

d. Operated and maintained a public water supply without a protective casing at least 30" above the highest known flood level elevation and without being properly surrounded by earth fill in violation of Rule 3.12 of the Public Water Supply System Rules and Regulations and Section 3.2, 3.14(a) and (c) of the Great Lakes Upper Mississippi River Board of State Sanitary Engineers Report on Policies for the Review and Approval of Plans and Specifications for Public Water Supplies from January 13, 1973 to December 21, 1974 and in violation of Agency Technical Policy Statement 212(a) from December 21, 1974 to date of filing of Complaint;

e. Operated and maintained a public water supply system without pump house heater and without adequate insulation so as to subject the system to freezing and to allow the system in fact to become frozen and in-operative during various periods from January 13, 1975 to date of filing of Complaint;

f. Operated and maintained a public water supply in such manner so as to cause the distribution of water containing offensive odor, taste and color from January 13, 1973 to date of filing of Complaint;

g. Operated and maintained a public water supply system without adequate pressure from January 13, 1973 to date of filing of Complaint.

All of these alleged violations are said to be prohibited by Section 18 of the Environmental Protection Act.

Count II

a. Failed to submit water supply samples and reports of operation from January 13, 1973 to date of filing of Complaint in violation of Section 19 of the Act;

Count III

a. Failed to employ on its operational staff at least one certified water supply operator from September 12, 1973 to date of filing of Complaint in violation of Section 1 of an Act to Regulate the Operating of a Public Water Supply [Illinois Revised Statute, Chapter 111 1/2, Section 50], effective September 12, 1973, as amended by P. A. 75-801].

Ronald W. Kuper Lucas is cited in the Complaint as owner, operator, managing agent, official custodian and owner of record of the East Lawn Water Company, holding said company in trust for Judy Williams Kuper and Adele McMillian. Judy Williams Kuper, a/k/a Judy Williams, is cited as owner, operator, managing agent and official custodian of the East Lawn Water Company. Three public hearings were conducted on this matter in April 1975.

East Lawn Water Company is a public water supplier located in the East Lawn Subdivision (Hampton Township), Rock Island County, Illinois. The facility consists of a drilled rock well, immersible pressure pump, well house, chlorination equipment, two pressure storage tanks, and a water distribution system. East Lawn provides water to 47 households in the East Lawn Subdivision at a monthly fee of \$4.00, 10% of which is deductible if the fee is paid before the due date. The company derives approximately \$400 per quarter from this service (R. 68).

Ronald W. K. Lucas, among others, was cited in a prior action before the Board involving similar allegations (See: EPA vs. East Lawn Water Company, et al, PCB 72-179). In that prior case Lucas was ordered to cease and desist from further violations within 60 days and to take corrective measures to bring the water supply facility into compliance.

Confusion regarding legal ownership, corporate officers, registered agents, legal shareholders and managerial responsibilities existed throughout the hearings. At various times throughout the record, the registered agent for East Lawn Water Company was shown to be a Miss Williams (R. 20), Mrs. Kuper (R. 21) and the brother-in-law of Ronald W. Kuper Lucas who "lives over in Collinsville" (R. 22). Ronald Lucas identified Miss Williams and Mrs. Kuper as one and the same person, his wife, a fact unknown to Respondent's attorney (R. 21). Mrs. Kuper testified that she uses her maiden name of Williams "solely for a business practice and no other reason" (R. 54). She has never been the corporation registered agent (R. 50). That position is held by a Michael McMillian of Edwardsville, Illinois.

During a pre-hearing conference Respondent's first attorney was granted leave to withdraw as attorney of record. (Public Exhibit #3). One of the reasons for withdrawal was that Respondent had not provided necessary information for the preparation of a proper response. This interfered with the defense of the case and precluded the attorney from complying with the Hearing Officer's order that "Respondent Corporation shall file and serve upon all parties, a list of shareholders for the year 1973 through the year 1974 and a statement of the registered agent of the aforesaid Corporation during that time period" (Public Exhibit #1, Item 4).

