

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
DONALD F. SIZELOVE, individually and)
d/b/a CENTRAL REALTY AND DEVELOPMENT)
CO., and THE MARK IV CORPORATION, a)
corporation,)
)
Respondents.)

PCB 73-279

OPINION AND ORDER of the Board (by Mr. Zeitlin)

This case was originally filed by the Environmental Protection Agency (Agency) as an enforcement action on July 10, 1973. It concerns the water supply for residents of the Washington Heights Subdivision, and the first addition thereto, located in McLean County, Illinois, near the City of Bloomington. The action has been the subject of several prior orders of the Board, on motions, which will be discussed below. After nearly one and one-half years of dispute, however, the parties arrived at a mutually acceptable Stipulation and Proposal for Settlement (Stipulation), which, with a subsequent Amendment, forms the basis of this Opinion and Order.

The Complaint alleged in essence that Respondent violated various provisions of the old Public Water Supply Rules and Regulations (Rules), which were continued in effect by Section 49 (c) of the Environmental Protection Act (Act). (Hereinafter only Respondent Sizelove will be referred to, and all activity or other matters attributed to him shall be understood to apply to all Respondents, except as noted). The Complaint also alleges that Respondent's actions were in violation of the Act itself; the specific violations included:

1. Inadequate pressure, (20 p.s.i. standard), in violation of Sec. 18 of the Act, old Rule 3.40 of the Rules, and Sec. 8.10 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, (hereinafter "standards"), incorporated by reference in the old Rules.

2. Inadequate water storage capacity, (35 gallon per person standard), in violation of old Rule 3.30.

3. Excessive levels of iron in the water, (0.30 mg/l standard), in violation of old Rule 3.13.

4. Failure to submit water samples for analysis, or operation reports, in violation Sec. 19 of the Act.

5. Failure to submit plans and specifications to the Agency, and failure to obtain approval before construction, of a public water supply installation, in violation of Sec. 15 of the Act.

6. Distribution of water with objectionable odor, color and taste, in violation of Sec. 18 of the Act.

(Note that the Board has since the inception of this action promulgated the new Chapter 6, Public Water Supply Rules and Regulations, superceding the old Rules at issue here).

HISTORY

Respondent Donald Sizelove, individually and d/b/a Central Realty and Development Company, originally purchased the Washington Heights Subdivision on or about May 20, 1970. (Beverly Sizelove, a joint tenant in the subdivision, is not a party to this action). The first addition to the subdivision was platted and recorded on or about July 24, 1970. The subdivision and its addition contain 25 lots, each of which contains an individual residence. At the time this action was commenced by the Agency, 24 of those houses were occupied.

In the course of developing the Washington Heights Subdivision, Respondent Sizelove constructed three wells, designed to provide domestic water to each of the houses. The first of these, drilled in June, 1970, was set up originally to serve lots 2 through 10. Well No. 2 was drilled in December 1970, and designed to serve lots 13 through 18, 26, and 27. Well No. 3 was drilled in August or September, 1971, and designed to serve lots 1 and 19 through 25. Each of the three wells has a separate 550 gallon pressure storage reservoir; the wells are constructed in pits, each having a pump served by separately metered electrical systems. Water is distributed to the lots in two inch plastic pipe.

Respondent's Supplementary Answer to Written Interrogatories and Motion to Produce Compliance, together with the Stipulation, indicate that Respondent was responsible for all construction and maintenance of the water distribution system for the Subdivision, with one exception. (That exception, a pump replacement by the affected residents, is not material to the findings here). Respondent was originally informed in August, 1970, that the Agency considered the water distribution system in the subdivision to be a Public Water Supply. At that time, Wells 1 and 2 were in operation and were not interconnected; Respondent claimed that as each well served less than 10 homes, he did not consider the distribution of water within the subdivision to constitute a Public Water Supply. In 1971 Wells 2 and 3 were interconnected with manual valves.

