

ILLINOIS POLLUTION CONTROL BOARD

July 18, 1974

ENVIRONMENTAL PROTECTION AGENCY)
COMPLAINANT)
)
)
v.) PCB 74-50
)
)
POW WOW CLUB, INC., a not-for-)
profit Illinois corporation)
RESPONDENT)
)

MR. STEPHEN Z. WEISS, ASSISTANT ATTORNEY GENERAL, and MR. STEPHEN H. GUNNING, ATTORNEY, in behalf of the ENVIRONMENTAL PROTECTION AGENCY
MR. RICHARD HALDEMAN, ATTORNEY, in behalf of the POW WOW CLUB, INC.

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This case comes to the Board on complaint of the Illinois Environmental Protection Agency (hereinafter referred to as the Agency), filed January 28, 1974.

On March 1, 1974, the Agency filed an amended complaint.

Hearing was held April 30, 1974.

The amended complaint charges that:

1) The Pow Wow Club, an Illinois not-for-profit corporation, at all times pertinent to the amended complaint owned, operated, and controlled a public water supply system furnishing drinking water to the Tullock Wood Trails Subdivision near Rockford, Illinois.

2) From March 3, 1972, and continuing every day to the filing of the Amended Complaint, Respondent has failed to "direct and maintain the continuous operation and maintenance of the public water supply system so that water shall be assuredly safe in quality for ordinary domestic consumption" in violation of Sec. 18 of the Environmental Protection Act.

3) That from on or about March 3, 1972, and every day to the filing of the Amended Complaint, Respondent has operated wells numbered 1, 3, 4, 6, 8, 9, 10, 11, 12, 13, and 14 constructed in pits without proper safety adaption in violation of Rule 3.12 of the Public Water Supply Systems Rules and Regulations which incorporate Sec. 3.2.3.14 and 6.2.2 of the Great Lakes-Upper Mississippi River Board of Generating Engineers Recommended Standards for Water Works (hereinafter referred

to as 10-State Standards).

4) From on or about March 3, 1972, and continuing every day to the filing of the Amended Complaint, Respondent has failed to provide a water storage capacity of 35 gallons per person and failed to locate the water storage tank above the ground completely housed or earth-mounded with one end projecting into an operating house, to prevent freezing in violation of Rules 3.30 of the Regulations and Sec. 7.15 (a) of the Standards and Technical Release 10-8.

5) From on or about March 3, 1972, and continuing every day to the filing of the Amended Complaint, Respondent has failed to fluoridate such public water supply so as to maintain a fluoride ion concentration of 0.9 to 1.2 mg/l in all water discharged into the distribution system violating Rule 5.28 of the Regulations.

6) That from on or about August 3, 1970, and continuing every day to the date of filing the Amended Complaint, including but not limited to March 4, 1971, April 16, 1971, June 9, 1971, July 22, 1971, August 3, 1971, October 21, 1971, November 18, 1971, and February 10, 1972, Respondent has failed to submit plans and specifications of charges or additions to the public water supply system to the Agency for written approval and has received no such written approval before beginning construction, violating Sec. 15 of the Environmental Protection Act.

7) From on or about April 27, 1972, and continuing to the date of the filing of the Amended Complaint, Respondent has failed to submit water samples for analysis and reports of operation as required by Sec. 19 of the Environmental Protection Act.

8) That from on or about September 12, 1973, to the filing of the Amended Complaint, Respondent has failed to employ a certified water supply operator as required by Sec. 1 of an Act to Regulate the Operations of Public Water Supply (Ill. Rev. Stat. Chap. 111 1/2, Sec. 501).

The threshold question in this action is whether the water supply system operated by Respondent is a public water supply system.

A public water supply system is defined as,

"All mains, pipes, structures through which water is obtained and distributed to the public, including wells and well structures (emphasis added), intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks (emphasis added), and appurtenances, collectively or severally, actually used (emphasis added) or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities or unincorporated communities where 10 or more separate lots or properties are being served, or intended to be served; state-owned parks and memorials; and state-owned educational, charitable, or penal institutions." (Ill. Rev. Stat., Chap. 111 1/2, Sec. 3 [j]).