During the first public hearing Ronald W. K. Lucas requested a delay in proceedings on grounds that he:

- A. Did not have possession of corporate records (R. 13),
- B. Did not have knowledge of certain financial dealings of the Corporation since that aspect of the Corporation was handled by his wife (R. 17),
- C. Had been unable to secure certain corporate documents from the attorney initially retained for defense against the Complaint (R. 27) and
- D. Was totally unprepared to defend himself and the Corporation (R. 13).

Ronald W. K. Lucas admitted that he had not attempted to secure certain corporate documents in the possession of the Corporation's attorney in Missouri (R. 26), that his wife had retained the other attorney and he did not know what efforts she had made towards securing the corporate records from the prior attorney of record (R. 29), and that he was unaware that a "so-called bad check" had been submitted to the prior attorney of record since his wife "never told me that" (R. 29). A short delay in the proceedings was granted.

Although Respondent was requested to appear at the next hearing with "all documents, deeds, records, corporate books or memoranda which established the ownership of the East Lawn Water Company" (R. 51), Judy W. Kuper testified that she was appearing with "a stock certificate" since the other documents had been "turned over with the corporate books quite some time ago to the State".

Mrs. Kuper testified that she is the secretary, bookkeeper, treasurer and general manager of the East Lawn Water Company (R. 50). Both she and Adele McMillian are stockholders in the Company, each holding 75 shares of common stock (R. 53). She testified that company stock certificate No. 22 was transferred from the previous owner to Ronald W. Kuper Lucas on February 2, 1972 and then to her "just shortly after that" (R. 55). However, upon examination of certificate No. 22, it was discovered that no such transfer had in fact taken place and that Ronald W. Kuper Lucas was the principal shareholder. Mrs. Kuper then admitted that it had been planned to transfer the stock to Adele McMillian and Judy Williams shortly after Larry Hill had transferred the stock to Ronald W. Kuper Lucas but that "due to my own error they weren't transferred into my name or Mrs. McMillian's" (R. 61).

Mrs. Kuper testified that she and Adele McMillian had provided the funds used to acquire the corporation and agreed that

her husband is nothing more than a trustee holding the stock for the benefit of Adele McMillian and herself (R. 62). The parties in this matter stipulated that both Judy Williams and Adele McMillian hold 75 shares of stock in the Company despite the fact that corporate records show no issuance of shares since the assignment of stock from Hill to Ronald W. K. Lucas (R. 283).

Corporate records show that no shareholder meetings for the election of officers or directors have been held since February 2, 1972 (R. 62). A resolution drawn up for the purpose of opening a bank account in Rock Island, Illinois showed that Adele McMillian signed the Resolution as President of the Company (R. 63). Although annual reports of the Company were filed with the State of Illinois, Mrs. Kuper testified that she did not bring any copies of the reports with her to the hearing because she was not aware that the Hearing Officer had directed the production of such documents at the public hearing (R. 65).

Income derived from payments to East Lawn Water Company is distributed for monthly maintenance, gas and electric bills, chlorination and bookkeeping fees (R. 68). Maintenance fees (chlorine addition, system checks, reports preparation, operator's salary and equipment repairs) average about \$40.00 per month while the electric bill ranges from \$30 to \$50 per month. Neither of the Kupers received any money from the Company whatsoever during 1974 (R. 77).

Marsha Foutch, a registered nurse, testified that she was hired in March 1974 to operate the well. She held this position until January 1975 at which time she resigned because the Company was \$70.00 in arrears in her pay (R. 127). She reassumed the position in April 1975 after the pay issue was resolved. To her knowledge the facility had no operator from January to April 1975 (R. 82). She is compensated at the rate of \$30.00 per month plus \$10.00 per month for chlorine, and postage fees required for sending water samples to the State laboratory. In addition, she receives water from the Company without charge.

