

ILLINOIS POLLUTION CONTROL BOARD  
January 23, 1986

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 85-23  
 )  
A & R TRANSPORT, INC., an )  
Illinois corporation, and )  
JAMES BEDEKER, )  
 )  
Respondents. )

MS. NANCY J. RICH, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

KRANTZ, MADLER & PELDYAK (MR. JAMES R. MADLER, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by W.J. Nega):

This matter comes before the Board on a three-count Complaint filed on February 21, 1985 by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that: (1) on, or about, June 1983, the Respondents caused or allowed the construction of a leach field which is a new treatment works at their facility without first obtaining the necessary Construction Permit from the Agency, and (2) since on, or about, June, 1983 until the issuance of a permit on August 15, 1984, the Respondents caused or allowed the use or operation of the leach field without first obtaining the requisite Operating Permit from the Agency in violation of 35 Ill. Adm. Code 309.202(a), 35 Ill. Adm. Code 309.203 and Sections 12(a), 12(b), and 12(c) of the Illinois Environmental Protection Act (Act).

Count II alleged that, from October, 1981 until February 29, 1984 (including, but not limited to, October 21, 1981, December 16, 1981, October 27, 1982, June 8, 1983, June 29, 1983, and October 24, 1983), the Respondents caused or allowed the concentration of five-day biochemical oxygen demand (BOD<sub>5</sub>) and/or suspended solids in the effluent discharged from their unlined lagoon and/or leach field to the unnamed creek that flowed into a farm pond commonly known as the Frank Nelson Farm Pond to exceed 30 milligrams per liter (mg/l) on a daily average as determined

pursuant to 35 Ill. Adm. Code 304.104(a)(3) in violation of 35 Ill. Adm. Code 304.120 and Section 12(a) of the Act.

Count III alleged that, from October, 1981 until February 29, 1984, the Respondents have caused, threatened, or allowed the discharge of contaminants into Illinois waters without the required NPDES Permit in violation of 35 Ill. Adm. Code 309.102 and Section 12(f) of the Act.

The parties filed a Stipulation and Proposal for Settlement on August 28, 1985. A hearing was held on October 23, 1985 at which no members of the public were present. At the hearing, the Hearing Officer granted the Agency's request for permission to file Complainant's Exhibit A within ten days of the date of the hearing. (R. 7-8). On October 31, 1985, the Agency filed Complainant's Exhibit A which consisted of an Agency inspection report with an attached memo which indicated that recent sample results from the Frank Nelson Farm Pond showed normal effluent parameter levels and the achievement of compliance.

Respondent James Bedeker is the President, director, a stockholder, and manager of Respondent A & R Transport, Inc. The Respondents own and operate a trucking business which is located at 2996 North Route 71/Rural Route #3 in the City of Ottawa, LaSalle County, Illinois. The Respondents' facility is utilized for washing the interiors and exteriors of tank trucks. Wastewater produced from washing out the interiors of the tank trucks is received and stored in a holding tank which has been especially constructed for that purpose. (Stip. 2).

During June of 1983, the Respondents constructed a leach field at their facility. Wastewater from the washing of the exteriors of the tank trucks was disposed of in this leach field. Between 1981 and the construction of the leach field in June of 1983, the Respondents' contaminated truck wash water was routed to an unlined lagoon. This unlined lagoon overflowed into a small creek that then flowed into a farm pond (i.e., the Frank Nelson Farm Pond) which was located approximately 20 feet further downstream. (Stip. 2-3). Additionally, from the time the Respondents built the leach field in June, 1983 until February 29, 1984, contaminated water was also discharged from the drainage tile. These drainage tile contaminants also flowed into the unnamed creek and subsequently flowed into the Frank Nelson Farm Pond. (Stip. 3).

It is stipulated that the Respondents never applied for, and never received, any of the necessary permits from the Agency for their activities until the Agency issued an appropriate joint Construction/Operating Permit for their operations on August 15, 1984. (Stip. 3). Moreover, the parties have stipulated that the Respondents: (1) caused or allowed the construction of a leach field in June of 1983 which is a new treatment works without first obtaining an Agency Construction Permit in violation of 35 Ill. Adm. Code 309.202 and Sections 12(a), 12(b), and 12(c) of

the Act; (2) from June, 1983 until the issuance of the Agency joint Construction/Operating Permit on August 15, 1984, caused or allowed the use or operation of their leach field which is a treatment works for which a construction permit is required under 35 Ill. Adm. Code 309.202 without first obtaining the requisite Operating Permit from the Agency in violation of 35 Ill. Adm. Code 309.203 and Sections 12(a), 12(b), and 12(c) of the Act, and (3) from October, 1981 until February 29, 1984, caused, threatened, or allowed the discharge of contaminants into Illinois waters without the necessary NPDES Permit in violation of 35 Ill. Adm. Code 309.102 and Section 12(f) of the Act. (Stip. 2-4).

