

BEFORE THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE

IN THE MATTER OF:)
)
R.E. PIERSON CONSTRUCTION CO.,) Appeal No. 93-21
SUSSEX COUNTY and)
K.C.I. TECHNOLOGIES, INC.)

FINAL ORDER

The Environmental Appeals Board ("Board") held a hearing on this appeal on March 8, 1994. The Board members present were Clifton H. Hubbard, Jr., Chairman, Joan Donoho, Robert Ehrlich and Robert I. Samuel. Steven C. Blackmore, Deputy Attorney General, advised the Board. Gary W. Aber, Esquire represented Pierson Construction Co. Dennis L. Schrader, Esquire represented Sussex County. Donald L. Logan, Esquire represented K.C.I. Technologies. M. Jane Brady, Esquire represented Daniel Wien and Salvatore Riggi ("Petitioners"). Jeanne L. Langdon, Deputy Attorney General represented the Secretary of the Department of Natural Resources and Environmental Control ("DNREC"). For the reasons that follow, the Board affirms the decision of the Secretary.

SUMMARY OF THE EVIDENCE

Petitioners Wien and Riggi commenced this action through petitions for alternative drinking water supply pursuant to 7 Del. C. § 6037 (the "Petitions"). Section 6037 entitles persons whose drinking water has been contaminated to petition DNREC for an order accepting or rejecting the contentions in the petition. Here, DNREC held a public hearing in response to the Petitions on

April 7, 1993 and receive testimony and evidence from Petitioners and Appellants. In August, 1993, DNREC issued Secretary's Order No. 93-0114 which found that Appellants should be held jointly and severally liable for the brackish water contamination of Petitioners' wells. Appellants had been involved in de-watering operations nearby for the purpose of sewer installation. The sewer line was owned by Sussex County; K.C.I. Technologies had been retained as a design consultant; and R.E. Pierson had completed the construction.

FINDINGS OF FACT

At the hearing before the Board, Appellants conceded the validity of DNREC's factual findings. Appellants also agreed, first, to attempt to provide Petitioners with potable water through a connection to the nearby Bay City Trailer Park water system, which is privately owned. If a connection cannot be obtained, Appellants have agreed to provide de-salinization equipment to Petitioners, including the cost of maintenance, to enable Petitioners to receive potable water for the three year period ordered by DNREC.

DNREC also ordered Appellants to provide potable water for three years to Frederick Anderson, a neighbor of petitioners. Mr. Anderson did not file a petition but he was incorporated by reference by DNREC since his situation was analogous. Although Mr. Anderson had received notice of the appeal to the Board, he did not appear or hire counsel to represent him before the Board.

CONCLUSIONS OF LAW

The procedures outlined in 7 Del. C. § 6037 to obtain an

alternative water supply are commenced by a petition. Since Mr. Anderson did not file a petition and did not enter an appearance in this appeal, the Board has not addressed his situation, but a copy of this Order will be provided to him. However, since it appears that the de-watering activities which contaminated Petitioners' wells also contaminated Mr. Anderson's well, the Board urges Appellants to provide Mr. Anderson with similar appropriate relief to eliminate further administrative or judicial consideration of these issues through appeals or a petition from Mr. Anderson.

Appellants are obligated to provide potable water to Petitioners Wien and Riggi for a three year period under Secretary's Order No. 93-0114 and their stipulation before the Board. The most practical solution would be to arrange a connection to the community water system maintained for Bay City Trailer Park. See §6037(d)(2). If such a connection cannot be arranged, Appellants shall compensate Petitioners for, or provide, de-salinization equipment and maintenance costs for a three year period. Section 6037(d) mandates that the most cost effective remediation solution be selected. Therefore, if a water supply connection cannot be arranged, Appellants shall "[p]rovide at no cost the treatment system necessary to maintain the water supply as an adequate drinking water supply and provide the costs of operation and maintenance of the system for a period of 3 years." § 6037(d)(3).

CONCLUSION

For the foregoing reasons, the Board unanimously affirms the decision of the Secretary.

Clifton H. Hubbard, Jr.
Clifton H. Hubbard, Jr.
Chairman
4/10/94

Joan Donoho

Robert Ehrlich

Robert I. Samuel

DATE: May _____, 1994

CONCLUSION

For the foregoing reasons, the Board unanimously affirms the decision of the Secretary.

Clifton H. Hubbard, Jr.
Chairman

Joan Donoho

Robert Ehrlich

Robert Ehrlich

Robert I. Samuel

DATE: May 10, 1994

CONCLUSION

For the foregoing reasons, the Board unanimously affirms the decision of the Secretary.

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