

Lakes Estates (R. 142). John Howard of the Division of Public Water Supplies, Environmental Protection Agency, stated that Russell and Axon had submitted plans but that these plans were never approved (R. 103,105). The record further indicates that in November of 1970, Mr. Reeves employed another engineering firm, Barttelbort and Rhutasel, to draw up new plans and specifications for the water system (R. 152). Plans were submitted and were approved by the Agency February 3, 1971 (EPA Ex. 3). Subsequently Mr. Reeves found the cost of constructing the new system prohibitive and directed his consultants to submit revised plans. The latter were approved August 10, 1971 (EPA Ex. 2). The revised system was put into operation about October 4, 1971, and the Agency was notified that the system had been installed October 6, the day before the hearing in this case (R. 157, Reeves Ex. 2).

The evidence clearly establishes that Mr. Reeves constructed the initial water system at Timber Lakes Estates without prior approval of the Department of Public Health. The record indicates that he began to supply water to the residents in the fall of 1967 (R. 177). Not until February of 1971 were plans for the system approved, and the system had still not been inspected as of October 7, the day of the hearing in this case. The fact that Mr. Reeves' original consultants told him that a permit had been received is not an adequate defense. As we held in a prior case (City of Mattoon v. EPA, PCB 71-8, April 14, 1971), responsibility for complying with the law cannot be abdicated simply by employing an independent contractor. Mr. Reeves had an obligation to ensure that the necessary steps had been taken to comply with all applicable regulations. We find Respondent has violated Section 2 of the Public Water Supplies Act and Rules 2.01 through 2.90, inclusive, of the Water Rules.

At the hearing Mr. Reeves disavowed any continuing responsibility for obtaining approval of plans and specifications for the water system and for ensuring that the water supply conformed to State standards (R. 140). As a basis for his disclaimer, Mr. Reeves cited an agreement made July 26, 1969, between himself and certain lot owners in Timber Lakes Estates. The agreement established the Timber Lakes Owners Committee whose representatives were to be responsible for operating and maintaining both the sanitary sewer system and the water system in the subdivision. Mr. Reeves argued that as a result of this agreement he was no longer the owner of, nor in control of, the water system. However, the same agreement clearly establishes that the responsibility for bringing the water system into compliance with State regulations lies with Mr. Reeves.

11. The Owners and Developers certify that as of the effective date of this agreement, the Sanitary Sewer System and Water System meets the specifications of the Sanitary Water Board of the State of Illinois or if not that the systems will be brought up to said specifications at the Owners and Developers sole cost and expense.

Compliance had still not been achieved by the date of the hearing. Mr. Reeves' responsibility with regard to the water system does not cease until full compliance is attained. Respondent is in violation of Section 15 of the Environmental Protection Act and is in continuing violation of Rules 2.01 through 2.90, inclusive, of the Water Rules.

The complaint next alleges that Mr. Reeves failed to maintain the water supply to such an extent that the water was not assuredly safe in quality, was not clean, was not adequate in quantity, and was not of satisfactory mineral character for ordinary domestic consumption, in violation of Section 7 of the Public Water Supplies Act and of Section 18 of the Environmental Protection Act. The question of the adequacy of the water in terms of quantity is considered later when we deal with the more specific allegation of inadequate storage facilities. Certainly the record indicates that at times the water has not been of good quality, by any reasonable standards. Chemical tests of the water indicated that the iron and manganese content, as well as the hardness of the water, at times exceeded the recommended maximums of the U. S. Public Health Service Standards for Drinking Water (Reeves Ex. 3). On two occasions bacteria indicative of pollution were present. There is ample evidence that the residents of Timber Lakes Estates found the water to be unsuitable for most domestic uses. Some residents had obtained drinking water from other sources ever since they moved into the subdivision (R. 178, 185, 193). Some testified that the water could not be used for cooking or bathing (R. 186, 187, 188). All described it as having a foul taste and odor at times (R. 177, 186, 188, 192). Some residents testified that the quality of the water had improved somewhat since the new system had been operating (R. 189, 193). Nevertheless, we find Respondent has violated Section 7 of the Public Water Supplies Act and Section 18 of the Environmental Protection Act.