The parties have also stipulated that inspections by Agency field personnel ascertained that, on six specified dates between October 21, 1981 and October 24, 1983 (i.e., October 21, 1981, December 16, 1981, October 27, 1982, June 8, 1983, June 29, 1983, and October 24, 1983), the Respondents caused or allowed the concentrations of BOD<sub>5</sub> and/or suspended solids in the effluent discharged from their unlined lagoon and/or leach field to the small unnamed creek flowing into the Frank Nelson Farm Pond to exceed 30 mg/l on a daily average as determined pursuant to 35 Ill. Adm. Code 304.104(a)(3), thereby violating 35 Ill. Adm. Code 304.120(a) and Section 12(a) of the Act. (Stip. 4).

However, the Complainant has emphasized that subsequent Agency inspections conducted in 1984 and 1985 demonstrated, and sample results verified, that the concentrations of BOD<sub>5</sub> and suspended solids in the area of the Respondents' leach field and the Frank Nelson Farm Pond were within the appropriate limits during 1984 and 1985 due to various steps taken by the Respondents to eliminate the environmental problems at their facility. (Stip. 5).

In reference to the good faith efforts of the Respondents to correct the environmental problems at their facility, it is stipulated that:

"...The Agency and Respondents agree that Respondents' construction of the leach field, though not permitted as required by the Act, was nonetheless a genuine attempt by Respondents to abate pollution at their facility. Respondents incurred numerous construction and other expenses due to the leach field. Respondents' subsequent willingness to discontinue use of its leach field in favor of an arguably more secure and verifiable disposal method is a further indication of Respondents' good faith ... Respondents expended additional funds in good faith to survey and analyze water quality at the A & R site and at Nelson's Pond. Documentation of the various engineering fees incurred by Respondents are attached hereto and incorporated by reference

as Exhibit A." (Stip. 5-6; see: Exhibit A which is attached to the Stipulation).

During the time period in which the Respondents worked with the Agency in attempting to resolve their environmental problems, the Respondents expended a total of \$5,585.63 on private tests and water samples. (See: Exhibit A which is attached to the Stipulation). Registered professional engineers were retained for a septic system project and for rehabilitation of the Frank Nelson Farm Pond in which topographical surveys of the Respondents' property and the farm pond were made; silt and water samples were obtained from the farm pond; percolation tests in the area of the proposed seepage field were conducted, and a proposed septic system was designed at a cost of \$3,112.88. Additionally, a private water environmental technology firm was hired to conduct detailed laboratory analyses of pond sediment in accordance with United States Environmental Protection Agency approved methodologies at a cost of \$2,472.75, thereby resulting in total incurred expenditures by the Respondents of \$5,585.63 (i.e., \$3,112.88 + \$2,472.75 = \$5,585.63).

The results of the previously mentioned tests and water sample analyses were available at all times for the Agency's perusal and evaluation. (R. 10). It was finally concluded that the best method of wastewater disposal would be to enter into a contract with the City of Ottawa to handle all the Respondents' wastewater disposal needs, and such a contract was entered into on April 1, 1985 between the Respondents and the City of Ottawa. (Stip. 6-7; R. 4-10). Under this agreement with the City of Ottawa, all of the wastewater generated by the Respondents' truck washing operations will be taken to the facilities of the City of Ottawa and disposed of there. To accomplish this activity, wastewater is first placed in a holding tank at the Respondents' facility and is subsequently pumped out to a tank trailer and then taken to one of the City of Ottawa's drop facilities. The City of Ottawa inspects the quality of the water on a regular basis to insure that appropriate environmental standards are being maintained. Accordingly, the Respondents are not presently utilizing, and do not intend to use, their leach field because of their contractual arrangement with the City of Ottawa. (R. 4-5).

Furthermore, because there was some indication that some partial environmental damage may have occurred at the Frank Nelson Farm Pond, the Respondents have agreed to restock this farm pond with various kinds of small game fish which will result in an additional expenditure of approximately \$800.00. (Stip. 7-8; R. 5-10). This fish restocking program will be in accordance with the recommendations of the Illinois Department of Conservation and Agency and fish hatchery personnel will also be consulted to insure proper restocking. (R. 5-6; see: pages 1 and 6 of Exhibit A of the Stipulation).

