

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1988

JOHN AND JACQUELINE SCHAFER,)
)
Complainants,)
)
v.) PCB 87-17
)
CITIZENS UTILITY COMPANY,)
)
Respondent,)
)
and)
)
ARROWHEAD HOME OWNERS)
ASSOCIATION)
)
Intervenor.)

ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on a February 20, 1987, complaint filed by John and Jacqueline Schafer (hereinafter "the Schafers") against Citizens Utility Company of Illinois (hereinafter "Citizens Utilities"). The Schafers charge that Citizens Utilities is failing to deliver public drinking water of an acceptable quality, in violation of Board regulations at 35 Ill. Adm. Code Part 604. On June 16, 1987, the Board received three letters from area residents who also complained about the quality of drinking water supplied by Citizens Utilities. Hearings were held on July 14, 1987 and November 19, 1987. No briefs were filed.

At the November 19, 1987 hearing, the Arrowhead Homeowners' Association (hereinafter "Arrowhead") moved to intervene in the proceeding. That motion was granted by the hearing officer. At the November 19, 1987 hearing, the parties introduced a Stipulation of Facts and Proposed Settlement (hereinafter "Stipulation"). The Stipulation neither admits or denies any violations of regulatory standards for drinking water quality, but does provide a mechanism for selection and implementation of improvements to the drinking water supply system. Development of the Stipulation was assisted by the Illinois Environmental Protection Agency, which acted as Amicus Curiae in the proceeding.

In essence, the Stipulation allows Arrowhead to participate in choosing the treatment technology to improve drinking water quality and requires certain actions by Citizens Utilities at certain times. Certain actions outlined in the Stipulation are

subject to approval by the Illinois Commerce Commission. The Stipulation also provides that the Board shall retain jurisdiction in this matter, and may resolve disputes that arise under the stipulation.

The Board has reviewed the Stipulation in light of the factors specified in Section 33 (c) of the Environmental Protection Act, and finds that the Stipulation provides an appropriate resolution of this matter. The Board will accept the Stipulation and order that its terms be carried out. The Board will also retain jurisdiction in this matter.

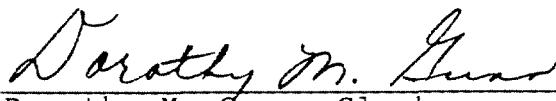
This Opinion constitutes the Board's findings of fact and conclusion of law in this matter.

ORDER

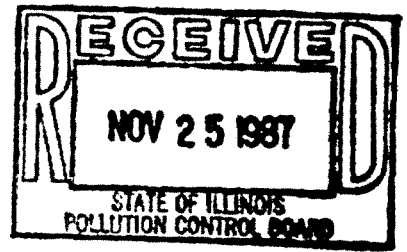
The Board hereby accepts the Stipulation of Facts and Proposed Settlement filed in this matter, a copy of which is attached and incorporated by reference as if set forth in full, and directs that its terms be carried out. The Board retains jurisdiction in this matter according to the terms of the settlement.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21st day of January, 1988 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board



BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JOHN AND JACQUELINE SCHAFER)	
Complainants)	
)	
v.)	
)	
CITIZENS UTILITIES COMPANY)	
OF ILLINOIS)	PCB 87-17
Respondent,)	
)	
and)	
)	
ARROWHEAD HOME OWNERS)	
ASSOCIATION)	
Intervenor.)	

STIPULATION OF FACTS AND PROPOSED SETTLEMENT

Complainants, JOHN AND JACQUELINE SCHAFER, (hereinafter "the Schafers"), Respondent, CITIZENS UTILITIES COMPANY OF ILLINOIS, (hereinafter "Citizens Utilities"), and Intervenor, ARROWHEAD HOME OWNERS ASSOCIATION, submit the following Stipulation of Facts and Proposed Settlement to the Pollution Control Board (hereinafter "Board") pursuant to 35 Ill. Adm. Code 103.180.

STATEMENT OF FACTS

Parties

1. The Schafers are home owners residing at 26 W. 324 Tomahawk, Arrowhead Subdivision, Wheaton, DuPage County,

Illinois. They receive their potable water from a public water supply owned and operated by Citizens Utilities.

2. Citizens Utilities is now, and at all times pertinent hereto has been, an Illinois corporation organized and existing under the laws of the State of Illinois. It is doing business in Illinois, with offices at 315 South Stewart Avenue, Addison, Illinois.

