

ILLINOIS POLLUTION CONTROL BOARD
May 1, 1981

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 80-32
)
PLANNED COMMUNITIES, INC.,)
an Illinois corporation,)
)
Respondent.)

MR. PHILIP L. WILLMAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

FOLLMER, WEST, ERDMANN & CLEM, ATTORNEYS AT LAW (MR. RICHARD O. ERDMANN, OF COUNSEL), APPEARED ON BEHALF OF RESPONDENT PLANNED COMMUNITIES, INC.

WILLIAMSON, MILLER & HENDREN, ATTORNEYS AT LAW (MR. PAUL C. HENDREN, OF COUNSEL), APPEARED ON BEHALF OF THE BRIARCLIFF ASSOCIATION.

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

This matter comes before the Board on the February 14, 1980 Complaint brought by the Illinois Environmental Protection Agency ("Agency").

Count I of the Complaint alleged that, from December 21, 1974 until February 14, 1980, the Respondent, Planned Communities, Inc. (the "Company"), failed to provide equipment to adjust and maintain the fluoride ion concentration of its water supply to a level between 0.9 milligrams per liter ("mg/l") and 1.2 mg/l in violation of Rule 3.05 of the Department of Public Health Rules and Regulations, Rule 306 of Chapter 6: Public Water Supplies ("Chapter 6"), and Section 18 of the Illinois Environmental Protection Act ("Act").

Count II alleged that, from December 22, 1975 until February 14, 1980, the Company failed to chlorinate its water in violation of Rule 305 of Chapter 6 and Section 18 of the Act.

Count III alleged that, from April 5, 1976 until February 14, 1980, the Respondent failed to provide a certified public water supply operator in violation of Rule 302 of Chapter 6 and Section 18 of the Act.

Count IV alleged that, from January 17, 1974 until February 14, 1980, the Company failed to submit the requisite monthly operating reports in violation of Rule 310 of Chapter 6 and Section 19 of the Act.

Count V alleged that, from November 11, 1975 until February 14, 1980, the Respondent failed to meet Agency criteria for the design, operation and maintenance of its public water supply facilities in violation of Rule 212(A) of Chapter 6 and Section 18 of the Act.

On May 29, 1980, the Respondent filed a Motion to Strike Count I of the Complaint for Lack of Jurisdiction; a Motion to Dismiss the proceedings on the ground that Planned Communities, Inc. was an improper party respondent; a Motion to Add Necessary Parties, and a Motion to Dismiss for Lack of Jurisdiction. On June 5, 1980, the Agency filed a Motion for an Extension of Time to Respond to the Respondent's Motions. On June 12, 1980, the Board entered an Order which granted the Agency's Motion for an Extension of Time to Respond to the Respondent's Motions.

On June 16, 1980, the Company filed a Motion for a Protective Order which requested that the Board enter a protective order limiting, under Complainant's Request for Production of Documents, Respondent's obligation to produce its files for the purposes of inspection and copying. However, the Company subsequently withdrew its Motion for Protective Order on July 11, 1980.

On June 19, 1980, the Agency filed responses in opposition to all of the motions that the Company had previously filed on May 29, 1980.

On July 10, 1980, the Board entered an Order which: (1) denied the Company's Motion to Dismiss for Lack of Jurisdiction; (2) denied the Company's Motion to Dismiss; (3) denied the Company's Motion to Strike for Lack of Jurisdiction; and (4) granted the Company's Motion to Add Necessary Parties with respect to the Briarcliff Association.

A hearing was held on December 12, 1980 at which members of the public were present. At this hearing, Planned Communities, Inc. moved to voluntarily dismiss the Briarcliff Association (the "Association") as a Respondent in this case. Since the Agency and the Association had no objections to the Company's motion, the Hearing Officer dismissed the Briarcliff Association from this action. (R. 5). However, under the Board's Procedural Rule 308(e), such a dismissal was not within the purview of the Hearing Officer. Because the Hearing Officer had no authority to dismiss the Briarcliff Association from this action, he should have referred the motion to the Board. Accordingly, the Board will remedy this procedural deficiency by dismissing the Briarcliff Association as a Respondent in this case.

Additionally, at the hearing, all other pending motions (i.e., a motion for a pre-hearing conference, a motion for a continuance of the hearing date, etc.) were withdrawn by mutual

consent of the parties. (R. 13-14). The terms of an unwritten settlement agreement were summarized orally. No members of the public made comment.

The parties filed a Stipulation and Proposal for Settlement on March 25, 1981. Since the proposed settlement as filed reflected the oral presentation at the hearing, the Board finds this procedure in substantial compliance with its Procedural Rule 331.

The Stipulation indicates that the Company's public water supply system (the "system"), which includes one drift well, a 5,000 gallon underground water storage tank, and distribution facilities, serves about 153 individuals in the Briarcliff First Subdivision near Mahomet, Champaign County, Illinois. (Stip. 2; Exhibit A).

The Briarcliff Association, a not-for-profit Illinois corporation, originally operated this public water supply system until December 31, 1978 under an automatically renewable one-year lease agreement between the Company and the Association which was first entered into on January 1, 1967. (Stip. 3-4; R. 11; Exhibit D). From January 1, 1979 until November 7, 1979, the Company and the Association participated in negotiations pertaining to the leasing, operation, maintenance, and repairs of the water supply facilities. On November 7, 1979, the Association provided the Company with written notice that, although it would perform routine maintenance until December 6, 1979, it would no longer operate the system after December 6, 1979. Nevertheless, after further discussions between the Company and the Association, the Association continued to operate the water supply until May 27, 1980. (Stip. 4).

