ILLINOIS POLLUTION CONTROL BOARD
October 30, 1980

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 79-70
EDWARD AND LYDIA SANDMAN, Respondents.	)	

WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

JOSEPH N. SIKES, VILLAGE ATTORNEY, APPEARED ON THE BEHALF OF THE INTERVENOR, THE VILLAGE OF HAWTHORN WOODS.

LYDIA SANDMAN APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

On March 29, 1979, the Environmental Protection Agency filed a complaint of seven counts charging the respondents, Edward and Lydia Sandman, with violations of the Environmental Protection Act (Act) of "An Act to Regulate the Operating of a Public Water Supply" Ill. Rev. Stat., 1977, Ch. 111½, par. 501 et seg. (PWS Act), and of Chapter 6: Public Water Supply (Chapter 6). On February 7, 1980, the Board imposed sanctions for respondents' failure to respond to discovery requests. Hearing was held in this action on April 21, 1980. Mrs. Sandman presented no testimony or witnesses in her behalf. The Village of Hawthorn Woods (Village), which was granted leave to intervene by the Hearing Officer, cross-questioned the Agency's witnesses and presented testimony of one witness in its behalf. Members of the press and public attended the hearing, and two residents of Hawthorn Woods presented testimony.

At the close of the day, the hearing record was ordered to be held open for 30 days. This was done in response to a motion of the Agency, which requested the opportunity to evaluate the testimony of the Village's witness and to perform further discovery, if necessary, before cross-examination of that witness. On June 4, the Agency moved to have the record closed and a briefing schedule set, stating that it had decided not to pursue further discovery. The Hearing Officer granted this motion by Order dated June 16, 1980. The Agency filed its final argument on July 2, 1980, but the respondents and the Village did not avail themselves of their opportunity to file closing arguments. In its argument, the Agency moved the Board to dismiss the Village from this cause

with prejudice if it did not state its interest in the cause in its final argument. No argument was filed by the Village. However, the Board finds that the Village made a showing of sufficient interest at the hearing on its motion to intervene, when it stated "...since the health of this area is concerned--this is within the Village of Hawthorn Woods, and we are concerned with the ultimate disposition of this matter" (R. 6). The Agency's motion is therefore denied.

The Sandman's system supplies water to some, but not all of the residents of the Acorn Acres Subdivision located in the Village of Hawthorn Woods (R. 84, Comp. Ex. 2). The Agency's witness, Mr. Leonard Lindstrom, and the Village's witness, Mr. Jack Lichter, concur in their description of the system, which was constructed and is currently maintained by Mr. Lichter's company (R. 83-86). Water is drawn from seven separate wells each 250-300 feet deep. Each of the wells and distribution systems, which were constructed between 1959-1971, were intended to be a private water supply system, that is, one which serves 9 or fewer properties in an unincorporated area (R. 83, §3(r) of the Act, §5 of the PWS Act). The wells do not interconnect (R. 31, 84), and only two of them share a common distribution system (Comp. Ex. 3, p. 2). Although nine or fewer properties were to be connected to each well, according to its builder (R. 83), the testimony of a resident of Acorn Acres, Heidi Brake, indicated that 68 homes were connected to the Sandman's system. The Agency estimated that 40-50 lots, serving about 140 persons are connected (Comp. Ex. 3, R. 84). The home water services are metered and uniform rates charged (Comp. Ex. 6, p. 2).

In its complaint, the Agency alleges that since at least 1970, the Sandmans' have owned and operated a public water supply located in Hawthorn Woods in Lake County. The Sandmans' were charged with the following offenses: 1) since September, 1973, failure to employ a certified treatment plant operator in violation of Rule 302 of Chapter 6, §18 of the Act, and §1 of the PWS Act, 2) since December, 1975, failure to chlorinate their water in violation of Rule 305 and §18 of the Act, 3) since December, 1974, failure to maintain the required fluoride ion concentration in violation of Rule 306 and §18 of the Act, 4) since January, 1975, failure to provide adequate hydro-pneumatic storage capacity for the system and to provide a fluoride meter, hydrants to flush the distribution system, and sufficient air blankets for the system's storage tanks, in violation of §18 of the Act, 5) since January, 1975, failure to submit requisite bacteriological samples in violation of Rule 309 and §§18-19 of the Act, 6) since December, 1974, failure to submit monthly operating reports in violation of Rule 310 and §§18-19 of the Act, and 7) since September, 1978, failure to submit "as built" plans of the system in violation of Rule 209 and §15 of the Act.