Accordingly, the proposed settlement agreement provides that the Respondents admit the violations alleged in the Complaint and agree to: (1) cease and desist from further violations; (2) dispose of all wastewater generated by their operations in accordance with the contractual agreement entered into on April 1, 1985 with the City of Ottawa; (3) notify the Agency if, for any reason, the contract with the City of Ottawa is no longer in effect; (4) promptly restock the Frank Nelson Farm Pond with specified varieties of fish in accordance with the recommendations of the Illinois Department of Conservation, and (5) pay a stipulated penalty of \$3,000.00 into the Environmental Protection Trust Fund. (Stip. 6-9).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

However, the Board is concerned that the 30-day provision in the proposed settlement agreement for restocking the Frank Nelson Farm Pond would, if followed literally, result in the requisite fish restocking operations being conducted in cold winter weather which might lead to the unnecessary death of fish. Accordingly, the Board has inserted a provision in item #7 of its Order which states that "if cold or otherwise inclement weather would make it likely that such fish would not be able to survive, the restocking operation shall proceed at the time recommended by the Illinois Department of Conservation as most favorable to the likelihood of fish survival and the previously mentioned 30-day time limit shall not be applicable".

If the parties believe that this minor language modification to their initially proposed settlement agreement is reasonable, appropriate, and acceptable, they can sign and file a Certificate of Acceptance and Agreement to be bound to all terms and conditions of the Order, which has been included for their convenience as item #10 of the Order.

The Board finds that the Respondents have violated 35 Ill. Adm. Code 304.120(a), 309.102(a), 309.202(a), and 309.203 and Sections 12(a), 12(b), 12(c), and 12(f) of the Act. The Respondents will be ordered to cease and desist from further violations, to follow the agreed-upon compliance plan, and to pay a stipulated penalty of \$3,000.00 into the Environmental Protection Trust Fund.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondents, A & R Transport, Inc. and James Bedeker, have violated 35 Ill. Adm. Code 304.120(a), 309.102(a), 309.202(a), and 309.203 and Sections 12(a), 12(b), 12(c), and 12(f) of the Illinois Environmental Protection Act.
2. The Respondents shall cease and desist from all further violations.
3. The Respondents shall dispose of all wastewater generated by their operations in accordance with the contractual agreement entered into on April 1, 1985 between the Respondents and the City of Ottawa, Illinois.
4. If, for any reason, the agreement between the Respondents and the City of Ottawa is no longer in effect or if, for any reason, the City of Ottawa does not accept any or all of the Respondents' wastewater, the Respondents shall promptly notify the Agency and state the manner in which such wastewater shall be disposed of.
5. If, for any reason, the Respondents plan to resume the disposal of wastewater in the Respondents' leach field, the Respondents shall first notify the Agency of such intention in writing, no later than 30 days before disposal in the leach field is scheduled to begin.
6. As per the specific stipulated agreement between the parties, the Agency is authorized to inspect the Respondents' premises, including the leach field, at any reasonable time, and to modify the Respondents' permit in any manner tending to encourage compliance with the Act and the rules and regulations promulgated thereunder.
7. Within 30 days of the date of this Order, the Respondents shall restock the Frank Nelson Farm Pond with the following sizes (in length) and types of fish in accordance with the recommendations of the Illinois Department of Conservation:
  - (a) One hundred fifty (150) eight to ten inch channel catfish;
  - (b) One hundred fifty (150) five to eight inch largemouth bass; and
  - (c) Fifteen hundred (1,500) three to five inch hybrid sunfish.

The Respondents agree that the above-specified fish will be of sufficiently high quality that they are capable of surviving in the pond under normal conditions.

If cold or otherwise inclement weather would make it likely that such fish would not be able to survive, the restocking operation shall proceed at the time recommended by the Illinois Department of Conservation as most favorable to the likelihood of fish survival and the previously mentioned 30-day time limit shall not be applicable.

- 8. Within 30 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, jointly and severally pay the stipulated penalty of \$3,000.00 which is to be sent to:

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

- 9. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on August 28, 1985, as amended by the Board in item #7 of this Order, which is incorporated by reference as if fully set forth herein.
- 10. Within forty-five days of the date of this Order, the parties shall execute and forward to Dorothy M. Gunn, Clerk, Illinois Pollution Control Board, Suite 11-500, State of Illinois Center, 100 West Randolph Street, Chicago, Illinois 60601 and to Mr. William D. Ingersoll, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all the terms and conditions of the Order of the Illinois Pollution Control Board in PCB 85-23, dated January 23, 1986. This forty-five day period shall be held in abeyance for any time period this matter is being appealed. The form of this certificate shall be as follows:

CERTIFICATION

I, (We), \_\_\_\_\_, hereby accept and agree to be bound by all the terms and conditions of the Order of the Illinois Pollution Control Board in PCB 85-23, dated January 23, 1986.

\_\_\_\_\_  
A & R Transport, Inc.

\_\_\_\_\_  
James Bedeker

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
By: Authorized Agent

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Title

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Title

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Date

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Date

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Illinois Environmental Protection Agency

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 23<sup>rd</sup> day of January, 1986 by a vote of 7-0.

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