

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1978

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
vs.) PCB 75-218
)
E. LYSLE EPPERSON, ALPHA)
FAY EPPERSON, and LYSLEEN)
HUNTER,)
)
Respondents.)

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

This matter comes before the Board on remand from the Appellate Court of Illinois, Fourth Judicial District. Originally a complaint was filed on May 28, 1975 by the Environmental Protection Agency (Agency). An amended complaint was filed on February 13, 1976. This complaint made allegations of violations of the Environmental Protection Act (Act), 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), several Rules of the Board's Chapter 6: Public Water Supplies and Section 1 of "An Act to Regulate the Operating of a Public Water Supply," Ill. Rev. Stat. Ch. 111 1/2 Par. 501 (1975). These allegations are more completely set out in the Board order of September 30, 1976 (23 PCB 581). In that order the Board made a final determination concerning forty-nine of the Respondents based on a stipulated agreement. This proceeding is concerned with the three remaining Respondents. A hearing was held in this matter on February 22, 1978.

In an order on April 27, 1978 the Board stated that if interrogatories answered after the hearing date raised new matters relevant to Respondent's defense that Respondents should be allowed an opportunity for further hearing. Since no new pleadings have been filed the Board assumes the Respondents intend to present no further evidence.

Requests for admissions were served on these Respondents in 1976. Since the requests went unanswered they are deemed admitted under Procedural Rule 314. The admissions are sufficient to find the alleged violations; however, the Board will examine the evidence presented at hearing.

E. Lysle Epperson testified at the hearing. Respondent,

Lysleen Hunter is Mr. Epperson's daughter. She owns a lot in Lakeview Acres (R. 81). There is no house on the lot nor any connection with the water system. Lysleen Hunter was never a member of the water association. The Board finds that there is no basis to find Lysleen Hunter in violation of the Regulations or Act. Respondent, Lysleen Hunter, is dismissed from the proceeding.

Respondent, Alpha Fay Epperson, who is 82 years old, is E. Lysle Epperson's mother. She did own a lot in the subdivision with a house on it (R. 54). She paid for water from the water supply system although she never attended the homeowner's meetings (R. 54). When the other resident respondents drilled individual wells Mrs. Epperson also put down a well (R. 55). E. Lysle Epperson's name appears on the loan for his mother's property because his parents were too old to get the loan on their own (R. 55). Mrs. Epperson does not presently own any property. The Board does find that the information provided at the hearing with the admissions is sufficient to find Mrs. Epperson in violation of the alleged Regulations and the Act. In making a final determination the Board must consider the factors of Section 33(c) of the Act. In this case there was no evidence presented as to any public injury. Mrs. Epperson did put in a well as did most of the other respondents in this case. The Board finds that a penalty would not aid in the enforcement of the Act in the case of Alpha Fay Epperson. A violation of Section 1 of "An Act to Regulate the Operating of a Public Water Supply" requires a minimum penalty of \$100.00. As noted in the Board order of September 30, 1976 this penalty is suspended.

Respondent E. Lysle Epperson was the original developer of this subdivision (R. 57). It was originally laid out in 1960 (R. 57). Prior to turning over the water system to the association of property owners Mr. Epperson stated that the water system was checked by the predecessor to the Agency and that no problems were noted (R. 59). Epperson did send monthly water samples when he operated the system (R. 48). When Mr. Epperson sold each lot \$300.00 was for the purchase of the water system (R. 59). Public Health Department officials did stop to see Mr. Epperson about the system in 1965 but left after determining Mr. Epperson was not selling water (R. 65). A Public Health permit was obtained when the well was constructed (R. 68). The mortgage company took over what property interests Mr. Epperson had left in approximately 1971 (R. 41, 42).

The facts presented to the Board do not present a clear picture of what has happened in this case. The very fact that this problem originated in the early 1960's adds much to the lack of clarity. Memories become dim and evidence is hard to provide. Violations could be found on the basis of the admissions alone; however, the Board finds that there is insufficient basis in the record to verify ownership and responsibility for the water system. The allegations against E. Lysle Epperson are dismissed.

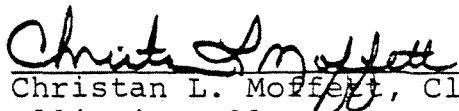
This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the order of the Pollution Control Board that:

1. Respondents Lysleen Hunter and E. Lysle Epperson are dismissed.
2. Respondent, Alpha Fay Epperson is found in violation as alleged and more fully set forth in the Board order of September 30, 1976, 23 PCB 587, 588.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 3RD day of August, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board