During the period from March 1974 to January 1975 Marsha Foutch was the sole operator of the facility. She has at no time been a certified public water supply facility operator (R. 82). Although Mrs. Kuper asked her to acquire the certification and advanced \$50 for the necessary course work, Mrs. Foutch was seeking full-time employment at that time and felt she could not handle a full-time job and the certification course work at the same time. She used the \$50 to cover late salary payments (R. 133).

Chlorination equipment for the water supply is located in the pump house. This equipment consists of one 20-gallon crock and a pump which sits atop the crock. The chlorine solution is prepared by adding one gallon of commercial liquid bleach (5.25% hypochlorite) to 18 gallons of water. Mrs. Foutch testified that bleach usage ranged from about 1 gallon per week in the winter to 2 gallons per week in the summer (R. 83). The commercial liquid bleach costs about \$.60 per gallon (R. 115).

Shortly after assuming the position of well operator in March 1974, Mrs. Foutch discovered that the chlorination unit was frozen and inoperative (R. 91). A contractor had to be called in to thaw the unit. Mrs. Foutch at first speculated that the chlorinator had frozen because "the heat was not on" (R. 91) but she later testified that the heater was operating (R. 92).

In May 1974 Mrs. Foutch recalled that flood waters were "waist high on me" in the pump house (R. 89). No chlorination was provided for the water because flood waters completely covered the crock and pump. Flood waters were one to two feet above the well casing and remained above the well casing for about three days (R. 104). Although no samples of the water were taken for analysis during this time, water was supplied to the customers (R. 105). Since the flooding conditions presented the possibility of contamination, Mrs. Foutch had an announcement published in the newspaper to inform the water supply customers that an Agency telegram advised the boiling of drinking water for five minutes (R. 105). This advisory remained in effect for two months.

Mrs. Foutch testified that she was unable to provide chlorination for the water supply during two additional periods, the summer or early fall of 1974 and October and November 1974. On July 15, 1974 Mrs. Foutch advised Judy Williams by telephone that she could not continue chlorination unless her salary and money for chlorination supplies were received. Although she was informed that the check would be mailed that day, Mrs. Foutch did not receive the money until September 5, 1974 (R. 91). On October 29, 1974 the chlorinator was taken out of service to repair a leak. It was replaced the next day. Chlorination was not provided for an undetermined part of November 1974 because the Company failed to supply money to purchase supplies (R. 89). Water samples were not sent in for analysis during these time periods because of the failure to receive any money for this purpose (R. 89, 115).

For about three days in March 1974 the water supply customers experienced a gradual decrease in water pressure. A leaking elbow joint at the well casing finally froze on the third day causing the customers to be without water. The joint

had been insulated at one time but was not insulated during the freezing weather because "it had been ripped off or weather beaten or whatever" (R. 107). Several of the customers called Mrs. Foutch to complain of the low water pressure. One of the customers, Opel Mayhugh, complained that her family could not bathe adequately after returning from an out-of-town trip (R. 113).

The water developed a yellow cast during flooding (R. 133) and had an offensive taste and odor during February, March and part of April 1975, according to Mrs. Foutch (R. 108). She described the odor as "a rotten egg odor" (R. 109). A 12 year old girl came to Mrs. Foutch's home in March 1975 complaining that the "water smelled and tasted so bad that she would not wash her hair or drink the water" (R. 111).

One of the firm's customers, Tracy Isaacson, testified that she has smelled the water on different occasions when she thought an animal had entered the pump house and drowned (R. 234). The water is discolored and "tastes like mud" to her. She is inconvenienced by "trying to tote in plastic jugs for drinking water" and having the jugs sitting around her kitchen. She dislikes having to boil the water for fifteen minutes stating that "you start out with a pan of water and you end up with half" the water (R. 236). The discolored water has turned all her white clothes to "pastel brown". She has experienced these problems continuously since moving to her present residence in May 1974.