The Agency further alleges that Respondent failed to provide adequate treatment for the iron content of the water, in violation of Rule 3.13 of the Water Rules. We have already noted that at times the iron content exceeded the recommendation of the U. S. Public Health Service. Rule 3.13 states that "Ground waters with mineral characteristics exceeding the recommended maximums of the United States Public Health Service Standards for Drinking Water should receive proper treatment to reduce them to satisfactory limits." A violation was clearly proved.

The complaint next alleges that Mr. Reeves failed to provide chlorination facilities for the water supply, in violation of Rule 3.15 of the Water Rules. The record indicates that on an unspecified date, Charles McGaughey, who operated the water system for Mr. Reeves, was informed by "the State" that chlorination was necessary to assure a safe water supply (R. 170). The approval by the Agency of Respondent's plans and specifications for the water system indicate that chlorination was to be provided (EPA Ex. 2 and 3). Chlorination was apparently provided only as of about October 4, 1971 (R. 158). However, Rule 3.15 relates only to water from a water supply located in a limestone aquifer. There is no evidence that the water supply serving Timber Lakes Estates is located in such an aquifer. We find the allegation to be deficient.

The Agency also alleges that Mr. Reeves failed to provide adequate storage facilities for the water supply, in violation of Rule 3.30 of the Water Rules. An inspector for the Agency stated that until his last visit to the site on October 6, 1971, only thirty-five gallons of storage capacity were provided (R. 51, 52). The same inspector testified that the State requires a capacity of thirty-five gallons per person. This was not disputed by Respondent. On October 6, an additional storage tank was present, of unknown capacity (R. 75). A violation was shown.

The complaint further alleges that Mr. Reeves failed to assure the continued maintenance and operation of the water supply by failing to provide that it be under the direct supervision of an appropriate corporation or organized body, in violation of Rule 5.01 of the Water Rules. The Rule requires that supervision be provided by "...a municipal or private corporation or a regularly organized body governed by a constitution and by-laws requiring regular election of officers." The aforementioned agreement between Mr. Reeves and the lot owners did establish such an organized body, however. According to the terms of that agreement the newly formed Timber Lakes Owners Committee was to elect three trustees to operate and maintain the sewage and water systems. Mr. Reeves testified that the Committee never did become functional (R. 126). While it is true that Mr. Reeves failed to bring the water system into compliance with State standards (and we have so ruled), we hold that he did meet his obligation to provide for supervision of the system by an organized body. It was the responsibility of the lot owners to organize themselves further once the Owners Committee was established. No violation of Rule 5.01 was proved.

In summary, we find violations with respect to construction of a public water supply without proper approval, failure to maintain the water supply properly, failure to supply adequate treatment for iron, and failure to provide adequate storage facilities. For these violations we will assess a penalty of \$3000. Clearly, an intolerable situation has existed at Timber Lakes Estates for an extended period of time. We trust that the new water system approved by the Agency will at last assure the long-suffering residents of the subdivision a water supply of adequate quantity and quality. The record indicates that the new system is now in operation. We shall order Respondent to file an affidavit with the Board by November 30, 1971, certifying that all components of the approved system are in operation. But since operation of the system does not automatically guarantee acceptable water quality, we shall order Respondent to file with the Board a report no later than December 31, 1971 that the water meets applicable standards. Water quality may be confirmed by tests of the Agency or an independent laboratory. The tests are to be supported by an affidavit of the Respondent assuring that the samples fairly represent the water supply.

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

ORDER

1. By November 30, 1971, George Reeves, Jr. shall file an affidavit stating that all components of the water supply system serving the residents of Timber Lakes Estates are in operation.
2. By December 31, 1971, George Reeves, Jr. shall file a report showing that the water meets all applicable provisions of the Public Water Supply Systems Rules and Regulations. Either a report from the Environmental Protection Agency or tests from an independent laboratory accompanied by an affidavit that the samples tested fairly represent the quality of the water is acceptable.
3. George Reeves, Jr. shall, within thirty-five days from the date of entry of this order, submit to the State of Illinois the sum, in penalty, of \$3000.
4. George Reeves, Jr., individually and d/b/a Timber Lakes Estates, shall immediately cease and desist from further violations of the Environmental Protection Act, the rules and regulations promulgated thereunder, the Public Water Supplies Act and the Public Water Supply Systems Rules and Regulations.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 11 day of November, 1971.


