

ILLINOIS POLLUTION CONTROL BOARD  
July 6, 1978

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 77-64  
 )  
LIONEL FAHNESTOCK and FAHNESTOCK )  
WELL SYSTEM, INC., )  
 )  
Respondents. )

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. LIONEL FAHNESTOCK APPEARED PRO SE ON BEHALF OF THE RESPONDENTS.

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

This matter comes before the Board on the February 25, 1977 Complaint brought by the Illinois Environmental Protection Agency alleging that Lionel Fahnestock and the Fahnestock Well System, Inc. owned a public water supply system which was operated with no certified water supply operator and no chlorination or fluoridation of water in violation of Section 1 of an Act to Regulate the Operating of a Public Water Supply, Ill. Rev. Stat. 1975, ch. 111-1/2, par. 501, and Rule 305 and Rule 306 of Chapter 6: Public Water Supply Regulations. A hearing was held on April 5, 1978.

The Fahnestock Well System, Inc. includes one 113 foot-deep drilled drift well which discharges into a relatively small, 362 gallon pressure tank. From the pressure tank, water passes into the mains, pipes and other structures which constitute the distribution system. (R. 8, R. 16, Comp. Exh. 4). The distribution system supplies water for drinking and general domestic use to 17 homes in the Fahnestock Court Subdivision in Peoria County, Illinois. (R. 9). The system has been in operation approximately 23 years. (R. 9).

At the hearing, Mr. Lionel J. Fahnestock testified that he was disabled on July 29, 1975 and had a total gross income of about \$1,500.00 in 1976. (R. 11, R. 13). Mr. Fahnestock, who was

called as an adverse witness by the Agency, admitted that the Fahnestock Well System had no certified public water supply operator, did not chlorinate its water before it entered the distribution system, and did not add any fluoride to its water to maintain a fluoride/ion concentration reported as F of 0.9 to 1.2 mg/l in its distribution system. (R. 9, R. 10).

Mr. Richard A. Gerard, an Agency employee, then testified that he inspected the Fahnestock Well System in Peoria, Illinois on January 7, 1975. (R. 15, R. 16). Mr. Gerard stated that he observed no certified operator on that date or on any of his subsequent inspections. (R. 17). He also testified that he observed that no facilities were provided to chlorinate or fluoridate the water. Mr. Gerard expressed the opinion that a feasible means existed to comply with the requirements of chlorinating this particular water supply. (R. 18). He indicated that, for this size water supply, a chlorine solution tank and a small chemical feed pump (to feed the chlorine solution into the water supply) could be installed to operate in conjunction with the well pump. (R. 18, R. 19). Mr. Gerard also indicated that a "simple set-up" to fluoridate the water could also be installed. (R. 19). This would consist of a solution tank and small chemical feed pump (to feed the fluoride solution to the water supply) which could be installed to operate in conjunction with the well pump. (R. 19). He said that it would cost approximately \$2,000.00 to install both the fluoridation and chlorination facilities. (R. 20). Mr. Gerard stated that chlorination is necessary to disinfect the water and safeguard the public health. He also testified that on March 21, 1978 he collected a water sample which was sent to the Agency's Champaign laboratory for fluoride analysis. (R. 20, R. 21).

The next witness was Lou Allyn Frost, an Agency employee. She testified that the Agency records indicated that no public water supply operator certification had been issued to either Mr. Lionel J. Fahnestock or Fahnestock Well System, Inc. (R. 26).

Mr. Frank John Schmidt, an Agency employee and laboratory manager, then described the standard routine that the laboratory follows when a water sample is first brought in, and identified the Complainant's Exhibits 4 and 5 (i.e., the mineral analysis reports pertaining to fluoride and chloride concentrations in water samples). (R. 29-34). He also indicated that fluoride may be a naturally occurring substance in water. (R. 35).

Mr. Lionel J. Fahnestock, who appeared pro se, then testified that he was representing himself because he had been disabled for 3 years, had little money coming in, and didn't have the money to hire a lawyer. (R. 37). Mr. Fahnestock said he "felt that it was

kind of fruitless" since he realized that he was "guilty of this offense." (R. 37). Mr. Fahnestock stated that he "tried various ways of rectifying this situation" where he "wouldn't have to go into this field of chlorination and chlorine." (R. 38). He obtained a survey of the subdivision from the Peoria Water Company in late 1977. (R. 38, R. 39). According to Mr. Fahnestock, the Peoria Water Company said that they could supply the subdivision with Peoria water "at a cost of \$36,999.00 for 17 homes" which "really wouldn't be feasible to the individuals; this would be from between \$2,400.00 and \$2,500.00 per house." (R. 39). This cost did "not include the main hook-up which would run from \$400.00 to \$500.00." (R. 39). Mr. Fahnestock stated that he "talked to the individuals and this is a subdivision of low income houses and they just couldn't afford it." (R. 39).

Mr. Fahnestock also testified that he had retained an engineer, Mr. Richard L. Bettler, to rectify the situation by installing a larger water tank and a chlorination and fluoridation water treatment system. (R. 39, R. 42, Resp. Exh. 4). Mr. Fahnestock also indicated that he plans to hire Mr. Ronald C. Hoyle as his certified public water supply operator. (R. 40).

In evaluating this enforcement action, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). The Respondent's good faith efforts to comply with the Board's Public Water Supply Regulations, and his personal situation and precarious financial condition have also been duly noted.

On the basis of the record, the Board finds that Mr. Lionel Fahnestock and the Fahnestock Well System, Inc. operated its public water supply without having in its employ a properly certified operator from January 7, 1975 until February 25, 1977 in violation of Section 1 of an Act to Regulate the Operating of a Public Water Supply (Ill. Rev. Stat., 1975, Ch. 111-1/2, par. 501). Moreover, the Respondents failed to properly chlorinate the water supply from December 21, 1975 until February 25, 1977 in violation of Rule 305 of Chapter 6: Public Water Supply Regulations. The Respondents also failed to maintain a fluoride ion concentration reported as F of 0.9 to 1.2 mg/l in its distribution system from January 7, 1975 until February 25, 1977 in violation of Rule 306 of Chapter 6: Public Water Supply Regulations. Consequently, a penalty of \$100.00 is assessed in accordance with Section 1 of an Act to Regulate the Operating of a Public Water Supply.

This Opinion and Order constitute 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. Mr. Lionel Fahnestock and Fahnestock Well System, Inc. have violated Rule 305 and Rule 306 of Chapter 6: Public Water Supply Regulations and Section 1 of an Act to Regulate the Operating of a Public Water Supply (Ill. Rev. Stat., 1975, Ch. 111-1/2, par. 501) from January 7, 1975 until February 25, 1977.

2. Within 90 days of the date of this Order, Mr. Lionel Fahnestock and Fahnestock Well System, Inc. shall pay a penalty of \$100.00 , payment to be made by certified check or money order to:

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

3. Mr. Lionel Fahnestock and Fahnestock Well System, Inc., shall forthwith take all appropriate measures to immediately chlorinate and fluoridate its public water supply system and to obtain a properly certified public water supply operator no later than 90 days from the date of this Order. The Respondents shall promptly take all necessary steps to obtain the requisite Agency approval for these measures.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6<sup>th</sup> day of July, 1978 by a vote of 4-0.

Christan L. Moffett  
Christan L. Moffett Clerk  
Illinois Pollution Control Board