Sharon Wells testified that she has experienced similar problems with discolored and odorous water. She has complained to the operator about the water quality problems (R. 241). She testified that the color of the water had affected her clothing and that the taste is so "terrible at times" that "you can't hardly drink it" (R. 241). She has had to purchase bottled water during flooding periods. Another resident of the Sub-division, Mrs. Opel Mayhugh testified that one family living in the Subdivision had been refused a loan to purchase the house in which they were residing because of the "well condition and the sewer condition" (R. 244).

Mrs. Foutch testified that she had never submitted operating reports to the Agency even though she knew they were required. She explained that the water supply was not fluoridated and that there was no way to measure the quantity of water being pumped to the customers. In addition, the facility did not have a chlorine test kit with which to measure the amount of chlorine in the water supplied to the customers (R. 116).

On June 6, 1974 Mrs. Foutch wrote a letter to Ira Markwood, Manager of Public Water Supplies for the Agency, complaining of conditions at the well site. She indicated her "hope" that proceedings would be "forthcoming against the owners for necessary repairs to the casing, etc." (Complainant Exhibit 2).

A former well operator, Glen Hains, was employed by Respondents from October 8, 1972 until January 13, 1974. During that time he was not a certified public water supply facility operator even though he was the only person performing the duties of well operator (R. 141).

Hains disagreed with the testimony of Mrs. Foutch as to the amount of bleach required for the water supply stating that bleach addition was only required "approximately once a month". He recited from personal records the dates and amounts of bleach added for the period January 3, 1973 through November 6, 1973. This testimony shows that Hains added one gallon of bleach on the average of every 18 1/2 days with intervals ranging from five days to thirty-four days. On at least two occasions he added a 15% solution of hypochlorite at a cost of \$.75 per gallon. No reason was given for using the stronger hypochlorite solution.

During flooding conditions which began on May 7, 1973 and lasted for four days, Hains was unable to chlorinate the water supply "for a couple of days". The flood water reached almost to the doorknob of the pump house during this flood (R. 169). Hains thought the flood waters covered the well casing but he "wasn't worried about the well casing, I was worried about that inside". He dumped the contents of the crock, cleaned it and added new bleach but "it came back in it" (R. 157). Hains called Respondent's customers and told them to boil their water. The boiling of water continued after the flood, "I told them [to boil] about two or three weeks longer, whatever they thought" (R. 156).

About one week after the May 1973 flood, the water developed an odor "like rotten eggs" which lasted for two days. Hains did not tell Respondents about the odor problem (R. 168).

Hains testified that he called Mrs. Kuper on January 6, 1974 and informed her that the system had frozen the day before. Hains recalled that Mrs. Kuper contacted Pete's Welding about the problem and that Pete's Welding installed a portable heater for "about three or four days". The portable heater was removed after the system was operating again (R. 170).

Both Mrs. Foutch and Hains testified that their salaries were not received promptly. Hains testified that he submitted water samples regularly to the Agency from October 10, 1972 until the date he terminated his employment with Respondent (R. 160).

Charles Bell, Jr., Regional Supervisor of the Agency's Division of Public Water Supplies, testified that he first visited Respondent's facility in May 1973 in response to a call from the Rock Island County Health Department advising of flooding in the area of Respondent's well. Bell observed water one foot deep around the well site and pump house. These conditions could cause the water in the well to become contaminated (R. 176). This would occur if water seeped down the side of the well casing and into the ground water.

Bell again visited the site in June and August 1973 to observe site conditions and to see if any work had been done towards achieving compliance with the Board Order in PCB 72-179. Subsequent to the August visit, Bell contacted Mrs. Kuper to inquire about the work. He was informed that they were applying for a loan from the Small Business Administration in order to start the repair work. Visits in September, October and December 1973 showed that Respondents had failed to start work towards compliance with the previous Board Order.

