, the alleged date on which the violations began, no Brotman remained in actual ownership or control of the facilities and all Respondents Brotman are accordingly dismissed from this proceeding.

We find that while Respondent Lucas has been the owner of the corporate stock since February of 1972, and that some of the violations complained of have remained in existence since his acquisition of ownership, he has diligently pursued a program of improvement which should bring the operation into compliance with the Statute and the Regulations, and we do not believe a penalty should be imposed against him although we will direct that he continue with such steps as are necessary to achieve the required degree of compliance.

We find that Respondent Hill and the corporate Respondent have violated the Act, Sec.18, and will impose a penalty against Hill and a compliance order against the corporation as will be set forth in our Order.

The facility subject to this proceeding is located adjacent to a 55-lot subdivision which it serves (R. 98, R.118). It consists of two pressure tanks and a small structure located between the tanks, which protects the piping and houses the chlorinator. The well is outside of the building and contiguous with the pressure tanks. The well is covered and insulated as is the piping from the well. A schematic diagram of the well is in evidence as Lucas' Ex. 2 (R. 119). The topography of the well site is such that in periods of heavy rainfall, water accumulates and floods portions of the well and water supply facility (R. 89, R. 120, R.137). While the devolution of corporate ownership would be of more significance if violations prior to July 1, 1970 were asserted, the record establishes that Ronald Brotman acquired virtually complete corporate ownership subsequent to 1967, which he retained until transfer to Respondent Hill in July of 1970. While there is some degree of uncertainty as to precisely when Hill acquired undisputed ownership of the corporate facility, there is no dispute that as of July 1, 1970, he was in complete operation and control of the water supply facilities and that some, if not all, of the corporate stock had been transferred to him prior to that date. (R. 256).

The record suggests that flooding of the well facility and other violations extended as far back as 1960 (R.137). A letter dated July 11, 1969 was sent to Ronald Brotman as President of the East Lawn Water Company by the Department of Public Health noting among other things, that the immediate area surrounding the well is low, permitting water to collect and stand several inches deep after a heavy rain; noting that the surface water could

possibly seep into the well and contaminate the water supply. Other violations are stated including the absence of a certified operator, of failure to provide adequate fluoridation and the inadequate number of water quality samples submitted for bacteriological determination. The letter suggested that in order to alleviate the sanitary defects, the immediate area around the well be filled and the surrounding ground area sloped away from the well casing to drain surface water away from the well (EPA Ex. 1) (R.110).

Brotman failed to take any steps pursuant to the recommendations of this communication and it is not clear from the record whether Hill was advised of this communication upon transfer of the corporate interest by Ronald Brotman to him, although he concedes that he received a "whole bunch of them" after he took over (R.270-271). In any event, no one did anything to bring the operation into compliance.

On or about February 23 or 24, 1971, (R.89) a condition of flooding occurred which was observed by Opal Mayhugh, a resident of the Eastlawn Addition Subdivision, when flood water surrounded the well structure and which flooded condition continued for 4 or 5 days (R.91). The water drawn from the tap in the witness' home was cloudy in color and had a "swamp odor , a sewer odor." (R.92). Tests taken in March of 1971 disclosed a contaminated condition of the water which the Agency witness attributed to the earlier flooding. Analysis made of 42 samples collected during the period between September, 1970 and August, 1971, showed the presence of contamination during March, 1971. This contamination is believed to have entered the well when flood waters from the Rock River inundated the area on February 23, 24 and 25, 1971. EPA Ex. 3 (R.155-160).

As a result of the foregoing tests, the Environmental Protection Agency wrote to Respondent Hill on December 15, 1971, directing that the following corrections be provided:

"NECESSARY CORRECTIONS

Sanitary Defects: Extend the well casing at least 30 inches so that the top is 2 feet above the highest known flood level. Construct a concrete envelope at least 18 inches in diameter around the casing up to a point 6 inches below the extended casing top. Fill in the area within a 15 foot radius of the well with compacted earth. The fill should come to within 8 inches of the top of the casing to prevent surface water from standing near the well (see diagram attached).

