

ILLINOIS POLLUTION CONTROL BOARD  
December 4, 1975

PEOPLE OF THE STATE OF ILLINOIS, )  
Complainant, )  
 )  
v. ) PCB 75-116  
 )  
CITIZENS UTILITIES COMPANY OF )  
ILLINOIS, an Illinois Corporation, )  
Respondent. )

Mr. James K. Jencks, Assistant Attorney General, appeared on behalf of Complainant.  
Mr. Daniel J. Kucera, Chapman and Cutler, appeared on behalf of Respondent.

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) upon the March 13, 1975, Complaint filed by the People of the State of Illinois (State) against Citizens Utilities Company of Illinois (Citizens) charging a continuing violation of Section 18 of the Environmental Protection Act (Act) from July 1, 1970 to the filing of the Complaint. In particular, the Respondent is charged with failing to direct and maintain its public water facilities so that water shall be safe in quality, clean, adequate in quantity and of satisfactory mineral character for ordinary domestic consumption in that the water supplied contained offensive odor, oil, a residue, is discolored and unpalatable due to the presence of iron and has been without adequate pressure.

On October 20, 1975, a hearing was held at which time a "Settlement Stipulation" was filed with the Board. While the facts, as stipulated, support a finding of violation of Section 18 of the Act, and while the plan of compliance, on the whole, is adequate, the Board must reject the stipulation.

The Board does so for two reasons. On page eight of the stipulation, the parties provide for the flushing of the distribution system at least twice per year. Nowhere do the parties provide for notice to be given to the consumers of the time of said flushing. The Board feels this notice to be mandatory.

Secondly, the stipulation, at page nine, provides that Citizens pay "in lieu of a civil penalty," the sum of \$1,000.00 to the general revenue fund of the State of Illinois. The Board finds that on the basis of the stipulation, Citizens

has violated Section 18 of the Act. No reason is furnished for permitting Respondent to pay said amount in lieu of a penalty. The Board welcomes stipulations which provide for the future protection of the environment and an adequate money penalty, EPA v. Custom Farm Services 3 PCB 310 (1971). However, the parties can only enter into binding stipulations with regard to facts and not to legal conclusions, EPA v. Soil Enrichment Materials Corporation 3 PCB 239 (1971). The Board considers the term in this settlement order which provides for a payment in lieu of penalty to be a stipulation to a legal conclusion. The Board finds that a penalty is appropriate here, considering that the compliance program is one of general upkeep and that the reason for violation was apparently the result of Respondent's failure to properly maintain its public water supply facility.

Therefore, the stipulation will be rejected by the Board. This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Board that the October 20, 1975, Settlement Stipulation be and is, hereby, rejected. The parties are herewith ordered to hearing or amendment of their settlement proposal not inconsistent with today's Interim Opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4<sup>th</sup> day of December, 1975 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board