As a result of his December 12, 1973 visit, Bell prepared a letter for signature by his supervisor which advised Respondents that undesirable conditions existed at the facility which might constitute violations of the Act and Public Water Supply Rules and Regulations. Among the conditions warned of were:

- A. Contaminated water during the Spring 1973 flood,
- B. Possible future contamination during periods of heavy rain or flooding,
- C. Failure to have a certified water supply operator,
- D. Failure to fluoridate the water supply,
- E. Failure to employ any method for determining the amount of water pumped and,
- F. Failure to submit operational reports.

Suggestions for correcting the "apparent violations" were provided including the recommendation that a second well be provided as a stand-by source "in the event of an emergency such as failure of your present well pump" (Complainant Exhibit 5).

Additional site visits were made by Bell in January, February, March and July 1974. Following his July 17, 1974 visit Bell again prepared a letter for signature by his supervisor advising Respondents of possible violation (Complainant Exhibit 9). In addition to findings similar to those enumerated in his prior letter, Bell advised Respondents that their failure to extend the well casing and fill the well area with compacted earth had "allowed flood water to again inundate and contaminate the well in May 1974".

Respondents were further advised that there was a leak in the well discharge line and the south pressure tank. Bell told Respondents that the site was overgrown with weeds which made proper care and maintenance of the system difficult. Suggestions were again made for bringing the facility into compliance.

Bell testified that Mrs. Kuper had called him in May 1973 to inform him that the delay in raising the well casing was caused by flooding and slow contractors (R. 219).

On April 28, 1975 Bell observed that the well casing had been extended and some earth had been piled around the casing although not to the 15' radius specified in plans for that work. He estimated that the top of the well casing is now about 12 to 18" above the previously defined flood level. The referenced flood level was defined here as the "door knob" on the pump house door" (R. 216).

Another Agency employee, Jayant Kadakia, visited the site on September 6, 1974. In his report (Complainant Exhibit 11) Kadakia noted that, although the well casing had been extended, the requirement that the top of the casing be 2 feet above the highest known flood level had not been complied with. Kadakia also noted that: a) there was no concrete collar around the casing, b) the earth placed around the well was not of sufficient radius and did not appear to be well compacted, c) the facility did not have a certified operator, d) the facility did not have fluoridation equipment or equipment for detecting the amount of water pumped or a chlorine test kit to monitor chlorine residual in the system, e) the pressure storage tanks were not equipped with an air compressor or sight glasses, and f) no monthly operational report had been submitted to the Agency.

Kadakia returned to the site on December 12, 1974. In his report of this visit (Complainant Exhibit 12) Kadakia noted that conditions were virtually unchanged since his visit of September 1974. He noted, however, that a heater in the pump house was inoperable which could cause the system to freeze during very cold spells. As a result of his April 7, 1975 visit, Kadakia testified that "no work along the lines that was necessary" had yet been performed (R. 263). He estimated that the top of the well casing is now 9 to 12" above the pump house door knob.

Testifying in Respondent's defense, Mrs. Kuper stated that repairs had been made on the facility continuously. These repairs include the installation of a new pump in 1973,

improvements and repairs on the chlorinator and furnace, installation of a new roof on the pump house and bracing on the well head. The pump was replaced even though the old pump was still operable because Respondent had been advised that it might become inoperable "in the very near future".

Regarding the operator's salary and chemicals supply, Mrs. Kuper testified that she sent the June 1974 paycheck to Mrs. Foutch but it was returned marked unclaimed. When advised by Mrs. Foutch that the June paycheck had not arrived in July, Mrs. Kuper sent a second check. She recalled that Mrs. Foutch had told her that "it might have been due to the flood and that they weren't collecting mail". On two other occasions her mail to Mrs. Foutch was returned marked unclaimed.

