

ILLINOIS POLLUTION CONTROL BOARD  
June 2, 1983

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 83-28  
 )  
TOP CHOP, INC., )  
an Illinois corporation, )  
 )  
Respondent. )

JAMES L. MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF  
OF THE COMPLAINANT.

NOEL E. HICKS, DARRELL COX, ROSS SIMS AND WAYNE I. OVERBEY  
APPEARED PRO SE.

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

This matter comes before the Board on the March 1, 1983  
Complaint brought by the Illinois Environmental Protection Agency  
(Agency).

Count I of the Complaint alleged that, from March 27, 1982 until  
March 1, 1983 (including, but not limited to, March 27, 1982,  
March 29, 1982, May 13, 1982, and December 9, 1982), Top Chop,  
Inc. (Top Chop) allowed the discharge of contaminants from its  
hog lot facility (facility) into an unnamed tributary of Goose  
Creek and into Goose Creek without an NPDES Permit in violation of  
35 Ill. Adm. Code 309.102 and Section 12(f) of the Illinois  
Environmental Protection Act (Act).

Count II alleged that, from March 29, 1982 until March 1,  
1983 (including, but not limited to, March 29, 1982 and May 13,  
1982), the Respondent allowed the discharge of effluent from  
its facility which has caused the unnamed tributary and Goose  
Creek to contain unnatural manure bottom deposits, an unnatural  
black color and manure odors in violation of 35 Ill. Adm. Code  
302.203, 35 Ill. Adm. Code 304.105, and Section 12(a) of the Act.

Count III alleged that, from March 29, 1982 until March 1, 1983  
(including, but not limited to, March 29, 1982 and May 13, 1982),  
Top Chop allowed discharges from its facility containing ammonia  
nitrogen in concentrations above 4.0 mg/l, so as to cause the  
water quality in the unnamed tributary and Goose Creek to have  
concentrations of ammonia nitrogen above 1.5 mg/l in violation of  
35 Ill. Adm. Code 302.208, 35 Ill. Adm. Code 304.105, 35 Ill.  
Adm. Code 304.301 and Section 12(a) of the Act.

Count IV alleged that, from May 13, 1982 until March 1, 1983 (including, but not limited to, May 13, 1982), Top Chop allowed the discharge of effluent from its facility which caused Goose Creek to contain less than 5.0 mg/l of dissolved oxygen and, from March 29, 1982 to March 1, 1983 (including, but not limited to, March 29, 1982 and May 13, 1982), caused the unnamed tributary to contain less than 5.0 mg/l of dissolved oxygen in violation of 35 Ill. Adm. Code 302.206, 35 Ill. Adm. Code 304.105, and Section 12(a) of the Act.

Count V alleged that, from March 27, 1982 until March 1, 1983 (including, but not limited to, March 27, 1982, March 29, 1982, May 13, 1982, November 8, 1982, and December 9, 1982), the Respondent did not maintain adequate storage facilities for liquid livestock waste to prevent an overflow except in the case of precipitation in excess of a 25-year 24-hour storm nor a minimum of 120-day storage in violation of Rule 104(d)(3)(c) and Rule 104(d)(3)(D)(ii) of Chapter 5: Livestock Waste Regulations (Chapter 5) and Section 12(a) of the Act.

A hearing was held on April 22, 1983\* at which no members of the public were present. The parties filed a Stipulation and Proposal for Settlement on April 28, 1983.

The Respondent owns and operates a hog lot facility with a liquid waste lagoon located near the Village of Palmyra in Macoupin County, Illinois. The Agency has conducted various inspections of Top Chop's site to insure that proper environmental standards were maintained.

During the Agency's inspection on February 25, 1981, it was found that the facility was in general compliance. The inspector observed that there was 8 to 10 feet of freeboard in the hog waste lagoon and that the Respondent's operation was expanding.

The Agency contacted an employee of Top Chop on March 27, 1982 because the hog waste lagoon at the facility was overflowing and was told that the overflow would be stopped. However, when the Agency inspector arrived at the facility on March 29, 1982, he observed that liquid hog manure was steadily flowing from the waste lagoon into the unnamed tributary to Goose Creek causing the tributary to be black and septic. Moreover, there were also dark pools in Goose Creek. Water samples taken by the Agency on March 29, 1982 show that violations of the ammonia nitrogen and dissolved oxygen standards occurred in both the unnamed tributary and in Goose Creek. (Stip. 2-3). The Respondent's employee stopped the overflow at the hog waste lagoon during the Agency's inspection.

\*The Stipulation was slightly modified, by agreement of the parties, at the hearing. On page 2, paragraph 4 of the stipulation the word "employee" was substituted for the term "manager" and on page 7, paragraph 6B, the following sentence was added: "The inspector will report to the Top Chop representative at the plant during this inspection." (R.7-8).

On May 13, 1982, another Agency inspection revealed that both Goose Creek and the unnamed tributary were black and septic in appearance. An extension line (suitable for a pump which was lying on the berm of the waste lagoon) was also found by the Agency inspector. (Stip. 3).

In a telephone conversation the next day (i.e., May 14, 1982), the Respondent's manager admitted to the Agency that Top Chop had been pumping waste into the unnamed tributary whenever it looked like it was going to rain because it couldn't arrange for cropland in which to apply the waste. (Stip. 3). Water samples taken by the Agency on May 13, 1982 indicate violations of the ammonia nitrogen and dissolved oxygen standards.

