

ILLINOIS POLLUTION CONTROL BOARD  
June 2, 1988

M. SANCHEZ, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 87-10  
 )  
 ISLAND LAKE WATER COMPANY, )  
 )  
 Respondent. )

MRS. MARVA SANCHEZ AND MR. W. RANDAL BAUDIN APPEARED ON BEHALF OF THE COMPLAINANT.

MR. MICHAEL T. CALDWELL APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Michael Nardulli):

This matter comes before the Board from a formal complaint filed by Mrs. Marva Sanchez (hereinafter "Mrs. Sanchez") on January 7, 1987. In the complaint, Mrs. Sanchez alleges that the Respondent, Island Lake Water Company, has violated 35 Ill. Adm. Code 604.201 "Finished Water Quality" which states:

- a) The finished water shall contain no impurity in concentrations that may be hazardous to the health of the consumer or excessively corrosive or otherwise deleterious to the water supply. Drinking water shall contain no impurity which could reasonably be expected to cause offense to the sense of sight, taste or smell.
- b) Substances used in treatment should not remain in the water in concentrations greater than required by good practice. Substances which may have a deleterious physiological effect, or for which physiological effects are not known, shall not be used in a manner that would permit them to reach the consumer.

The Complainant cites problems with red water destroying home appliances and laundry, sand in the water system and poor water pressure. Mrs. Sanchez requests that the Board enter an order to have the Island Lake Water Company "correct this problem immediately..."

The Board scheduled a hearing on this complaint for January 15, 1987. Hearings were continued on July 13, 1987 and concluded at a third session on September 16, 1987. Nine (9) witnesses testified on behalf of the Petitioner. The Respondent called only one (1) witness. In addition, four (4) members of the public made statements in response to the Hearing Officer's invitation to allow any one attending the hearing to testify. The parties agreed that no briefs would be filed. On September 22, 1987, the Respondent filed a Motion for Directed or Summary Finding. On direction from the Board, the Respondent filed a proof of service for the Motion for Directed or Summary Finding on the Complainant on October 28, 1987. The Complainant did not respond to the Motion for Directed or Summary Finding. The Board hereby denies the motion for reasons made apparent in the following decision.

#### FACTUAL BACKGROUND

Island Lake Water Company is a closely-held Illinois corporation that operates a water-treatment and distribution facility supplying potable water to the residents of Island Lake, Illinois. The system serves approximately eight-hundred (800) services (R.283). The water treatment for Island Lake water includes a sequestration program to control the iron in the water. The program includes the injection of a polyphosphate sequestering agent. The sequestering agent causes the iron in the water to either adhere to the mains or allows the iron to be carried through the system without staining or causing red water problems. (R. at 109). The iron that adheres to the mains can be removed from the system by flushing the systems through open hydrants. Testimony by the Illinois Environmental Protection Agency (hereinafter "Agency"), Division of Public Water Supply Regional Manager of the northeast region of Illinois, Mr. Leonard Lindstrom indicates, however, that the Respondent has not followed a good sequestration program because it has been unable to flush part of its mains and has a history of not flushing (R.290-292). It is not clear from the record how often the system has been flushed. In a letter dated April 30, 1987, the Agency has recommended that Island Lake Water Company repair its broken hydrants, install additional hydrants, and thoroughly flush the distribution system early in the spring, during the summer and again late in the fall in order to reduce the red water problem. (R.293-296).

#### EVIDENCE OF THE ALLEGED VIOLATION

At the public hearing, the Complainant, Mrs. Sanchez, had the burden of proving that the Respondent had violated the standards established in 604.201.

A violation of 604.201 will be found if any one of the following requirements is not achieved:

- 1) Finished water shall contain no impurity in concentrations that may be hazardous to the health of the consumer or excessively corrosive or otherwise deleterious to the water supply.
- 2) Drinking water shall contain no impurity which could reasonably be expected to cause offense to the sense of sight, taste or smell.
- 3) Substances used in treatment should not remain in the water in concentrations greater than required by good practice.
- 4) Substances which have a deleterious physiological effect, or for which physiological effects are not known, shall not be used in a manner that would permit them to reach the consumer.

To prove a violation of the first standard listed, the Complainant would need to show what impurities were in the water, the concentration of the impurities and prove that the impurities could be hazardous, excessively corrosive or otherwise deleterious. A violation of this standard has not been proven by the Complainant through the testimonies and exhibits presented at the public hearing. Evidence from expert witnesses, chemical analysis, cause and effect relationships or some equivalent type of evidence would be required to meet this burden of proof.

Similarly, Mrs. Sanchez has failed to prove a violation of the third and fourth standards listed. The evidence does not show that substances used in treatment remain in the water in concentrations greater than required and there was no evidence of any substance having a deleterious physiological effect.

However, the burden of proof for the second standard listed is more readily met. This standard is based on a reasonable person test and is violated when the water quality offends the sense of sight, smell or taste of a reasonable user of the water. The burden of proof under this standard can be met by the testimony of reasonable people stating that they found the finished water offensive to their senses or by submitting finished water samples as exhibits that can be examined by reasonable people and found to be offensive. While this sentence from 604.201(a) is, in part, intended to be a preamble to the finished water standards defined throughout Subpart B on Chemical and Physical Quality, it is the Board's opinion that this sentence is also intended to establish a catch-all standard for finished water quality and to allow relief from unusable finished water even if this water meets all of the other standards of

Subpart B.