At hearing, the question arose as to whether the Sandman's system actually is a public water supply system within the meaning of §3(r) of the Act and §5 of the PWS Act. The Sandman's have admitted that they operate a public water supply system: by failing

to respond to the Agency's February 19, 1980 First Request to Admit Facts (Admissions 1-6), they have admitted the facts there set forth (Procedural Rule 314(c)). Even in the absence of this admission, the Board would find this system to be a public one.

Section 3(r) of the Act (formerly 3(j)), and Section 5 of the PWS in pertinent part, describe a public water supply as "mains, pipes, and structures" ..."...actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities ;..." Complainant's Exhibit 2 shows Acorn Acres to be within the corporate limits of the Village of Hawthorn Woods. Additionally, whatever the Sandmans' original intent may have been, the Board finds that a unified public water system has developed since as many as 68 homes are served, there is unified management and charges throughout the system, and two of the wells' distribution systems are inter-connected. EPA v. Pow Wow Club, Inc., PCB 74-50, 13 PCB 113, 117 (July 18, 1974), EPA v. Timberlane Acres Assoc., PCB 75-248, 19 PCB 725, 726 (January 22, 1976).

By failing to respond to the Agency's First Request to Admit, the Sandmans' have also admitted to the truth of all of the rest of the Agency's allegations. In light of these admissions, and the testimony and exhibits introduced by the Agency at hearing in support of its complaint,* the Board finds Edward and Lydia Sandman to have violated all of the aforementioned sections of Chapter 6, the Act, and the PWS Act.

The balance of the testimony at hearing relates to mitigation of the offense, and to the considerations required to be addressed by Section 33(c) of the Act. The Agency witness Lindstrom testified that Mr. Sandman is a competent operator of the existing system, even though he is not certified, and that the water distributed by the Sandmans is of generally good quality (R. 60-63, 121-123). Of the bacteriological samples received by the Agency only those of August-September, 1978 showed contamination (Comp. Ex. 3, p. 4, R. 48-49). However, both Mr. Lindstrom and Mr. Lichter testified that the water is of good quality naturally, rather than as a result of any finishing by the Sandman system.

The residents of Acorn Acres concur in these assessments. Mrs. Heidi Brake introduced two exhibits showing community support for the Sandmans as operators of the system, and for the safety, adequacy and quality of the chlorine-free, fluoride-free water supplied by the Sandmans. The first of these is a letter signed by Robert M. Gardner. The second is a petition addressed to the

*Count I: Admission 9, R. 29-30, 105, Comp. Ex. 3 and 6; Counts II and III: Admissions 10 and 11, R. 36, 105, Comp. Ex. 3 and 6; Count IV: Admission 12, R. 26-38, 58-60, 105-106, Comp. Ex. 3 and 6; Count V: Admission 13, R. 30-36, 106, Comp. Ex. 3, 4, and 6; Count VI and VII: Admissions 14 and 15, R. 38, 106, Comp. Ex. 3 and 6.

Agency requesting that it dismiss the complaint against the Sandmans. This petition was signed by owners of 63 of the 68 homes connected to the system, with owners of two of the remaining 5 homes unavailable, and 2 more homes empty and on the market (R. 124-130, Heidi Brake Ex. 1 and 2).

The Agency's testimony generally, as well as Exhibits 1 and 2, indicate its belief that the Sandmans' system is of social and economic value to the community and is suitable to the area in which it is located. However, the lack of a certified operator, submission of insufficient samples, failure to submit as-built plans, and the other operation and maintenance deficiencies are believed to interfere with the protection of the health and general welfare of Illinois citizens (e.g. 30-34, 36-40).