To encourage the correction of these environmental problems, the Agency sent Top Chop a letter on May 28, 1982 which described the discharges observed on March 29, 1982 and May 13, 1982 and listed the violations that occurred. This letter instructed the Respondent to apply for an NPDES Permit and recommended a regular dewatering program to cropland. The Agency's letter also suggested that the Respondent contact a consulting engineer, the Soil Conservation Service, or the County Extension Advisor for help in planning and developing an adequate waste disposal system. (Stip. 3-4).

A subsequent Agency inspection on June 28, 1982 indicated that Top Chop's facility was in general compliance with applicable regulations. However, a later inspection on November 8, 1982 showed that there was only 1 foot of freeboard in the waste lagoon. The Agency sent the Respondent a letter on November 18, 1982 which recommended that the lagoon be dewatered to allow 2 to 3 feet of freeboard so that there would be sufficient waste storage capacity to get through the winter months. On December 9, 1982, the facility's waste lagoon overflowed during heavy rains. (Stip. 4.)

The proposed settlement agreement provides that the Respondent admits the violations alleged in the Complaint and agrees to: (1) follow a specified compliance program to correct all environmental problems; (2) cease and desist from further violations; and (3) pay a stipulated penalty of \$1,500.00. (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 generally acceptable under 35 Ill. Adm. Code 103.180.

However, the Board believes that the proposed \$1,500.00 penalty is far too low. Because of the extent and duration of the harm to the environment; the flagrant and deliberate nature of many of the water pollution violations (such as the Respondent's admitted, and continuing, policy of pumping waste directly, and repeatedly, into the unnamed tributary); the undue delay in

implementing corrective action; and the Respondent's seemingly lackadaisical and cavalier attitude of dilatorily cooperating with the Agency, the Board believes that a \$5,000.00 penalty is appropriate in this case.

Accordingly, the Board will accept the proposed settlement agreement with the proviso that a \$5,000.00 penalty be imposed. A certification of acceptance and agreement to be bound to all terms and conditions of the Board's Order (including the increased penalty provision) has been included as paragraph 8 of the Board's Order. If the parties choose not to accept the modified settlement agreement, the Stipulation and Proposal for Settlement will be rejected in toto by the Board and the case will be remanded to the parties for appropriate action.

The Board finds that the Respondent, Top Chop, Inc., has violated 35 Ill. Adm. Code 302.203, 302.206, 302.208, 304.105, 304.301 and 309.102; Rule 104(d)(3)(c) and Rule 104(d)(3)(D)(ii) of Chapter 5: Livestock Waste Regulations; and Sections 12(a) and 12(f) of the Act. The Respondent will be ordered to cease and desist from further violations; follow the compliance plan set forth in the Stipulation; and to pay a penalty of \$5000.00.

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 Respondent, Top Chop, Inc., has violated 35 Ill. Adm. Code 302.203, 302.206, 302.208, 304.105, 304.301, and 309.102; Rule 104(d)(3)(c) and Rule 104(d)(3)(D)(ii) of Chapter 5: Livestock Waste Regulations; and Sections 12(a) and 12(f) of the Act.
2. The Respondent shall cease and desist from further violations.
3. The Respondent shall take all necessary actions to obtain an NPDES Permit for waste discharges at its hog lot facility in accord with its NPDES Permit application which was filed on September 27, 1982.
4. The Respondent shall allow the Agency to inspect the exterior premises of its facility at any reasonable times without the Agency contacting management before the inspection. The inspector will report to the Top Chop representative at the plant during this inspection.
5. Within 30 days of the date of this Order, the Respondent shall meet with representatives of the Agency and representatives of either the Soil Conservation Service, the County Extension

Advisor, or a consulting engineer to develop a plan of regular land application of waste and the amount of freeboard which must be maintained so as not to cause water pollution. This land application and freeboard maintenance plan shall be implemented as soon as practicable, and, in the interim period, the Respondent shall:

- (a) maintain at least 2 feet of freeboard in the waste lagoon and shall not cause or allow discharges of waste from the facility except in the case of precipitation in excess of a 25-year 24-hour storm;
- (b) have available over 300 rotated acres of appropriate crop land for the application of waste; and
- (c) have available at all times 3 liquid manure tanks with tractors and dewatering equipment for the application of waste to cropland.

6. Within 30 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay a penalty of \$5,000.00 which is to be sent to:

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

7. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on April 28, 1983, as modified, which is incorporated by reference as if fully set forth herein.

8. Within 30 days of the date of this Order, Top Chop, Inc. and the Agency shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this Order. This Certification shall be submitted to the Agency at 2200 Churchill Road, Springfield, Illinois 62706. The 30-day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification shall be as follows:

CERTIFICATION

I, (We) \_\_\_\_\_, hereby accept and agree to be bound by all terms and conditions of the Order of the Illinois Pollution Control Board in PCB 83-28, dated June 2, 1983.

\_\_\_\_\_  
Top Chop, Inc.

\_\_\_\_\_  
Illinois Environmental  
Protection Agency

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 2<sup>ND</sup> day of June, 1983 by a vote of 4-0.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board