3. Citizens Utilities owns and operates, and at all times pertinent hereto has owned and operated, a public water supply located at Wheaton, Illinois, and commonly known as the Arrowhead Division Public Water Supply (hereinafter "the public water supply"). The public water supply is regulated by the Illinois Environmental Protection Agency (hereinafter "Ill. EPA") as a public water supply (facility number 0435150) under the Illinois Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, section 1014 et seq.). The public water supply serves approximately 1879 persons and has 568 service connections.

4. Citizens Utilities is also regulated by the Illinois Commerce Commission as a public utility.

5. The Arrowhead Home Owners Association of DuPage County, Illinois (hereinafter "Arrowhead Home Owners Association") is a general not for profit corporation acting as a home owners association with membership restricted to

residents of legal age who own property in Arrowhead Subdivision plus certain adjoining subdivisions outside of Citizens Utilities' service area. Its organizational purposes include creating, "... an awareness of area problems affecting the interests and well being of the community." and working, "... as a unit to protect these interests and combine with other organizations in maintaining the high standards of our area." Its president is Gerald Stoller, of 1847 Wingate Lane, Wheaton, Illinois 60187, and its secretary is Mary Udelhofen, of 26 W. 044 Cree Lane, Wheaton, Illinois 60187. Both the Schafers and Citizens Utilities stipulated to the intervention of the Arrowhead Home Owners Association and that it be made a party to this proceeding.

History and Applicable Regulations

6. On February 20, 1987 the Board received a formal complaint against Citizens Utilities from the Schafers, alleging the following: "Excessive Iron Concentration (rust) in water supply" in violation of 35 Ill. Adm. Code 604.201 and "My water is usually brown or yellow. I sometimes have to wait 3 weeks to have water clear enough to wash white clothes and pastels."

7. 35 Ill. Adm. Code 604.201(a) provides,

The finished water shall contain no impurity in concentrations that may be hazardous to the health of the consumer or excessively corrosive or otherwise deleterious to the water supply.

Drinking water shall contain no impurity which could reasonably be expected to cause offense to the sense of sight, taste, or smell.

8. 35 Ill. Adm. Code 604.202 requires that the concentration of iron in the finished water not exceed 1.0 milligrams per liter (mg/l). However, 35 Ill. Adm. Code 604.203(b) permits iron in excess of 1.0 mg/l if sequestration proves to be effective.

9. Ill. EPA records since June 29, 1982 indicate that iron concentrations in this public water supply's finished water that is filtered (a test as to the degree of sequestration) range from 0.16 to 1.44 mg/l and in unfiltered water from 1.17 to 5.80 mg/l. Unfiltered water from Well #1 had 2.40 mg/l and from Well #2 had 1.70 mg/l of iron.

10. The Board appointed Ms. Patricia F. Sharkey as hearing officer and later Allen Shoenberger was substituted by the Board as hearing officer as of October 14, 1987. A copy of the Schafers' complaint was sent to the Agency.

11. Beginning February 5, 1987, the Board sent a large number of informal complaints against this public water supply to the Agency for investigation. These complaints made allegations concerning excessive iron concentrations in the public water supply, that is, iron concentrations which are very offensive to the sight, which damage plumbing and appliances and discolor clothes being washed and cause the water sometimes to be unfit to drink.

12. The Ill. EPA has had a number of telephone conversations with the Schafers and Citizens Utilities and met with representatives from Citizens Utilities twice in attempts to devise a plan to correct the problems of the high iron concentrations in the finished water. Copies of the informal complaints were made available to the Schafers and Citizens Utilities. The Ill. EPA, with the cooperation of Citizens Utilities, mailed a survey to the 568 customers of the public water supply on March 6, 1987. There were responses from 374 customers. 73.7 percent indicated that the water was unacceptable. 52.6 percent indicated that the water was unacceptable and wanted Lake Michigan water. Based on the results, the Ill. EPA determined that use of sequestering had not been fully effective in reducing the effect of the high iron concentration as allowed under 35 Ill. Adm. Code 604.203(b). On July 7, 1987 the Ill. EPA notified Citizens Utilities that the Ill. EPA had imposed Restricted Status on this public water supply.

13. On July 14, 1987 a public hearing was held in this proceeding and a number of persons testified as witnesses for the Schafers. The hearing was continued to September 16, 1987 to complete receiving testimony in the Schafers' case in chief and to hear testimony on behalf of Citizens Utilities. The Ill. EPA proposed to both of the parties a general outline of a settlement and an agreement in princi-

ple was reached. The hearing officer held a telephone conference on September 15, 1987 with both parties and the Ill. EPA to discuss the proposed settlement. The scheduled September 16, 1987 hearing was postponed to November 19, 1987 to allow preparation of this stipulation.