According to Mrs. Kuper, neither Mrs. Foutch nor Glen Hains had ever complained about water discoloration or odor. Mrs. Kuper testified that she was not aware of these problems until "yesterday" when it was called to her attention for the first time (R. 288). She remembered receiving a letter from Tracy Isaacson about a billing problem but no mention was made in that letter about the discoloration or odor problems (R. 294).

Upon being notified that the system had frozen on January 5, 1975, Mrs. Kuper testified that she called A-1 Welding to handle the problem immediately (R. 286). Shortly thereafter, her husband and a repairman from St. Louis visited the facility to check on the problem. They discovered that gas had not been turned on to the furnace by Hains so the power company was called out to check the furnace. The power company found that "someone had disconnected the fan belt".

After correcting these problems, Mrs. Kuper testified that they fired Hains "that same day" (R. 287). Hains vigorously denied having been fired on that date. He testified that he called Mrs. Kuper on January 13, 1974 to tell her that he was quitting. He then received an envelope postmarked February 1, 1974 which contained a letter dated January 13, 1974. (The Hearing Officer reported that the testimony of Hains "was fair but bore a sense of malice to his ex-part-time employer".)

Respondent had hired a certified operator in May 1973. However Hains informed Mrs. Kuper that the operator was neither supervising nor visiting the facility. Mrs. Kuper testified that she continued to pay the operator through October or November 1973 at which time she learned that the operator's certification had expired in July 1973. The operator had not informed her that his certification had expired.

After obtaining a list of certified operators from the Agency, Mrs. Kuper sent letters to all certified operators in surrounding counties offering employment. Mrs. Kuper testified that three or four operators refused the job because "word had gone around" that the EPA was going to be involved with the system. "They were just afraid to get involved with them" (R. 289).

Part of Respondent's delay in hiring a certified operator can be attributed to the actions of Marsha Foutch, according to Mrs. Kuper. When Mrs. Foutch told her that she would obtain the certification, no other employment contacts were made by Mrs. Kuper. The two month period that followed before Mrs. Foutch decided that she would be unable to secure certification "was just something that happened" (R. 289). Two prospective employees are withholding committment pending the outcome of this matter (R. 290).

Attempts to have the well head raised "started in the beginning of 1973 and even before that at times", according to Mrs. Kuper. A licensed engineer drew up required plans and a permit was secured from the Agency. Johnson Water Equipment was hired to perform the work in early 1973. However a number of delays were caused by "ground too wet to perform the work", a flood, and a "too busy" contractor (R. 290).

A second contractor informed Respondents that they were too busy with winter jobs to perform the work at that time but that the job could be "the first thing in the spring (of 1974) before flooding could occur". Flooding did occur, however, before the new contractor could get to the job. Respondents contacted the contractor again and "finally got them to understand it had to be done then". Mrs. Kuper testified that the well head was finally raised in August 1974 in conformance with plans and specifications "that were given to us" and "approved by the EPA" (R. 291). She testified that she first found out that there was no casing around the well only "yesterday" (R. 302).

Mrs. Kuper testified that she was aware of the leaking elbow joint before it froze in March 1974. She called Johnson Water Equipment and informed Mr. Johnson about the leak. She was informed that he did not want to replace the joint at that time since it was planned to eliminate that joint when the well head was raised. When the joint froze Respondent "realized we couldn't let it go any longer" (R. 312).

Respondents do not visit the facility with any regularity to check on the operation (R. 311). They do not meet with the well operator on a routine basis. Mrs. Kuper testified that she had never seen or tasted the water and that she thought it was average "that you normally drink". She was never informed that it had "a bad taste, a bad odor or bad color" (R. 315).

The crux of the problem, according to Mrs. Kuper, is that the malfunctions cannot be corrected quickly unless she is informed of them. Although she believes Mrs. Foutch to be a conscientious person, Mrs. Kuper believes the water supply problems developed because of Mrs. Foutch's failure to communicate the problems to her. All customers were notified by letter that Respondents would accept collect calls if any problems developed due to "low pressure or no water". Mrs. Kuper believed that discoloration and bad odor would be reason to call but she never received any calls.