On April 16, 1980, the Company obtained a temporary Certificate of Public Convenience and Necessity from the Illinois Commerce Commission which authorized the Respondent to operate the public water supply. (Stip. 5; Exhibit C). Subsequently, on May 27, 1980, the Company replaced the Association as the operator of this system. (Stip. 4-5).

During the prior time period, there were extensive legal proceedings pertaining to the ownership and operation of this public water supply system:

"...From April 18, 1971 until November 27, 1975, Foreclosure Proceedings File No. 71-C-179 at Circuit Court of the Sixth Judicial Circuit, Champaign County, progressed. On December 9, 1974, the Circuit Court of Champaign County, Illinois, appointed Alice W. Ogg as receiver of all PCI real estate, including but not limited to the Briarcliff water and sewer systems. On November 28, 1975, Notice for Sale was issued. On December 5, 1975, PCI paid Gibson City Federal Savings and Loan the required amount by loan obtained from Busey First National Bank. From December 9, 1974 until December 5, 1975, due to foreclosures proceedings, the custody and control of PCI's rights in

the water and sewer system were under the control of said receiver...

From September 14, 1976 until February 6, 1978, there was a law suit between PCI and BHI over who is the owner of the public water supply. On February 6, 1978 the Circuit Court of the Sixth Judicial Circuit, Champaign County, declared, in the case of Briarcliff Association v. Planned Communities, Inc. and Busey National Bank of Urbana 76-C-906, that PCI is the sole owner of the public water supply." (Stip. 2-3; Exhibit B).

It is stipulated that the Briarcliff Association was the operator of the system from January 1, 1967 until May 27, 1980 and thus the Company was not responsible for submitting operating reports to the Agency during this time period. (Stip. 6). Furthermore, the Association did not submit any of the required operation reports to the Agency from January 17, 1974 until April 16, 1980. (Stip. 6).

Additionally, it is stipulated that: (1) the system failed to provide equipment to chlorinate the water since December 22, 1975; (2) since November 11, 1975, the system "has not had a master meter; a screened, downturned facing elbow on the air relief valve to the storage tank; a sight glass on the storage tank; and an air compressor for the storage tank"; (3) the public water supply has had no equipment to maintain the fluoride ion concentration of its raw water to the required level (i.e., between 0.9 mg/l and 1.2 mg/l) since December 21, 1974; (4) the storage tank capacity for the water supply system has fallen below 35 gallons per capita on a few occasions since November 11, 1975; and (5) "since April 15, 1976 until May 27, 1980, the lessee-operator failed to provide a certified water supply operator". (Stip. 5-6).

The parties have also indicated that the Company has attempted to provide a properly certified public water supply operator on two separate occasions since May 27, 1980. (Stip. 6). However, each of these operators has resigned the position before submitting a "Notification of Operator in Responsible Charge" form to the Agency. (Stip. 6).

The proposed settlement agreement provides that the Company follow a compliance plan which mandates that the Company will promptly: (1) hire a properly certified operator; (2) "install a screened, downturned elbow on the air relief valve to the storage tank"; (3) submit plans and specifications to the Agency for the construction of the improvements necessary to provide fluoridation, chlorination, metering, and storage of water; (5) apply for the necessary permits from the Agency, and (6) pay a stipulated penalty of \$100.00. (Stip. 7-8).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in

Section 33(c) of the Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondent, Planned Communities, Inc., has violated Rule 3.05 of the Department of Public Health Rules and Regulations; Rules 212(A), 302, 305, 306, and 310 of Chapter 6: Public Water Supplies, and Sections 18 and 19 of the Act. The stipulated penalty of \$100.00 will be assessed against the Respondent.

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 Respondent, Planned Communities, Inc., has violated Rule 3.05 of the Department of Public Health Rules and Regulations; Rules 212(A), 302, 305, 306, and 310 of Chapter 6: Public Water Supplies, and Sections 18 and 19 of the Illinois Environmental Protection Act.

2. Within 15 days of the date of this Order, the Respondent shall:

(a) hire a Class A, B, or C certified operator and submit to the Agency an original "Notification of Operator in Responsible Charge" form signed by the operator and the Respondent (the certified operator will sign the requisite monthly operating reports and submit them to the Agency);

(b) install a screened, downturned elbow on the air relief valve to the storage tank.

3. Within 45 days of the date of this Order, the Respondent will submit plans and specifications to the Agency for construction necessary to provide:

(a) fluoridation and chlorination of the public water supply system;

(b) the installation of an acceptable means of metering the finished water, sight glass, and air compressor on the storage tank; and

(c) the installation of adequate water storage tank capacity.

4. Within 15 days from the date that the Respondent receives a Construction Permit from the Agency, it will install the proposed chlorination equipment and apply to the Agency for an Operating Permit for this equipment.

5. Within 9 months from the date that the Respondent receives a Construction Permit from the Agency, it will complete the remainder of the requirements outlined in Item 3 of this Order, and will apply to the Agency for an Operating Permit for the remaining equipment.

6. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of \$100.00 which is to be sent to:

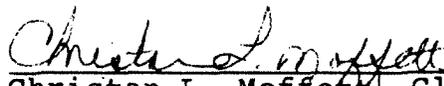
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

7. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed March 25, 1981, which is incorporated by reference as if fully set forth herein.

8. The Briarcliff Association is hereby dismissed as a Respondent in this case.

9. The Board retains jurisdiction in this matter for a six-month period.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 1st day of May, 1981 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board