The Agency first received a complaint in June, 1972, regarding the quality and quantity of the water being distributed, from one of the residents of the subdivision. After that, the Agency made inspection visits to the Washington Heights Subdivision on several occasions in 1972 and 1973. The results of those visits, Group Exhibits A, B and C to the Stipulation submitted by the parties, indicate violations supported by discolored water, gas presence in the water, low pressure, and excessive quantities of iron in the water. (These findings are also assented to by the parties in the Stipulation itself). This enforcement action was then instituted by the Agency, through the Attorney General, on July 10, 1973.

Respondent's Motion to Strike Complaint and Dismiss, filed on January 18, 1974, was denied by a Board Order of January 24, 1974. Nor did the Board grant Respondent's Motion for Amended Complaint or Bill of Particulars. And on November 22, 1974, the Board denied the Agency's Motion to Add Parties, which would have added as parties three "Homeowner's Associations". (Those Associations are further discussed below).

In the Fall of 1973, the parties received information concerning a possible expansion of the Bloomington Township Water District (District), which would allow that District to supply water to an area including the Washington Heights Subdivision. The District had applied for a grant from the Farmer's Home Administration for that purpose, and was soliciting commitments for water purchase from individual residents of the area. Further, the District had entered negotiations with the City of Bloomington for the purchase of water. (The Bloomington City Council later, on January 27, 1975 approved a contract to sell water to the District.) In July, 1974, the District received a suitable commitment from the Farmer's Home Administration, conditioned upon commitments from 80% of the residents to be served. The District anticipates being able to supply water to the Washington Heights Subdivision area in late Summer, 1975.

A hearing was held in the matter on November 26, 1974, in Bloomington, Illinois. The parties at that time entered a Stipulation, and renewed orally their Motion to Add Parties. (The latter Motion was resubmitted to the Board in written form on December 6, 1974). In essence, the parties by this document adopted water service from the Bloomington Township Water District as the long term solution to their problems, and proposed an interim plan pending connection to that District.

In an Interim Order adopted January 23, 1975, the Board rejected the Stipulation submitted by the parties. The Board at that time stated that it was not opposed to the factual provisions of the proposed Stipulation, or to the provisions for penalty and compliance. But the Board found that several technical difficulties in the Stipulation provisions prohibited acceptance, and returned the matter to the parties for further negotiation and some redrafting of the Stipulation.

An Amended Stipulation and Proposal for Settlement (Amended Stipulation) was then submitted to the Board on March 19, 1975, after a further hearing held in Bloomington on March 18, 1975. In compliance with our Interim Order of January 23, 1975, the parties in that Amended Stipulation accomplished the following:

1. Submitted proof that three "Homeowners Associations" had acquired the necessary legal status to allow their assumption of certain property and responsibilities which would be required under the interim compliance plan;
2. Submitted binding agreements under which those Homeowners Associations are bound to the terms of the Amended Stipulation;
3. Submitted a written communication from the Bloomington Township Water District evidencing the intent of that District to supply water to the Washington Heights Subdivision, which will be required to achieve long term compliance in this matter;
4. Deleted from the original Stipulation certain deficient clauses regarding final termination of cause and the disposition of any penalty to be levied.

AMENDED STIPULATION

With its later Amendment, the Stipulation in this case now provides facts on which the Board may base its decision, a provision for penalty should the Board find that those facts support a finding of violation on the part of Respondent, and an interim plan to provide water to the Washington Heights Subdivision until the Bloomington Township Water District can provide such water.

Both the Agency and Respondent in this case indicate that connection with the District is the best long run solution to water supply problems in the Washington Heights Subdivision. The parties have estimated that an upgrading of the present system to meet public water supply standards would cost between \$20,000 and \$100,000. Plans near the lower end of that range would require at least 400 days to construct, (by which time a hookup to the District is expected), and could not be guaranteed to assure compliance with the Board's requirements for a Public Water Supply. A plan costing up to \$100,000 would still take in excess of 18 months to become effective.

