

ILLINOIS POLLUTION CONTROL BOARD

December 17, 1992

HERMAN W. PRESCOTT,)
)
Complainant,)
)
v.) PCB 90-187
) (Enforcement)
)
CITY OF SYCAMORE,)
)
Respondent.)

T. JORDAN GALLAGHER OF GALLAGHER, KLEIN & BRADY, APPEARED ON BEHALF OF COMPLAINANT;

PETER THOMAS SMITH OF SMITH & STRAUSS AND TIMOTHY JOHNSON APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flenal):

This matter comes before the Board on a complaint filed October 16, 1990, by Herman Prescott (Prescott or complainant) against the City of Sycamore (Sycamore). The complaint alleges that Sycamore has violated 35 Ill. Adm. Code 653.604 of Subtitle F, Public Water Supplies, by failing to maintain the required amount of chlorine residual in all active parts of the distribution system. Prescott requests that the Board order Sycamore "to supply the Northeast section of the City with a steady supply of chlorine up to standards * * *" and to conform to the recommendations of the Illinois Environmental Protection Agency (Agency), as contained in a letter attached to the complaint. (complaint at ¶9.)

On December 20, 1990 the Board denied a motion filed by Sycamore to dismiss this action. (Prescott v. Sycamore (December 20, 1990), PCB 90-187, 117 PCB 153.) In its order, the Board found that the alleged violations of 35 Ill. Adm. Code 654.403 contained in the complaint were improper because that section contains unenforceable secondary maximum contaminant levels for finished water. The Board also found that allegations related to iron and manganese were contained in the complaint, but that the complaint contained no citation to any applicable section of the Board regulations or Environmental Protection Act (Act) regarding the manganese and iron concentrations which Sycamore is claimed to have violated. The Board declined to dismiss the matter for this reason, stating that the complainant could either file an amended complaint or amend his pleadings to conform to the proof at hearing. (*Id.* at 2.) Prescott has not so amended his complaint or pleadings, and the Board will proceed on the alleged violation of Section 653.604 only.

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Hearing was held on June 2 and 3, 1992, in Sycamore, Illinois. No members of the public were in attendance, as noted by the hearing officer. Prescott filed his brief on July 16, 1992; Sycamore filed its response brief on July 31, 1992; Prescott filed his reply to Sycamore's response on August 7, 1992.

FACTS

Prescott lives at 462 East Exchange Street in the northeast section of the City of Sycamore. The dwelling is one in a group of condominiums in the area. Prescott moved to the location in November 1988. The evidence at hearing established that the Prescott residence receives water through a six inch pipe connected to a water main. The pipe extends for approximately 230 feet until it dead ends at a hydrant. (Tr. at 45, 145, 339-340.) Various tests of the water in the area were conducted for chlorine content by Prescott, Agency personnel, and Sycamore personnel both before and after the complaint was filed.

A threshold issue is what rules apply to this water supply. Whether the tests conducted indicate that a violation of the applicable standards has occurred is at issue in the proceeding. Whether this pipe system is owned and controlled by the condominium residents or Sycamore such that one or the other would carry the responsibility of maintaining the pipe and hydrant system is also at issue in this proceeding.

APPLICABLE LAW

The Board regulations at 35 Ill. Adm. Code 604.401 require public water supplies to chlorinate their water before it enters the distribution system. Section 604.401(b) of the Board's regulations provides for the Agency to set levels and to promulgate procedures for chlorination of public water supplies. The Agency has set chlorine levels at Section 653.604. The section requires as follows:

A minimum free chlorine residual of 0.2 mg/L or a minimum combined residual of 0.5 mg/L shall be maintained in all active parts of the distribution system at all times.

It is this chlorine residual requirement contained in Section 653.604 that Prescott alleges Sycamore has violated.

The Board notes that prior to the filing of Prescott's complaint, the Board amended its public water supply regulations and that Section 604.401 was amended. (In re Safe Drinking Water Act Regulations (August 9, 1990), R88-26, 114 PCB 149.) Section 604.401 applies only until the effective date has passed for the filtration and disinfection requirements of new 35 Ill. Adm. Code

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611. Subpart B, pertaining to a particular public water supply. The dates are set out for each type of public water supply, classified by source, in Section 611.240. One of the following effective dates for different types of groundwater sources would apply to Sycamore's water source:

- b) A supplier that uses a groundwater source under the influence of surface water and does not provide filtration treatment shall provide disinfection treatment specified in Section 611.241 beginning December 30, 1991, or 18 months after the Agency determines that the groundwater source is under the influence of surface water, whichever is later, unless the Agency has determined that filtration is required.
- c) If the Agency determines that filtration is required, the Agency may, by special exception permit, require the supplier to comply with interim disinfection requirements before filtration is installed.

* * *

- e) A system that uses a groundwater source under the direct influence of surface water and provides filtration treatment shall provide disinfection treatment as specified in Section 611.242 by June 29, 1993 or beginning when filtration is installed, whichever is later.

* * *

- g) CWS suppliers using groundwater which is not under the direct influence of surface water shall provide disinfection pursuant to Section 611.241 or 611.242, unless the Agency has granted the supplier an exemption pursuant to Section 17(b) of the Act. [The Board notes that the effective date for this subsection (g) is September 20, 1990, the same as the effective date of this Section 611.240.]

(Section 611.240.)

On October 29, 1992, by interim order, the Board found that it is possible that disinfection requirements of 35 Ill. Adm. Code 611 apply to this system, and that the chlorination requirements of Section 604.401 (and of Section 653.604 which proceeds from Section 604.401) are no longer in effect for this source, or have not been in effect prior to the filing of the complaint. Prior to the interim order, neither the complainant nor any other party had supplied the Board with information of

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what type of supply this is, other than it is a groundwater system. Therefore, the Board ordered the parties to submit a document to inform the Board of the type of public water system used by Sycamore, according to the categories listed above from Section 611.240, so that the correct effective date and sampling requirements may be applied.

On November 13, 1992, Sycamore and Prescott filed a stipulation of facts which states that:

The public water system used by the Respondent, CITY OF SYCAMORE, at all pertinent times in the above captioned case used groundwater which is not under the direct influence of surface water.

As the parties indicate, this system is a groundwater system not under the direct influence of surface water. Therefore, the effective date of the new requirements for filtration and disinfection found at 35 Ill. Adm. Code 611.Subpart B for this system is September 20, 1990, a date prior to the filing of this complaint. By the time of the filing of the complaint, Section 604.401, and Section 653.604 which proceeds from Section 604.401, were no longer in effect for this source. The Part 611 rules include different sampling requirements than those found at Section 653.604. The Board finds that the complainant has not brought this action based on applicable law; consequently, he has not shown that a violation of applicable law has occurred. Therefore, based on the record before it, the Board must dismiss this complaint as no violation can be found. The Board does not reach the issue of ownership and control of the hydrant since no violation of the applicable law can be found.

If the complainant believes Sycamore is in violation of the applicable disinfection requirements of 35 Ill. Adm. Code 611, he may file a new complaint.

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

ORDER

For the reasons contained in the above opinion, no violation is found and this matter is dismissed.

IT IS SO ORDERED.

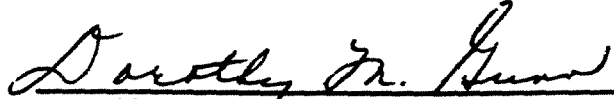
B. Forcade dissented.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111½, par. 1041, provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also

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35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 17th day of December, 1992, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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