In interpreting a regulation that is health-related, the Board will interpret it to cover as many situations as fall under the Act with a strict construction. The Public Water Supply Regulations were promulgated to protect the public health, safety, and welfare. The Board finds that the water supply system operated by the Pow Wow Club is a public water supply.

This water supply system services the Tullock's Woods Subdivision. It was the intent of the developer to have each group of 9 homes serviced by one well, for the express purpose of keeping the water supplies as private (R. 146). Each home owner was to own one-ninth of the well serving his property (R. 146). In 1965, before the entire system could be completed, the developer went bankrupt (R. 144). In order to provide a continuity in ownership and water supply to the subdivision (and to clear things out of the bankruptcy), Respondent purchased the water system on a bill of sale (R. 145).

It appears Respondent was originally incorporated to manage a park and clubhouse facility located in the subdivision (R. 149). It now charges residents of the subdivision \$8 per month for water (R. 140). There is also a substantial charge to new homeowners who want to tap into the water system (R. 139).

Whatever the intent of the original developer was, the fact is today there is a unified water supply system serving the subdivision. As Environmental Protection Agency Exhibit #9 points out, eight wells are now serving more than nine lots. There are gate valves located throughout the system to link the wells together. There is unified management and charges throughout the system. Therefore, it is the conclusion of the Board that the water supply system operated by Respondent is a public water supply.

Sec. 1, Act to Regulate the Operations of Public Water Supply, requires that all public water supplies in Illinois shall have on their operational staff at least one natural person certified as competent as a water supply operator under the provisions of this Act. Mr. Dooley, manager of the Pow Wow Club, stated that he had no license to be a qualified water operator and that he was not aware of anyone on the staff being so certified (R. 127). Also, there appeared to be no record of a certified operator at the Respondent's system in the records of the Agency (R. 50). The Board finds the Respondent violated Sec. 1 of An Act to Regulate the Operation of Public Water Supply.

Sec. 19 of the Environmental Protection Act requires that owners and custodians of public water supplies submit samples for analysis and such reports of operation pertaining to the sanitary quality or adequacy of such supplies as may be requested by the Agency. It is admitted by Mr. Dooley that upon receiving water sample bottles from the Agency, they were not returned, and in fact were put in storage (R. 135). Since they were not returned within 15 days as required by Sec. 19 of the Act, the Board finds Respondent violated Sec. 19 of the Environmental Protection Act.

Section 15 of the Act requires owners of public water supplies or custodians to submit plans and specifications to the Agency and to obtain written approval before construction of any of any proposed public water supply installations, changes, or additions are started.

Mr. Palm, of the Environmental Protection Agency's Division of Public Water Supply Permit Section, testified that after search of the Agency's files, no record of plans or designs has been filed in the last 2 1/2 years (R. 16-17).

Mr. Dooley admitted that no designs or plans have been submitted to the Agency, when changes were constructed in the system (R. 135).

Testimony of Charles Bell, of the Agency's Division of Public Water Supply, showed that during the period of his investigation, sump pumps were added to certain of the wells in the system (R. 47).

Therefore, the Board finds that Respondent has violated Sec. 15 of the Environmental Protection Act.

Rule 5.28 of the Regulations requires that a fluoride ion concentration of 0.9 to 1.2 mg/l be maintained in all water discharged to the distribution system.

Mr. Bell testified that he saw no fluoridation equipment attached to the system (R. 48). Mr. Dooley also admitted that there was no fluoridation equipment attached to the system, and no fluoride was being added (R. 133). There being no rebuttal to the Agency allegation that the fluoride level is not maintained at the level as required by Rule 5.28, the Board finds Respondent violated Rule 5.28 of the Regulations.

Rule 3.30 provides that detailed data shall be submitted as to construction and location of storage reservoirs. The construction is to meet the requirements of the 10-State Standards and the provisions of Technical Releases 10-1 and 10-8 of the Department of Public Health. As stated above, no design data has ever been submitted to the Agency, and so Respondent is in violation of Rule 3.30. As a further violation of the rule, the storage tanks are not located above ground level surface or completely housed. In fact, they are buried next to the well pit (R. 46). Location of the tanks above ground level or completely housing them is required by Sec. 7.1.5 (a) of the 10-State Standards as incorporated in Rule 3.30. Also, the evidence has shown that insufficient storage capacity has been maintained in the pressure tanks, contrary to the requirement of Technical Release 10-8 which recommends 35 gallons per capita capacity. Testimony by Mr. Dooley indicated that each of the tanks holds at a maximum 750 gallons (R. 134). With 13 active wells (Exhibit 9), each with a storage of 750 gallons, the system has a storage capacity of 9750 gallons. With a reputed population of 504 persons in the subdivision (Exhibit 6 [A]) not rebutted, the capacity of the system should be 17,640 gallons.