Pending hook-up to the District, an interim plan provides that Respondent will convey to the three "Homeowners Associations" all of his remaining interest in the Subdivision, including the present water distribution system. Existing Well No. 2 is to be dropped from the system, a new well dug, and the three wells then remaining disconnected from each other; the three Homeowners Associations will then each operate an independent system to supply water to their respective members. The resulting arrangement, to operate until water is supplied by the District, would be:

	<u>Existing Well No. 1</u>	<u>Existing Well No. 3</u>	<u>New Well</u>
Lots served:	1 thru 9 (Association No. 2)	19 thru 27 (Association No. 3)	10, 13 thru 18 (Association No. 1)

Under this arrangement, Respondent Sizelove will take the following actions:

1. Pay for the work described above.
2. Pay for the examination, and rehabilitation where necessary, of the existing distribution system.
3. Pay all repair and maintenance on the new well for a period of one year, exclusive of electrical operating costs.
4. Convey his remaining interest in the Washington Heights Subdivision to the respective Homeowner's Associations, including the wells, distribution lines, pumps, and "outlot No. 28", on which one of the wells is situated.
5. Deposit with an escrow agent \$625, amounting to \$25 per house, to be used as payment to the Bloomington Township Water District for the required sign-up charge.
6. Pay to each of the three Homeowners' Associations an amount equaling \$75 per house for payment of the final tap-on fee, which will be charged by the Bloomington Township Water District, and an additional amount to be used for the rental of commercial water filters by the individual homeowners. That amount breaks down as follows:

Association No. 1	\$ 980
Association No. 2	1,260
Association No. 3	1,260
TOTAL:	<u>\$3,500</u>

The Amended Stipulation also provides that the Board may, based on the facts presented, find that Respondent Sizelove has violated the Act and/or the old Rules, as charged in the Complaint. In the event that the Board should so find, the Amended Stipulation makes provision for a penalty of \$750.

As was noted above, the evidence submitted at the November 26, 1974 hearing, and the Stipulation as originally entered on that date, clearly provide a sufficient basis for the Board to reach a finding of violation on each of the points alleged in the Complaint. Insofar as the parties have assented to such a finding, it is not necessary that we consider here each of the provisions of Section 33(c) of the Environmental Protection Act, as would normally be the case.

As to the penalty provision of the original Stipulation, (the amount of which was not affected by the changes contained in the Amended Stipulation), we would not normally find the sum of \$750 sufficient in a case of this

type. The record here indicates that Respondent was notified very early in the history of the Washington Heights Subdivision that the Agency considered the subdivision water system to constitute a Public Water Supply; Respondent nonetheless continued operation in violation of the Old Rules and the Act. But in mitigation, Respondent's considerable outlays to achieve compliance, and his apparent cooperation with the Agency in achieving such compliance, permit us to find that amount acceptable.

Finally, the Agency consents to the dismissal of Respondent Mark IV Corporation, as there is no indication that that Respondent is in any way connected to the Washington Heights Subdivision or with the subject matter of this action.

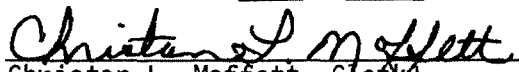
This Opinion constitutes the Board's findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent Mark IV Corporation is dismissed as a party Respondent.
2. Respondent Donald F. Sizelove, individually and d/b/a Central Realty and Development Co., is found to have violated or permitted violations of Sections 15, 18, and 19 of the Illinois Environmental Protection Act, and to have violated or allowed to be violated Rules 3.13, 3.30, and 3.40 of the old Public Water Supply Rules and Regulations, continued in effect by Section 49(c) of the Act.
3. Respondent Donald F. Sizelove, individually and d/b/a Central Realty and Development Co., shall pay a penalty of \$750 for said violations. Payment is to be made within 35 days by certified check or money order to the State of Illinois, Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
4. Respondent Sizelove, individually and d/b/a Central Realty and Development Co., shall conform fully with the provisions of paragraphs 3 through 7 of the Stipulation and Proposal for Settlement as Amended, submitted in this proceeding.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of May, 1975 by a vote of 5 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board