At the public hearing for this complaint, the preponderance of the evidence indicated that the finished water distributed by the Island Lake Water Company could reasonably be expected to cause offense to the sense of sight, taste or smell. The testimony of numerous customers of Lake Island Water Company indicated that they found the water unfit for the uses of drinking, cooking, bathing, washing laundry, making coffee and other typical uses of potable water. There were common complaints of a chlorine odor to the water, sediment and white precipitate in the water, a cloudy appearance of the water, red water problems and damage to appliances. Further, the finished water samples submitted as exhibits evident many of the offensive qualities brought out in testimony. The testimony of the Agency representative also tends to prove that the water has offensive characteristics.

Based on the record, it is apparent that the Island Lake Water Company did violate 604.201(a). It is not clear, however, how often the finished water quality standard was violated or if violations took place on the dates mentioned in the complaint.

BOARD ACTION

In the complaint, Mrs. Sanchez recommends the Board enter an order to "correct this problem immediately". While it is the Board's desire to grant this relief, the practicalities of the situation make it impossible. Because seventeen months have already passed since Mrs. Sanchez filed her complaint, the Board will attempt to ensure a lasting and expeditious, rather than immediate, remedy with its order.

Ill. Rev. Stat. ch. 111<sup>1/2</sup>, par. 1033(c) sets forth the elements for this Board to consider in reviewing this type of action. Par. 1033(c) elucidates the following criteria:

In making its ... determinations, the Board shall take into considering all facts and circumstances bearing upon the ... [violations] ... but not limited to:

1. the character and degree of injury to or interference with the ... health, general welfare and physical property of the people;
2. the social and economic value of the ... source;

3. the suitability ... of the ... source including the question of propriety of location in the area involved.
4. the technical practicability and economic reasonableness of reducing or eliminating the [violations] ... from such pollution source.

The interference with the physical property and general welfare of the people of Island Lake is well documented in the testimony on behalf of the Complainant. The damage to laundry and appliances, as well as the inconvenience of purchasing bottled water, is substantial when the aggregate effect is considered. There is no question that a water-treatment and distribution facility serves a useful social and economic purpose. There also is no question that the facilities need to be in the area serviced and are suitably located.

The issue of the technical practicability and economic reasonableness of reducing or eliminating the violations was addressed in the testimony of the Agency representative. He testified that the installation of a filter tank would be a reliable technology to remove hardness from the water. However, this type of filtration system would require a large capital expenditure and would be difficult for a private water company to finance. The approach considered more reasonable by the Agency is to improve maintenance and operational practices so that an effective sequestration program can be developed.

There are two more criteria by which this Board must judge Respondent's actions. The first is the degree of economic advantage enjoyed by Respondent by its failure to comply with the law. IEPA v. Standard Metal Co., PCB 83-22, decided January 10, 1985. The second additional criterion is whether or not the Respondent made good faith attempts to comply with the Act.

According to the testimony of the representative of the Agency, the poor water quality can at least in part be attributed to the Respondent's failure to follow a proper sequestration program, to maintain the system, to replace broken hydrants and to install additional hydrants that would allow for a thorough flushing of the system. The failure to spend money for proper operation and maintenance results in an economic advantage for the water company at the expense of its customers. There is also testimonial evidence that the Respondent failed to make a good faith effort to correct the problem. A number of customers testified that in response to their complaints about water quality, the water company said that the problem was inside the customer's home and not the responsibility of the water company. Further, customers were told that they were the only ones having problems, even though the testimony at hearing indicates that there were problems in other areas. The failure

to investigate and address problems, that reasonably would be expected to be under the control of the Respondent, indicates the lack of a good faith attempt to comply with the Act.

The Board will exercise its power to assess civil penalties under Ill. Rev. Stat. 111<sup>1</sup>/<sub>2</sub> Section 1042. In taking this action, the Board hopes to deter the Respondent from neglecting its responsibilities to properly maintain and operate its system.

The Board also notes that the Agency supplied the Respondent with a number of recommendations for improvement to the Respondent's sequestration program. The Respondent has been in receipt of these recommendation at least since the beginning of May of 1987. The Agency was of the impression that the Island Lake Water Company had adopted these recommendations and had began installing and repairing hydrants and following a scheduled flushing program. If the company was following the recommendations, the improvements should be completed by this time. These improvements would eliminate a significant part of the water quality problems in Island Lake and would allow the Respondent time to implement the Agency's other recommendations. Because of the length of time Island Lake Water Company has already had since the time this complaint was filed to improve its finished water quality, and the short amount of time it would take to implement a significant portion of the Agency's recommendation, the Board orders the Respondent to cease and desist from further violation of 35 Ill. Adm. Code 604.201 within forty-five (45) days of the date of this Order.

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

#### ORDER

Based on the Board's findings and conclusions expressed in this Opinion, the Board hereby finds the Respondent, Island Lake Water Company in violation of 35 Ill. Adm. Code 604.201(a) and orders Island Lake Water Company to undertake the following actions:

- 1) Island Lake Water company shall pay a penalty of one-thousand dollars (\$1000.00) to the Illinois Environmental Protection Trust Fund as a civil penalty for the violation of 35 Ill. Adm. Code 604.201(a) with forty-five (45) days of the adoption of this Opinion and Order.

Such payment shall be made by certified check or money order payable to the Illinois Environmental Protection Trust Fund and mailed to:

Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, IL 62706

- 2) Pursuant to Section 1033(b) of the Illinois Environmental Protection Act, the Board directs the Island Lake Water Company to cease and desist from further violations of 35 Ill. Adm. Code 604.201 within forty-five (45) days of the date of this Order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111<sup>1/2</sup> 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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 2<sup>nd</sup> day of June, 1988, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board