Operator Certification: We request that you employ a certified operator to supervise the operation of your supply.

Water Pressure : Maintain a minimum of at least 30 ps 1 (gage pressure) at the pump house.

#### OTHER IMPROVEMENTS

Chlorination Record: We recommend you maintain daily chlorination records on the chlorine report sheets provided by this Agency. A copy of the completed report sheet should be sent to this office at the end of each month.

Pressure Storage: A sight glass and air compressor should be provided for the pressure storage tank. The sight glass is used to determine the amount of air blanket in the tank and the compressor provides a positive means of maintaining the air blanket."

Notwithstanding the above, Hill failed to take any corrective measures prior to the time when he sold the Company to Lucas in February of 1972. In his testimony, Hill concedes that he was the sole owner and operator of the water company since July of 1970 (R.257). In his motion to dismiss, Hill contends that only the corporation is subject to liability and that he has no equity, stock, possession or control of Eastlawn Water Company. While Hill may not presently have any interest in the Company, having transferred his ownership to Lucas, there is no dispute that during the period of flooding and high bacterial count in February of 1971, Hill was the sole owner and operator of the Company. Section 18 of the Environmental Protection Act requires that "owners and official custodians" of public water supplies shall take steps to provide safe and clean water.

We do not feel, on the facts of the present case, that an owner of corporate stock can escape liability for violation of this section, by contending that the corporation is the sole owner and operator of the facility in violation. If the term "custodian" contained in Section 18 of the Act is to have any meaning, it must apply to a situation as in the present case where one person is the sole owner of the corporate stock and operator of the facility involved.

Hill's continued indifference to the relevant regulations and his failure to take steps of any nature to correct the situation require us to assess a penalty against him for violation of the foregoing provisions. We hold Hill accountable and his Motion to Dismiss is denied. Lucas, on the other hand, after having acquired ownership and control in February, 1972, has embarked upon a program of compliance including the raising of the well and the employment of a certified operator to bring the operation into compliance. (R.36).

In summary, we dismiss the complaint as to all Respondents Brotman on the basis that none was in ownership or control of the facilities on the dates when the alleged violations occurred. In so dismissing

the Brotmans, and particularly, Ronald Brotman, we do not conclude that they were without fault in allowing the events complained of to develop. Our holding of dismissal is only because none was in ownership or control on the dates when the alleged violations occurred. We hold Respondent Hill to have been in both ownership and control when the flooding of the well took place and when the high bacterial counts resulted. We find that his indifference, both before and after this occurrence necessitates the imposition of a penalty which we assess against him in the amount of \$2,500. It is fortunate that the contaminated water pumped by the well did not result in extreme illness or death to those who were obliged to use this water and that the consequences were not more severe than what occurred. While we find the corporation to have violated the statute, we impose no penalty against it as this would only work to the possible detriment of Lucas, the present owner.

We do not assess a penalty against Respondent Lucas because we believe he has been acting with diligence to bring the operation into compliance but we will direct that he and the corporation cease and desist any continuing violation of all statutory and regulatory provisions found to have been violated by this Opinion and to take all necessary steps to bring the operation into compliance. The record does not indicate how far along the compliance program has progressed but we trust that Lucas will take all steps to achieve such compliance. See Environmental Protection Agency v. Lake In The Hills Company, -72-197, 5 PCB (October 10, 1972).

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

Mr. Henss took no part in the consideration or decision of this case.

IT IS THE ORDER of the Pollution Control Board:

1. Complaint against Jack Brotman, Ronald Brotman and W. I. Brotman is dismissed as no violation against these Respondents has been proven for the period in which the alleged violations took place.
2. Penalty in the amount of \$2,500 is assessed against Respondent Larry Hill for violation of Section 18 of the Environmental Protection Act for the period between July 1, 1970 and February 2, 1972, the date upon which Respondent Lucas acquired ownership of the Company. 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.

