

ILLINOIS POLLUTION CONTROL BOARD  
September 30, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Complainant, )  
)  
v. ) PCB 75-218  
)  
E. LYSLE EPPERSON, )  
GLENN BUELTER, )  
GEORGE E. & SHARON M. DAVIS, )  
RICHARD A. & MARGO L. HOBKIRK, )  
NOELLE M. DARLINGTON, )  
RONALD O. & DOROTHY J. LAMKIN, )  
DONALD L. & BETTY J. FOSS, )  
GEORGE T. & LILA L. MOORE, )  
MICHAEL R. & KAREN R. WEBER, )  
EDWIN L. & SHIRLEY HARRIS, )  
ALPHA FAY EPPERSON, )  
LOIS M. HALL, )  
KEVIN P. & HELENA G. CORLEY, )  
KATHY M. BOATMAN, )  
RICHARD K. & DOROTHY M. HAMPE, )  
THEODORE R. & ELEANOR Y. GIBSON, )  
ALPHONSE, JR. & JANET E. ANTOINE, )  
CHARLES L. & HELEN PARKER, )  
RICHARD E. & BARBARA K. WAHLS )  
CHARLES E. & CHARLOTTE J. BENNETT, )  
MARGUERITE E. FREEHILL, )  
DAVID S. & RHODA J. BALDOCK, )  
RAYMOND & AUDREY BUCH, )  
STANLEY & MARY R. COOPER, )  
RAYMOND W. & JUDITH C. VONDERAHE, )  
DELMAR W. & CAROL A. AUKAMP, )  
EARL R. & JANET I. ACUP, )  
ARTHUR G. & JEANETTE WILMERT, )  
THOMAS C. & MYRNA P. LEITH, and )  
LYSLEEN HUNTER, )  
)  
Respondents. )

Mr. Steven Watts, Assistant Attorney General, appeared for the Complainant.

Mr. William S. Hanley appeared for all Respondents except E. Lysle Epperson, Alpha Fay Epperson and Lysleen Hunter.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Pollution Control Board (Board) upon a Complaint filed May 28, 1975 by the Environmental Protection Agency (Agency). An amended complaint was filed on February 13, 1976. Of the fifty-six Respondents named four were dismissed in a Board Order of March 25, 1976. The four Respondents dismissed were Charles T. and Sandra S. Merrill and George B. and Betty Klockenga. The Complaint in Count I alleges that Respondents owned or operated or caused to be operated a public water supply system furnishing water for drinking and general domestic use; that this public water supply consists of a drilled well, a hydro-pneumatic storage tank, and a distribution system; that before, on and after July 1970 until December 21, 1974, Respondents as a result of maintenance and operation of the system violated Section 18 of the Environmental Protection Act (Act) and Rule 3.12 of the Public Water Supply Systems Rules and Regulations (Regulations) which are continued in effect by Section 49(c) of the Act and incorporating by reference certain sections of the "Great Lakes-Upper Mississippi River Board of State Sanitary Engineers Report on Policies for the Review and Approval of Plans and Specifications for Public Water Supplies" (Standards).

Specifically alleged are the following: The drilled well was constructed in a pit without proper safety adaption, thus subjecting it to flooding and possible contamination by surface water in violation of Sections 3.2.3.14 and 6.2.2 of the Standards and Rule 3.12 of the Regulations and Section 18 of the Act; the top ten feet of the well casing was not encased in a concrete envelope to properly protect it from the entrance of shallow ground water in violation of Section 3.2.3.4(a) of the Standards, Rule 3.12 of the Regulations and Section 18 of the Act; the top of the casing was not properly sealed, therefore allowing the possible entry of unknown contaminants in violation of Section 3.2.1(a) of the Standards and thereby Rule 3.12 of the Regulations and Section 18 of the Act; the Water Supply System contained a four inch Orangeburg tile directly connected into the well casing; this tile discharged into a man-made lake approximately two hundred fifty feet south of the well and as a result violated Rule 3.60 of the Regulations and Section 18 of the Act; the Water Supply System had inadequate pressure storage, and the pressure storage tank was not equipped with a sight glass or an air compressor to maintain proper air-to-water ratio, in violation of Section 7.1.5 of the Standards and