14. All of the parties to this proceeding, as well as the Ill. EPA, believe one resolution for the iron violation is to obtain Lake Michigan water. However, Citizens Utilities estimates it will be mid-1992 before Lake Michigan water will be available, at the earliest. Another resolution would be the installation of iron treatment facilities. Since the parties do not believe that it would be equitable for the home owners and Citizens Utilities to have to pay for treatment to achieve compliance as well as for Lake Michigan water, the parties and Ill. EPA agree that interim compliance steps should be taken by Citizens Utilities, and the Arrowhead Home Owners Association should decide whether it prefers to have iron treatment installed or to wait for Lake Michigan water.

PROPOSED TERMS OF SETTLEMENT

15. As a result of the settlement discussions, the parties and the Ill. EPA believe the customers served water by Arrowhead Division of Citizens Utilities, as well as the public interest and Citizens Utilities, will be best served

by the resolution of this enforcement action under the terms and conditions provided herein.

16. The parties hereby agree as follows:

A. By February 1, 1988, the Arrowhead Home Owners Association shall review the advantages and disadvantages of having iron treatment installed or obtaining Lake Michigan water and shall inform in writing Citizens Utilities and the Ill. EPA of its selection of which compliance plan by that date. The notice of its selection, properly executed and authorized by the Arrowhead Home Owners Association and including a sworn affidavit to such effect, shall be sent by certified mail to:

Thomas E. Fricke
General Manager
Citizens Utilities Company of Illinois
315 South Stewart Avenue
Addison, Illinois 60101

and to

Charles Bell
Manager, FOS
Division of Public Water Supplies
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276.

B. If the Arrowhead Home Owners Association selects installation of iron removal facilities as the compliance plan, Citizens Utilities shall install iron removal facilities, subject to approval by the Illinois Commerce Commission (hereinafter "ICC"). Citizens

Utilities shall make all reasonable efforts to obtain that approval in a timely manner. Upon receipt of ICC approval, Citizens Utilities shall follow the schedule below.

C. If the Arrowhead Home Owners Association selects Lake Michigan water as the compliance plan, Citizens Utilities shall negotiate with the DuPage Water Commission to obtain Lake Michigan water for the public water supply as soon as possible, subject to approval by the Illinois Commerce Commission. Citizens Utilities shall make all reasonable efforts to obtain that approval in a timely manner. However, if by February 1, 1989, or within one year from receipt by Citizens Utilities of the notice of the selection of the compliance plan by the Arrowhead Home Owners Association, whichever is later, Citizens Utilities has not obtained a signed contract with the DuPage Water Commission to obtain Lake Michigan water for the public water supply as soon as possible, Citizens Utilities shall, subject to prior receipt of ICC approval, install iron removal facilities in accordance with the schedule below. The Arrowhead Home Owners Association may waive the one year deadline to give Citizens Utilities additional time to negotiate said contract with the DuPage Water Commission. Any such waiver

shall be in writing, shall be for a specific time period, and may be renewed in the discretion of the Arrowhead Home Owners Association.

D. If the compliance plan is the installation of iron removal facilities for the public water supply, Citizens Utilities shall file a petition for necessary ICC approvals of construction and resulting rate increases for an iron removal treatment facility within thirty days after receipt of the notice of the selection of this plan from the Arrowhead Home Owners Association. In addition, Citizens Utilities shall comply with the following schedule, with the dates below starting from the date the Arrowhead Home Owners Association notified Citizens Utilities that it has selected the installation of iron removal facilities as the compliance plan, or from the end of the last waiver granted by the Arrowhead Home Owners Association, whichever is applicable, plus the length of time that it takes to obtain ICC approvals of the proposed construction and rate increase, (hereinafter referred to as "the starting date"):

1. Within nine months from the the starting date, Citizens Utilities shall complete all engineering plans and obtain all necessary permits for installation of the iron removal facilities necessary to achieve compliance with the iron standard

(35 Ill. Adm. Code 604.202);

2. Within 12 months from the the starting date, Citizens Utilities shall complete the bidding process for the necessary construction; and

3. Within 30 months from the the starting date, Citizens Utilities shall complete all necessary construction and achieve compliance with the iron standard (35 Ill. Adm. Code 604.202).