Mrs. Kuper testified that the system "doesn't break even" financially because of continuous operational repairs and the low rate for water now charged. A petition to increase this rate has been submitted to the Illinois Commerce Commission and a decision on that petition is now pending.

Respondents have authorized McClure Dunkirk Engineering to proceed with plans, specifications, permit applications and completion reports for the installation of fluoridation equipment, a master meter and an air compressor for the water supply system (Respondent Exhibit 1).

Residents of the East Lawn Addition are considering a venture aimed at securing the water supply system as a "not-for-profit community well association", according to Mrs. Foutch. Following a meeting of the residents in which this possibility was discussed, Respondents were notified of the proposed venture and reacted favorably (R. 117).

Opel Mayhugh testified that Mrs. Kuper had called her in February 1975 wanting to know if she and her husband would "accept the well as a gift" (R. 245). After conferring with their attorney, the Mayhughs decided "it was more than what we wanted to tackle". Mrs. Mayhugh also recalled that Mrs. Kuper had offered to give her a list of operators "that would allow us to use their name for \$5 or \$10 a month".

Mrs. Kuper recalled the conversation with Mrs. Mayhugh but vigorously rejected the interpretation rendered by Mrs. Mayhugh. She denied having ever offered to give Mrs. Mayhugh a list "where she could buy the names of operators". She

denied offering the water supply system as a gift. She testified that the Mayhughs were merely told that Respondents were "liquidating immediately" and that the Mayhughs could contact a local attorney who could "give her a list of any violations outstanding". Mrs. Kuper then testified that, when Mrs. Mayhugh asked about the price for the system, she informed Mrs. Mayhugh that there would be no price, "we just wanted to donate the system, we were liquidating and there were violations and they would have to be corrected" (R. 295).

This recital of facts has been long but we believe was necessary to show the mismanagement, failure of communication and the gross neglect in the operation of this water system. All alleged violations have been proven, including the allegation that Respondents failed to employ a certified water supply operator. A certified water supply operator was on the company payroll for three months in July 1973, but the record indicates that this employee did not supervise the operation nor was he even visiting the facility. This employee remained on the payroll even after Respondents were advised of his failure to attend to the duties of a certified water supply operator.

The failure of mail delivery is largely unexplained. The problems with mail delivery do not correspond well with testimony establishing the dates of floods in the area. Mrs. Kuper testified that she had never contacted the post office regarding the mail delivery nor had she ever attempted to solve the problem (R. 317) and we regard this as additional evidence of mismanagement.

Respondents were somewhat hampered in defending against the charges because of the unavailability of corporate records. They must bear the responsibility since the Hearing Officer clearly had notified them to come prepared with corporate records and they had the opportunity to address that issue prior to the hearing. There is abundant evidence of slipshod methods which were adopted, not only in the operation of the water system but in the keeping of corporate records and the preparation for defense of the case.

From the record, it is apparent that Ronald W. K. Lucas knows little about the operational aspects of this water system. He relies heavily upon Mrs. Kuper to run the operation. He apparently does not question her management practices, even though he is nominal owner of the stock in the company. As the stipulated owner and as the manager of the company one would anticipate that Mrs. Kuper at least would be fully aware

of the operational problems with the company. Her neglect is obvious. In the previous case involving the Respondents the Board Opinion clearly pointed out that the water supply system had experienced problems with discoloration and odors. Testimony by Mrs. Kuper that she became aware of these problems only "yesterday" therefore strongly suggests that she never bothered to read the prior Opinion and Order.