Rule 3.30 of the Regulations and Section 18 of the Act; Respondents did not submit samples of water for analysis and such reports of operation pertaining to sanitary quality, mineral quality, or adequacy of such supplies as were demanded by the Agency, in violation of Section 19 of the Act; a portion of the Water Supply System was constructed of two inch galvanized pipe, an unapproved material, in violation of Section 8.0.1 of the Standards, Rule 3.40 of the Regulations and Section 18 of the Act. Count II alleges these same conditions as violations of Section 3.2.3.14 and 6.2.2 of the Standards, Technical Policy Statement 212(B) (Edition of January 13, 1975) which was submitted in conformance with Rules 103B and 212 (Technical Policy Statement) and therefore in violation of Rule 212 of Chapter 6: Public Water Supplies and Section 18 of the act, and also Sections 3.2.3.4(a), 7.1.5, and 8.0.1 of the Standards, Technical Policy Statement 212(B), 212E(1), 212E(2), 212G, Rules 212, 312, 314(a), 314(b) of Chapter 6, and Sections 18 and 19 of the Act. Count II also alleges that Respondents failed to add fluoride to the water of the Public Water Supply System as required by Section 7(a) of "An Act to Provide for Safeguarding the Public Health by Vesting Certain Measures of Control and Supervision in the Department of Public Health over Public Water Supplies in the State" and therefore Rule 306 of Chapter 6. Count III alleges that on or before May 24, 1965 to at least the filing of the complaint Respondents allowed the operation of the water supply without the employment of a person properly certified as competent to operate the system in violation of Section 1 of "An Act to Regulate the Operating of a Public Water Supply," Ill. Rev. Stat. Ch. 111 1/2 Par. 501 (1975).

A hearing was held April 21, 1976 in Lincoln, Illinois. Respondents E. Lysle Epperson, Alpha Fay Epperson and Lysleen Hunter did not appear. The Agency made a motion for default pursuant to Procedural Rule 320. The Board does find E. Lysle Epperson, Alpha Fay Epperson and Lysleen Hunter in default and on the basis of the allegations of ownership and operation of the Lakeview Subdivision Public Water Supply, now taken as true, the Board finds these Respondents in violation of all the alleged Standards, Regulations and Acts as set out in the complaint.

At the hearing the remaining Respondents and the Agency submitted a Stipulation of Facts and a Proposed Settlement Agreement for Board approval. Subsequent to the hearing the parties submitted a Proposed Settlement Agreement with Modification.

The Stipulated Facts of the Agreement are as follows. Forty-nine Respondents participated in this agreement (i.e. all Respondents but those in default). The area in question is Lakeview Subdivision located in the Southeast 1/4 of the Northwest 1/4 of Section 18, Township 20 North, Range 2 West of the Third Principal Meridian in Logan County, Illinois. This subdivision was developed by E. Lysle Epperson and includes those subdivisions known as Lakeview Acres Subdivision filed October 26, 1960 in Plat Book 12, pages 6 and 7 of the Logan County Recorder's Office, Sunny Acres Subdivision filed November 10, 1960, recorded in Plat Book 12, pages 10 and 11 of the Recorder's Office and Sunny Acres Second Subdivision filed December 17, 1963 recorded in Plat Book 12, pages 74 and 75 of the Recorder's Office.

The subdivision is presently served by a public water supply system consisting of a drilled well, a hydro-pneumatic storage tank estimated at a capacity of approximately 500 gallons, and a distribution system consisting of both galvanized and plastic pipe. Inspections of this system by the Department of Public Health and the Illinois Environmental Protection Agency have disclosed conditions as those alleged in the complaint.

The Respondents participating in this settlement agreement are owners of the residences located in the Lakeview Subdivision. It was further stipulated that the present ownership of the well and distribution system is in dispute between the developer, E. Lysle Epperson, and the various homeowner users. Since 1965 there has existed an unincorporated ad hoc committee or association of homeowners in the subdivision known as the Sunny Lake Water Association also known as the Lakeview Water Committee. The Association has accepted payment by residents which monies have been applied to the costs of the operation of the public water supply system. Various homeowners within the subdivision and E. Lysle Epperson, developer of the subdivision, whether or not members of the homeowners' association, have helped repair, maintain and operate the public water supply system.

To resolve this situation Respondents agree to discontinue use of the present well and distribution system on or before November 1, 1976. The Respondents agree to replace the present public water supply system by drilling a series of wells. The following Respondents each agree to dig a well solely for the use of their residence in Lakeview Subdivision:

Alphonse, Jr. and Janet E. Antoine  
Charles E. and Charlotte J. Bennett

Kathy M. Boatman  
Raymond and Audrey Buch  
Marguerite E. Freehill  
Theodore R. and Eleanor Y. Gibson  
Richard K. and Dorothy M. Hampe  
Ronald O. and Dorothy J. Lamkin  
Thomas C. and Myrna Pleasant Leith  
George T. and Lila L. Moore  
Charles L. and Helen Parker  
Richard E. and Barbara Wahls  
Michael R. and Karen Weber  
Donald L. and Betty J. Foss

Respondents Edwin L. and Shirley Harris have drilled and installed a private well serving their own residence.

Respondents Helena G. and Kevin P. Corley agree to drill one well to serve the residence owned by them in Lakeview Subdivision. This well is to also serve one other residence in the subdivision. Respondents George E. and Sharon M. Davis and Lois Hall agree to drill one well to serve the residences owned by each of them in Lakeview Subdivision. This well will serve two other residences in the subdivision. Respondents Noelle M. Darlington, Glenn Buelter and Richard A. and Margo L. Hobkirk agree to drill one well to serve the residences owned by each of them in Lakeview Subdivision. Respondents David S. and Rhoda J. Baldock agree to dig one well solely for the use of the residence owned by them or alternatively to be served by the well to be drilled by Respondents Noelle M. Darlington, Glenn Buelter and Richard A. and Margo L. Hobkirk.

