

ILLINOIS POLLUTION CONTROL BOARD  
July 12, 1973

ENVIRONMENTAL PROTECTION AGENCY

v.

McHENRY SHORES WATER COMPANY;  
JOHN H. FUHLER and NORTHERN ILLINOIS  
UTILITIES, INC.

PCB 72-509

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle)

This is an enforcement action involving alleged violations of Section 18 of the Environmental Protection Act and also Rules 3.13, 3.30 and 5.28 of the Public Water Supply Systems Rules and Regulations in the operation of a public drinking water supply facility in the Village of McHenry Shores. Hearings were held on March 23 and May 5, 1973.

In PCB 72-137 the Board granted a variance to McHenry Shores Water Company from the same Rules alleged to be violated here. The \$3,000 penalty levied in that case was not paid and is not collectable at the present time because of the Appellate Court decision in the Citizen Utilities Company case.

The record in the instant case clearly points out that the violations have not been corrected and that the deplorable condition still exists. The Agency introduced evidence that approximately fifty per cent of the persons living in McHenry Shores still have strong complaints concerning the color and odor of the water and the staining of clothes washed in that water (Tr. 179-183). Rule 3.13 which adopts the United States Public Health Service Standards of 0.3 mg/1 for iron is still being violated. It was admitted by the defendant (Tr. 64) and also proved by Agency tests (Agency Ex. 5 thru 12). Samples taken as late as March, 1973 show iron concentrations at levels of 0.4, 0.7, 0.2, 1.0, and 1.5 mg/1.

Rule 3.30 provides by reference that the gross volume for hydropneumatic storage tanks is to be 35 gallons per capita. According to the figures, the current storage capacity should be 28,000 gallons but in fact it is only 13,000 to 17,000 (Tr. 307, 404). This is a violation also.

Section 18 of the Act provides that the water supply shall be "safe in quality, clean, adequate in quantity, and of satisfactory mineral character for ordinary domestic consumption." In view of our above findings concerning excessive iron concentrations and inadequate quantity, we also find a violation of Section 18 of the Act. In further support of the Section 18 violation, residents in the area testified to rusty brown discoloration (Tr. 192), stained laundry (Tr. 205, 209), rust in the water (Tr. 228), the need to purchase bottled water (Tr. 228), and odors.

Up until May, 1973 the Water Company was owned by the respondent John Fuhler. Northern Utilities is the new owner. Prior to his purchase of the water company Mr. Fuhler was sole owner and president of Fuhler Realty Company (Tr. 8). In 1969, Fuhler entered into negotiations for some vacant land in the McHenry Shores area for the purpose of development, resale and speculation. The water company was included by the seller as part of the total package. Ownership of the land was taken by Fuhler Realty and ownership of the water company was taken by Mr. Fuhler personally. Since that time Mr. Fuhler has made profits on the same of homes that he built on the land. He also allowed those new homes to hook up to the water system, thus worsening the problems. It appears that Mr. Fuhler cared only about making money on his real estate deal but cared nothing about the health and well being of those who drank his water.

For this total disregard for the health and safety of his fellow human beings we assess a penalty of \$5,000 against Mr. Fuhler personally. The contract between McHenry Shores Water Company and Northern Illinois Utilities (Resp. Ex. 3) provides that Northern would pay any fine levied by the Board against "the Seller" in this case. Since "the Seller" is McHenry Shores Water Company and not Mr. Fuhler personally, we feel free to levy a personal penalty against Mr. Fuhler aside from the contract.

In view of the fact that the new owner, Northern Illinois Utilities, purchased the company after the proven dates of violation and that it has indicated its desire to rectify the situation we shall not penalize Northern in this proceeding.

#### ORDER

1. Northern Illinois Utilities, Inc. shall cease and desist from all violations of the Act and Rules in the operation of McHenry Shores Water Company by October 12, 1973.
2. John F. Fuhler shall pay to the State of Illinois by August 17, 1973 the sum of \$5,000 as a penalty for the violations found in this proceeding. Penalty payment by certified check or

money order payable to the State of Illinois shall be made to:  
Fiscal Services Division, Illinois Environmental Protection  
Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

3. Northern Illinois Utilities, Inc. shall adhere to the following conditions:
  - a. That Northern post a \$10,000 bond with the Agency by August 1, 1973 to guarantee its performance and compliance with this order and the Act and Rules.
  - b. That Northern shall submit to the Board and Agency by August 15, 1973 a firm and specific program for the abatement of all violations.
  - c. That hereinafter Northern shall file monthly operational reports with the Agency in a form satisfactory to the Agency.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 12<sup>th</sup> day of July, 1973 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board