The Board has thoroughly considered all of the factors of Section 33(c) of the Act. We find that there has been a substantial and serious interference with the protection of the health, general welfare and physical property of the families served by this water system. The water system does have a social and economic value but that exists only if it is correctly operated. Shipshod methods of the type seen here can change an asset into a health liability in the community. We find that the water system is suitable to the area in which it is located if the owners make adequate provision against flood damage. Such protection, and compliance with the appropriate regulations are both technically feasible and economically reasonable.

Because Respondents did fail to comply with the Hearing Officer's order for production of corporate records, there is but a meager amount of financial information in this record. It would appear that, at times, the water supply operation has profits of \$130 to \$190 per quarter (\$400 income less \$70 - \$90 expenses). This, of course, largely ignores the cost of repairs but the evidence of repairs and their cost is negligible. It is difficult to know the true financial situation but the impression is given that this water system is not a money making proposition. This impression comes in part from the Respondents' attempt to donate the entire system to one or more families now residing in the East Lawn Addition.

We regret the necessity of imposing a monetary penalty in this case. Our prior Order has been ignored and we feel that stronger measures are required in order to force the recalcitrant to come into compliance. This may not be a money making operation for Respondents but this fact cannot justify the continued flouting of laws which were designed to protect the health of people. The health and welfare of 47 families have time and again been threatened and it can be permitted no longer. We shall not require Respondents to close this facility for the simple reason that the customers would be forced to suffer even further by such an order.

We find that Ronald W. Kuper Lucas is not personally liable since he was not involved in managing the company and had only a nominal ownership of stock certificates held for the benefit of others. Judy Williams Kuper would be liable as the manager of the Company but she was not named as a Respondent personally until the filing of the Amended Complaint. There is no showing that the Amended Complaint was served upon her in conformity with our Procedural requirements.

Our Order will require Respondent, East Lawn Water Company, to pay a monetary penalty in the amount of \$2500 and to bring the water system into compliance with the law. If compliance can be achieved at an early date then the Board will be amenable to a reduction of the penalty to \$500. In view of the history of this operation we believe a performance bond in the amount of \$5000 will be appropriate. In addition, Respondent will be required to provide the well operator with ample operating expenses at least one month in advance to insure that chlorination is not suspended again for lack of funds.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondent East Lawn Water Company shall pay to the State of Illinois by December 31, 1975 the sum of \$2500 as a penalty for violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be mailed to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.
2. Respondent East Lawn Water Company shall provide the well operator with funds sufficient to cover the purchase of all required chemical supplies and postage fees at least one month in advance of the date such funds are required. By the 7th day of each month following the date of this Order Respondent shall have provided the Agency with proof that such funds were provided and received by the well operator.
3. Respondent shall immediately proceed with maintenance measures designed to insure that the entire water system supply is adequately protected from freezing. All such measures shall have been completed by October 15, 1975,

and the Agency shall be advised of the measures taken and the date of completion no later than 5 working days after said date of completion.

4. Respondent shall submit a compliance plan to the Agency by September 15, 1975 and shall send a copy of the compliance plan to the Pollution Control Board. The compliance plan shall show that Respondents will eliminate the violations which have been proved in this case and will come into compliance with the Regulations by November 15, 1975. The compliance plan shall be accompanied by a performance bond in the amount of \$5000 to guarantee performance of all aspects of the compliance plan. Respondents shall proceed immediately with installation of a master meter, chlorination equipment and an air compressor at the well site and shall provide the well operator with an Agency approved chlorine test kit no later than September 15, 1975.

The Environmental Protection Agency shall provide the Board with an assessment of Respondent's compliance plan within 15 days after receipt of the plan.

5. The Board retains jurisdiction of this matter until December 31, 1975 for any further orders as may be required. Within that period of time Respondent East Lawn Water Company may apply for a reduction of monetary penalty upon proof of full compliance with the preceding paragraphs of this Order.

6. Respondent East Lawn Water Company shall cease and desist from its violations of the Act and Regulations, as found in this proceeding, by November 15, 1975.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted the 4th day of September, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board