4. Notwithstanding the above, Citizens Utilities shall complete preliminary engineering and submit a request for proposal for engineering design services for the iron removal facilities prior to ICC approval. (Citizen Utilities expects this advance work should save two to three months from the total project schedule as compared to waiting until obtaining ICC approval. Assuming no objections, Citizen Utilities expects ICC to approve its petition within six months of its filing.)

E. Within 30 days after entry of the Board order incorporating this settlement, Citizens Utilities shall submit a program for flushing its water mains in the distribution system of the public water supply for review by Ill. EPA and review and approval by the Arrowhead Home Owners Association. It is agreed that the purpose of such flushing is the reduction of any build-up of iron precipitate in the water mains. The program shall include system-wide flushing to be done at least on a monthly basis, weather permitting. Local areas shall be flushed more often as needed. This program shall be revised from time to time based on the number, frequency and significance of complaints of high iron concentrations, discoloration of clothes,

etc. If the flushing program or revisions cannot be mutually agreed upon by the Arrowhead Home Owners Association and Citizens Utilities to assure that the drinking water does not contain iron precipitate that could reasonably be expected to cause offense to the sense of sight and taste or to discolor clothes, etc., the Arrowhead Home Owners Association or Citizens Utilities may file a request with the Ill. EPA for a written opinion as to whether the flushing program should be adopted or revised. Ill. EPA shall consult with both the Arrowhead Home Owners Association and Citizens Utilities and provide a written opinion to both within 45 days of the request. If the Ill. EPA advises adoption of the flushing program or a revision in the flushing program, Citizens Utilities shall do so unless the Arrowhead Home Owners Association or Citizens Utilities asks the Board to resolve the dispute. The burden of proof shall be on the party disagreeing with the Ill. EPA opinion to prove by clear and convincing evidence that the Agency's opinion is unreasonable. If the Ill. EPA does not provide its written opinion to both parties within 50 days of the request, either or both parties may ask the Board to resolve the dispute without waiting further for the Ill. EPA's written opinion. The Ill. EPA may provide

its written opinion to the parties and to the Board even after the 50 days have expired and the burden of proof shall be as stated above. Any flushing program undertaken in accordance with this settlement shall be discontinued upon compliance with the iron standard being consistently achieved for six months. During this six months, flushing may be reduced in accordance with the provisions of Paragraph 16 E above, except the Ill. EPA shall provide any requested written opinion within ten days of the request, otherwise either party may ask the Board to resolve the dispute without waiting further.

F. Reports on dates and locations of water main flushings shall be sent to the Ill. EPA for six months and thereafter upon request, and shall be sent to the Arrowhead Home Owners Association on a monthly basis until compliance with the iron standard is achieved.

G. Citizens Utilities shall use the most effective sequestering agents available to reduce the effects of excessive iron concentration until compliance with the iron standard is achieved.

H. Within 15 days after entry of the Board order incorporating this settlement, Citizens Utilities shall set up a process for handling complaints about high

iron concentrations in the public water supply. This process shall include the following:

1. A toll-free telephone hot-line that is used solely for receipt of calls concerning high iron concentrations in the water and manned by an employee during regular business hours. Telephone calls shall be taken by a telephone answering machine or an answering service during non-regular business hours, so that complaints may be made 24 hours a day, seven days a week. The telephone number shall be provided to the Arrowhead Home Owners Association within 15 days after entry of the Board order incorporating this settlement and to all households served by the public water supply in writing within 90 days after entry of the Board order incorporating this settlement.

2. Persons who complain about the high iron concentrations shall be given the option of being at home while an investigator comes to the home or not being at home. In either instance, Citizens Utilities shall investigate the complaint within 24 hours when investigation can be made during regular business days; and no later than the end of business on the next regular business day following receipt of the complaint, in the case of holidays, weekends and other times when investigation cannot be completed during regular business days.

3. Names, addresses and telephone numbers of all complainants, summaries of complaints, dates of complaints and statements of the responses made by Citizens Utilities shall be recorded in writing by Citizens Utilities. These records shall be sent to the Ill. EPA for three months and thereafter upon request, and shall be sent to the Arrowhead Home Owners Association on a monthly basis.

4. The requirements of Paragraph 16 H, subparagraphs 1 through 2 above, shall continue until compliance with the iron standard is consistently achieved for six months.

I. Within 60 days after entry of the Board order

incorporating this settlement, Citizens Utilities shall complete investigation of allegations of substances appearing to be hydraulic oil in the drinking water and report to Ill. EPA and the Arrowhead Home Owners Association in writing as to the results and any remedies that Citizens Utilities deems appropriate.