In the opinion of Agency witness Lindstrom, it is both technically practical and economically reasonable for the Sandmans to correct the equipment deficiencies. This witness suggested that there are three compliance options. The first option, that of dividing the system into 9 private systems, does not solve the problem, as Acorn Acres is located in an incorporated area. The second option suggested would involve installation of necessary fluoridation and chlorination equipment at each well for about $1000 each, erection of a housing at each well for about $2000 each, and payment of an operator to make daily inspections for about $20 daily, in addition to the $150 monthly cost of a certified operator to supervise the system on a twice monthly basis. (Mr. Lichter estimated the cost to install and house necessary equipment to be $15,000 per well, rather than the $3,000 suggested by Mr. Lindstrom (R. 91).*) The third option suggested was to rebuild the Sandman's system to be a more conventional public supply, with only one or two wells and larger mains. This was estimated to cost approximately $100,000 to $250,000 (R. 76-78, 54).

Consideration of all the facts and circumstances of this case in light of Section 33(c) leads the Board to conclude that in this case, imposition of a nominal penalty is a necessary and appropriate

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*This testimony, and the earlier cross-questioning of Mr. Lindstrom, by the Village was allowed by the Hearing Officer over the Agency's objection that the introduction of such information was a circumvention of the Board Order entered in this case on February 7, 1980 (R. 64-66, 92). As a sanction for continued failure to respond to discovery requests, the Board debarred the Sandman's from presenting testimony concerning, among other issues, their ability to pay any penalty imposed, and the economic reasonableness and technological feasibility of compliance with the Act (37 PCB 311, February 7, 1980). While it does seem that the Village presented much the same evidence as the Sandmans might have themselves, the Board finds that the Hearing Officer was correct in his ruling.

aid to enforcement of the Act. The Sandmans' received notice of the deficiencies observed by Agency inspectors both by telephone and by letter in 1975 and in 1978 (Comp. Ex. 4, 7, and 12, Ex. B, D, E thereto), but no actions towards compliance in any area were noted in the record. Compliance was shown to be technically achievable. Compliance usually imposes economic burdens; if the burden is believed to be arbitrary or unreasonable, variance relief may be sought. While the Board notes that the Acorn Acres water users strongly support maintenance of the status quo, and the water source at present is of high quality, we must observe that the lack of problems with the system is entirely fortuitous.

The Board has noted this in its Opinion in R78-8, October 30, 1980. Even if a water source is at present "bacteriologically pure," it can easily become contaminated before it reaches the consumer. Contamination can occur suddenly, and for a variety of reasons. A system operator can cause contamination, either by mistakes in operation, or by mere contact with the system while he is carrying or suffering from an infectious disease. Contamination can occur during system installation or repair, as well as a result of back siphonage, which can suck contaminants into a system through leaks or cross connections, or of back pressure.

The continued good health of Acorn Acres residents is jeopardized by the lack of adequate sampling of and reporting concerning the water supplied by the system, and by the Sandmans' failure to provide the Agency with "as-built" plans of the system, particularly since the system is not chlorinated as a protection against sudden, unexpected contamination. As the system is now monitored and existing, problems which develop might not be noticed and traced until major adverse health effects had been felt. This concern would become even more pressing if the Sandmans' were replaced by less competent system operators.

The Board hereby assesses a penalty of $100. The Sandmans shall also be ordered to cease and desist from violations of Chapter 6, the Act, and the PWS Act, and to develop a plan to bring their public water supply system into compliance.

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

ORDER

1. Respondents Edward and Lydia Sandman are hereby found to have violated Section 1 of "An Act to Regulate the Operating of a Public Water Supply, Sections 15, 18, and 19 of the Environmental Protection Act and Rules 209, 305, 306, 309 and 310 of Chapter 6: Public Water Supply.

2. Within 60 days of the date of this Order, Respondents shall submit to the Agency a compliance plan for their public water supply system.

3. The Respondents shall cease and desist from violation of the aforementioned Rules and Acts within 180 days of the date of this Order, except that submission of requisite samples and monthly reports shall be commenced immediately.

4. Within 90 days of the date of this Order, Respondents shall pay, by certified check or money order payable to the State of Illinois, a penalty of $100 which is to be sent to: Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, IL 62706.

5. The Agency's motion to dismiss the intervenor, the Village of Hawthorn Woods, is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 30th day of October, 1980 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board