ILLINOIS POLLUTION CONTROL BOARD
October 2, 1980

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	PCB 79-270
RIVERVIEW HEIGHTS PROPERTY OWNERS' ASSOCIATION,	)	
Respondent.	)	

MR. THOMAS R. CHIOLA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. RICHARD W. LEIKEN, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by N.E. Werner):

This matter comes before the Board on the December 20, 1979 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). The Complaint alleged that the Respondent failed to: (1) provide a certified water supply operator for its facility; (2) provide chlorination and fluoridation of its public water supply system ("system"); (3) supply "as-built" plans to the Agency for its system; (4) conform to the Agency criteria regarding its well casing; and (5) submit representative samples of its raw and finished water to the Agency in violation of Section 1 of an Act to Regulate the Operating of a Public Water Supply, Ill. Rev. Stat., ch. 111½, par. 501 (1977); Rules 209, 212, 305, 306, and 309 of Chapter 6: Public Water Supplies ("Chapter 6"); and Sections 18 and 19 of the Illinois Environmental Protection Act ("Act"). A hearing was held on August 20, 1980. The parties filed a Stipulation and Proposal for Settlement on August 21, 1980.

The Respondent, the Riverview Heights Property Owners' Association (the "Association") is an Illinois not-for-profit corporation which owns and operates water supply facilities which provide water for drinking and general domestic uses to the owners or occupants of homes in the Riverview Heights' Subdivision in Woodford County, Illinois. (Stip. 2-3; Exhibit A). The Association's water supply system (the "system") includes one drift well, a 1,000 gallon pressure tank, and an auxiliary distribution system. (Stip. 2).

The Association has asserted that, because of a small claims action in 1977, it operates a "private" rather than "public" water supply system (i.e., since it may not be required to serve 10 or more lots or properties). On the other hand, the Agency previously contended that, because the Association was capable of serving at least 10 lots or properties at all times pertinent to the Complaint, and since no permanent disconnection or separation of the distribution system had yet taken place, the system ought to be considered a "public" water supply within the purview of Section 3 of the Act. (Stip. 3).

It is stipulated that the Respondent filed a small claims court Complaint against Mr. Rober Kahler on April 19, 1977 which sought payment for past water services provided to Mr. Kahler and/or disconnection of service to him. Mr. Kahler was one of the 10 property holders being served by the Respondent in 1977. However, the court entered a temporary restraining Order on February 3, 1978 which enjoined the Respondent from disconnecting Mr. Kahler's water service. Subsequently, the court held, on November 17, 1978, that Mr. Kahler "had an equity interest in the well, the pump, the pipes and appurtenances, including the right to take water from the lot but that Kahler was not entitled to obtain water from the pipeline and distribution system of the Association." (Stip. 3). The lot in question is currently being served by the Respondent since the amount due has since been paid by Mr. Kahler or his successor. (Stip. 3). Accordingly, at least 10 lots are now being served by the Respondent's distribution system. (Stip. 3).

The stipulated facts indicate that the Agency notified the Respondent on July 26, 1977 that its water supply system was operating in violation of the Public Water Supply Act, the Board's Public Water Supply Regulations and the Illinois Environmental Protection Act. (Exhibit B). The parties have also stipulated that the Association has never provided: (1) a properly certified operator; (2) "as-built" drawings of its system to the Agency; (3) a permanent casing for its drift well projecting 18 inches above the ground surface; and (4) raw and finished water samples to the Agency. (Stip. 4). Additionally, the Respondent has admitted that it failed to provide chlorination in its supply from December 21, 1975 until the present time and failed to furnish the requisite fluoridation from December 21, 1974 to date. (Stip. 3; 5).

The proposed settlement agreement provides that the Respondent admits the allegations of the Complaint and agrees to cease and desist from further violations by no longer "supplying 10 or more lots or properties with water for drinking and general domestic use." (Stip. 5). Additionally, the Association has agreed to: (1) drill a new well to serve a portion of the 10 properties currently served by the system; (2) promptly separate the legal ownership of the old well from the new well so that "the legal entity responsible for ownership and operation of each well is separate and distinct"; (3) promptly separate the appurtenant distribution system from each well so that "less than 10 lots or

properties are being served by each well respectively"; and (4) pay a stipulated penalty of $100.00 . (Stip. 5).

Moreover, the Association has agreed to promptly provide the Agency with adequate proof of separate legal ownership and operation which shall include an inspection by Agency employees for verification purposes. (Stip. 5). Additionally, the parties agree that, upon completion of the steps outlined in the settlement proposal, the Respondent shall no longer be considered a "public water supply" as defined by Section 3 of the Act. (Stip. 6). The record indicates that the Association has contracted with the Chris Ebert Company for a new well which will cost $5,291.09. (Stip. 5; Exhibit C). Because several new wells have been constructed on lots previously served by the Association, the original well which was serving 10 homes now serves only 6 homes. (Exhibit D).

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondent, the Riverview Heights Property Owners' Association, has violated Section 1 of an Act to Regulate the Operating of a Public Water Supply, Ill. Rev. Stat., Chapter 111½, par. 501 (1977); Rules 209, 212, 305, 306, and 309 of Chapter 6: Public Water Supplies; and Sections 18 and 19 of the Illinois Environmental Protection Act, and orders the Respondent to cease and desist from further violations. The stipulated penalty of $100.00 is hereby assessed against the Respondent.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, the Riverview Heights Property Owners' Association, has violated Section 1 of an Act to Regulate the Operating of a Public Water Supply, Ill. Rev. Stat., Chapter 111½, par. 501 (1977); Rules 209, 212, 305, 306, and 309 of Chapter 6: Public Water Supplies; and Sections 18 and 19 of the Illinois Environmental Protection Act.

2. The Respondent shall cease and desist from further violations.

3. Within 45 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay the stipulated penalty of $100.00 which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on August 21, 1980, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 2nd day of October, 1980 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board