NOTICES

17. All notices, reports and other documents required hereunder to be given shall be mailed or delivered as follows:

A. For the Arrowhead Home Owners Association, to the last known address of the then current President of the Arrowhead Home Owners Association.

B. For the Ill. EPA, to Charles Bell, Manager, FOS, Division of Public Water Supplies, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276.

C. For Citizens Utilities, to Thomas E. Fricke, General Manager, Citizens Utilities Company of Illinois, 315 South Stewart Avenue, Addison, Illinois 60601.

EXTENSIONS OF TIME

18. Citizens Utilities' obligation to meet any of the time requirements of this settlement shall not be extended

unless it is the result of an act of God or by a circumstance beyond Citizens Utilities' control or by any other circumstances agreed to by the Arrowhead Home Owners Association and Citizens Utilities. Written notice of the claimed applicability of this provision must be given to the Arrowhead Home Owners Association and the Ill. EPA within a reasonable time. Said notice shall be in affidavit form, signed by an officer or the General Manager of Citizens Utilities, and state: (A) the delay is caused as a result of an act of God or circumstances beyond Citizens Utilities' control, and describe the cause, and (2) a timetable by which Citizens Utilities intends to implement the delayed requirements. Citizens Utilities shall adopt all reasonable measures to avoid or minimize any such delay.

Should the Arrowhead Home Owners Association and Citizens Utilities fail to agree within 30 days from the date the Arrowhead Home Owners Association receives written notice from Citizens Utilities as provided above on what circumstances shall excuse a delay in performance or period of extension, either the Arrowhead Home Owners Association or Citizens Utilities may submit the matter to the Board for resolution after a hearing. The burden of proving by clear and convincing evidence that any delay is caused by an act of God or by circumstances beyond Citizens Utilities' control shall rest with Citizens Utilities. Any such hearing

before the Board will be in accordance with Board Procedural Rules found at 35 Ill. Adm. Code Subpart F.

APPLICABILITY AND ENFORCEMENT OF STIPULATION

20. The provisions of this settlement shall apply to and be binding upon the parties to this action and their assigns and successors in interest. Citizens Utilities shall give notice of any Board order incorporating this settlement to any successors in interest prior to transfer of ownership, and simultaneously notify the Arrowhead Home Owners Association and the Ill. EPA that notice has been given.

21. The parties hereby stipulate and agree that the statement of facts contained herein represents a summary of the evidence and testimony which has been or would be introduced by the Schafers at hearing and that Schafers' claims would have been disputed at hearing. This stipulation does not constitute an admission on the part of any of the parties hereto. The parties further stipulate that this Statement of Facts is made and agreed upon for the purpose of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding unless the Board approves and disposes of this matter pursuant to all of the terms and conditions set forth herein. If the Board should reject any

portion thereof, the entire settlement and stipulation shall be terminated and be without legal effect and the parties shall be restored to their prior position in this litigation as if no settlement and stipulation had been executed, without prejudice to any parties' position as to any issue or defense. Citizens Utilities neither admits nor denies any of the allegations found in the formal or informal complaints made against it.

22. Violation by Citizens Utilities of any final Board order incorporating this settlement shall make Citizens Utilities subject to a civil penalty of not to exceed \$10,000 for said violation and an additional civil penalty of not to exceed \$1000 for each day during which violation continues, in accordance with Section 42(a) of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1985, chapter 111 1/2, paragraph 1042(a)).

23. Besides the parties hereto, the Ill. EPA, through the Illinois Attorney General's Office or State's Attorney's Office, may enforce any Board order incorporating this agreement as though the Ill. EPA were a party to this proceeding.

24. The parties ask that the Board retain its jurisdiction over this case to resolve any disputes over this agreement, including disagreements concerning adoption or

revisions to the flushing program.

WHEREFORE, Complainants, Intervenor, and the Respondent jointly pray that the Board adopt and accept the foregoing settlement and stipulation as written.

FOR THE COMPLAINANTS:

Date: Nov. 19, 1987

Jacqueline K. Schafer
Jacqueline K. Schafer
John A. Schafer
John A. Schafer

FOR THE INTERVENOR:

Date: Nov. 19, 1987

Arrowhead Home Owners
Association

by: Harold A. Stotler
President

FOR THE RESPONDENT:

Date: Nov. 19, 1987

Citizens Utilities Company of
Illinois

by: Ronald F. Fike
GEN. MANAGER.
title

Stipulation of Facts and Proposed Settlement prepared by:

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