The Board finds Respondent violated Rule 3.30 of the Regulations by not submitting design criteria and by having insufficient storage cap-

acity in tanks above ground.

Rule 3.12 of the Regulations requires that detailed information as to the type of construction to be used, geological formations to be penetrated, and type of well seal to be employed must be furnished. Also construction must conform with the 10-State Standards. Sec. 3.2.-3.14 (a) of the Standards states that the upper terminal of well requirements are: a) protective casing for all ground water sources must project not less than six inches, and preferably 12 inches, above the pumphouse floor or cover installed; b) site not subject to flooding must have floor of pumphouse at least one foot above original ground surface.

Environmental Protection Agency Exhibit #7, taken along with the testimony of Mr. Bell (R. 54), shows that these well pumps are located in pits under the ground, so that the pumphouse floor, which in fact is the bottom of the pit, is not located at least one foot above ground level.

Therefore, the Board finds Respondent violated Rule 3.12 of the Regulations by failing to submit plans and design criteria and by failing to properly place the well pump.

Sec. 18 of the Environmental Protection Act states that owners and official custodians of public water supplies shall direct and maintain the continuous operation and maintenance of water supply facilities so that water shall be assuredly safe in quality, clean, adequate in quantity and of satisfactory mineral character for ordinary domestic consumption. Violations of the Rules above tend to prove a violation of Section 18 of the Act, as these rules were promulgated to assure a safe and adequate supply. Therefore the Board finds Respondent violated Sec. 18 of the Act.

Testimony was elicited by Respondent from David Conklin that Respondent did not have adequate funds to upgrade the system. The Board does not find this to be a mitigating factor. Though the Board is required to consider the impact of enforcement on a respondent, with health-related subjects such as water supply a true showing that the rule is arbitrary and unreasonable must be shown. The evidence showed that Respondent charges \$8 per month for water. If it is necessary to raise these rates to bring the system into conformity with the Regulations, then Respondent will have to take this action.

We will order Respondent to file a compliance plan with the Agency within 150 days of the entry of this Order, outlining a plan to comply with all applicable Regulations. The extended time for filing the plan is granted because at this time the Board is considering new regulations concerning the operation of public water supplies, which should be adopted during the month of September. Therefore Respondent should be advised of these regulations in submitting its compliance plan.

Upon submittal of the compliance plan Respondent shall have 90 days to construct the needed improvements, after which it shall cease and desist all violations of the Act and Regulations.

The Board feels that though Respondent is a not-for-profit corporation, the failure to comply with the Act and Rules is of such a nature as to warrant a fine. The fine will not be large, as it is the opinion of the Board that money used in a fine can better be used to upgrade the system. The conflict over whether this is a private or public supply mitigates the fine assessed.

It should also be noted that there have been no citizen complaints filed with the Agency regarding this system.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

- 1) The Pow-Wow Club, Inc. is found to have violated:
 - a) Secs. 15, 18, and 19 of the Environmental Protection Act.
 - b) Rules 3.12, 3.30, and 5.28 of the Public Water Supply Systems Rules and Regulations.
 - c) Sec. 1 of the Act to Regulate the Operating of a Public Water Supply (Ill. Rev. Stat., Chap. 111 1/2, Sec. 502).
- 2) Respondent Pow-Wow Club, Inc. shall pay to the state of Illinois the sum of \$350 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
- 3) Pow-Wow Club, Inc. shall submit to the Agency within 150 days of entry of this Order a plan of compliance for bringing the water supply system of Tullock Woods Trails Subdivision into conformance with all applicable statutes and regulations at the time of such submittal.
- 4) Pow-Wow Club, Inc. shall cease and desist violation of all applicable statutes and regulations in the operation of the water supply system of Tullock Woods Trails Subdivision within 240 days of the entry of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 18th day of July, 1974, by a vote of 5 - 0.

Christan L. Moffett