The Respondents Arthur G. and Jeanette Wilmert, Earl R. and Janet I. Acup, Stanley and Mary R. Cooper, Raymond W. and Judith C. Vonderahe and Delmar W. and Carol A. Aukamp agree to drill one well to serve the residences owned by them in Lakeview Subdivision or alternatively to continue to use the aforesaid well and distribution system conditioned upon completion of the following modifications in the present system.

1. The distribution system will be properly severed and capped so that the system will be able to serve only the above residences.
2. The top of the well casing will be properly sealed.
3. The Orangeburg tile directly connected into the well casing will be disconnected and the well casing properly sealed.

The Respondents stipulating to this agreement reserved the right to elect to drill their own wells rather than share a well as stated above or to share a well with Respondents other than those stated, provided that the drilling and sharing of new wells will be accomplished by November 1, 1976. One of the objects and purposes of the agreement is to terminate the present distribution system and to remove it and any future system of shared wells as provided under the agreement from the jurisdiction of the Public Water Supply Act as now enacted.

The Agency recognizes the cost to these residential property owners of installation of new wells. The Agency stipulated that in light of these costs that a penalty would not serve as an aid to the enforcement of the Act and that the Agency's interest will be satisfied by a Board Order requiring the Respondents to complete their action by November 1, 1976.

The Board finds that all the stipulating Respondents were in violation of all the alleged Standards, Regulations and Acts as set out in the complaint. The Board further finds that the parties in stipulating that a penalty would not aid in the enforcement of the Act have stipulated beyond the provision of Procedural Rule 333 and the law. The stipulating Respondents have admitted and all Respondents are found in violation of Section 1 of "An Act to Regulate the Operating of a Public Water Supply," Ill. Rev. Stat. Ch. 111 1/2 Par. 501 (1975). This Act provides for a minimum penalty of not less than \$100. For this reason the Board shall assess a penalty of \$100. This penalty shall be suspended for all Respondents.

The Board must consider the factors of Section 33(c) of the Act; (1) the character and degree of injury, (2) the social and economic value of the pollution source, (3) the suitability of locations and (4) the technical and economic reasonableness of compliance. The existence and accessibility of a water supply is an absolute necessity to the subdivision. There has been no presentation in evidence of any injury to the public by the failure to comply with the regulations and the law. The stipulating Respondents have shown mitigation by putting money and effort into alleviating the situation. Defaulting Respondents have not made any attempt to show mitigation.

As for the defaulting Respondents the Board finds a penalty necessary. The burden of presenting mitigating

factors under Section 33(c) of the Act is upon Respondents, Ill. Rev. Stat. Ch. 111 1/2 §31 (1975), Processing and Books, Inc. v. Pollution Control Board, Ill. 2d \_\_\_\_\_, \_\_\_\_\_ N.E. 2d \_\_\_\_\_ (1976). Respondents by default have not made any presentation of this information. A properly run public water supply has high social and economic value. In this case E. Lysle Epperson, as the developer, had the first and best opportunity to provide a properly built well and distribution system and by not doing so has ignored his responsibility to the public health. Mr. Epperson has waived his right to present mitigation as have the two other defaulting Respondents by not participating in the resolution of the problem. The Board assesses a penalty of \$2,000 against E. Lysle Epperson to aid in the enforcement of the Act and penalties of \$200 each are assessed against Alpha Fay Epperson and Lysleen Hunter.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondents are found to be in violation of Sections 3.2.3.14, 6.2.2, 3.2.3.4(a), 3.2.1(a) of the Standards and Rule 3.12 of the Regulations and Section 18 of the Act; Rule 3.60 of the Regulations, Section 7.1.5 of the Standards and Rule 3.30 of the Regulations and Section 18 of the Act; Section 19 of the Act and Section 8.0.1 of the Standards, and thus, Rule 3.40 of the Regulations and Section 18 of the Act; Technical Policy Statements 212(B), 212E(1), 212E(2), 212G Rules 212, 312, 314(a), and 314(b) of Chapter 6: Public Water Supplies, and Sections 18 and 19 of the Act; Section 7(a) of "An Act to Provide for Safe-guarding the Public Health by Vesting Certain Measures of Control and Supervision in the Department of Public Health over Public Water Supplies in the State" and Rule 306 of Chapter 6: and Section 1 of "An Act to Regulate the Operating of a Public Water Supply."
2. The stipulating Respondents shall build wells in conformance with the agreement set out in the Opinion.
3. Respondents E. Lysle Epperson, Alpha Fay Epperson and Lysleen Hunter are found in default.

4. E. Lysle Epperson shall pay a penalty of \$2,000 and Alpha Fay Epperson and Lysleen Hunter shall each pay a penalty of \$200. Payment shall be made within 35 days of this Order by certified check or money order payable to:

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

5. A penalty of \$100 is assessed in conformance with "An Act to Regulate the Operating of a Public Water Supply." This penalty is suspended.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30<sup>th</sup> day of September, 1976 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board