

ILLINOIS POLLUTION CONTROL BOARD
June 22, 1979

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-230
)
 EAST LYNN COMMUNITY WATER SYSTEM, INC.,)
)
 Respondent.)

William Blakney, Assistant Attorney General, appeared on behalf of the Complainant;

No one appeared as official representative of the Respondent.

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

This matter comes before the Board on a Complaint filed on August 23, 1978, against the East Lynn Community Water System, Inc. alleging violations of the NPDES permit provisions of the Environmental Protection Act and Chapter 3: Water Pollution Regulations. The Complaint alleged that the Respondent discharged contaminants including iron and suspended solids without an NPDES permit in violation of Section 12(f) of the Act and Rules 901 and 902(e) of Chapter 3.

A hearing was held in Hoopston, Illinois on February 28, 1979. While no one appeared as official representative of the Respondent, Mr. Thomas McConnell and Mr. Stanley Steiner were present at the hearing to present testimony and cross-examine the Agency witness. At the beginning of the hearing, the Complainant submitted evidence that the Respondent was served with a Request for Admission of Fact and Genuineness of Documents but failed to respond within the 20 days required under Procedural Rule 314(c) nor on any occasion prior to the hearing. Since the Respondent failed to comply with a response in the time allotted, each matter of fact and the genuineness of the document will be deemed admitted for the purposes of this enforcement action.
(Exh. 1)

The Respondent, East Lynn Community Water System, Inc., owns and operates a public water supply which serves approximately 145 people in the Village of East Lynn. The East Lynn water supply maintains a well package treatment plant consisting of filters to remove iron and manganese and the equipment necessary

to add fluoride and chlorine to the water before entering the Village distribution system. Backwash generated from cleaning the iron filters is collected in a settling tank and then discharged to an intermittent stream upstream from the Kankakee River. (R. 9, 30, 33-34, 41)

Mr. Cecil Van Etten, Manager of Public Water Supplies for Region VI, Illinois, testified that the East Lynn water supply was without an NPDES permit from October, 1977, until the date of this Complaint. Since then, the Respondent has applied for and was issued an NPDES permit on January 3, 1979, to be effective February 2, 1970. Mr. Van Etten stated that the East Lynn permit conforms to all Illinois EPA standards and requirements. (R. 7, 8-10, 38)

In view of this evidence and the numerous admissions in the record, the Board finds the East Lynn Community Water Supply, Inc. in violation of Section 12(f) of the Act and Rules 901 and 902(e) of Chapter 3, for discharging contaminants to Illinois waters without an NPDES permit.

In mitigation, Mr. Thomas McConnell testified that the supply did not think that a permit was required because it was not "a mining or manufacturing operation." Mr. McConnell stated that the water supply retained this position despite letters of notice from the IEPA stating that an NPDES permit was required. The record is clear; the East Lynn Community Water System, Inc. did not apply for a permit until after this enforcement action was filed with the Board. (R. 21-23)

In considering the Section 33(c) factors of the Act, the Board does not question the social and economic value or the suitability of the public water supply system which serves the East Lynn community. The Board is, however, concerned about Respondent's failure to apply for an NPDES permit before the filing of this Complaint, a procedure which was technically feasible and economically reasonable for the Respondent.

While some mitigation is justified because of Respondent's financial problems, such conditions will not justify Respondent's failure to obtain the necessary NPDES permit when required. Under these circumstances, the Respondent will be assessed a \$100.00 penalty as a minimum necessary in this case to aid in the enforcement of the Act and to discourage and eliminate future failures to comply with the permit requirements of this State.

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

ORDER

1. Respondent, East Lynn Community Water System, Inc., is found to have discharged contaminants to Illinois waters without an NPDES permit in violation of Section 12(f) of the Environmental Protection Act and Rules 901 and 902(e) of Chapter 3: Water Pollution Regulations.

2. Respondent, East Lynn Community Water System, Inc., shall cease and desist all further violations of the Act and the Board's regulations.

3. Respondent, East Lynn Community Water System, Inc., shall pay a penalty of \$100.00 for the aforementioned violations within 35 days of this Order. Payment shall be by certified check or money order payable to:

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

IT IS SO ORDERED.

Mr. Jacob D. Dumelle concurred.
Mr. Nels Werner concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22nd day of June, 1979, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board