

ILLINOIS POLLUTION CONTROL BOARD
December 2, 1982

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 82-85
)
GILT EDGE FARMS, INC., a)
Delaware corporation, HUNTER)
BARNEY and LANCE BARNEY,)
)
Respondents.)

STEPHEN GROSSMARK, ASSISTANT ATTORNEY GENERAL, APPEARED ON
BEHALF OF COMPLAINANT;

JOHN B. WHITON, SNOW, WHITON SCHROEDER AND FISHBURN, LTD.,
APPEARED ON BEHALF OF RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by D. Anderson):

This matter comes before the Board upon a complaint filed June 23, 1982 by the Illinois Environmental Protection Agency (Agency), naming as respondents Gilt Edge Farms, Inc., Hunter Barney and Lance Barney. The complaint alleged violations of Sections 9 and 21 of the Environmental Protection Act (Act), Rule 102 of Chapter 2: Air Pollution and Rules 201, 202, 301, 310 and 312 of Chapter 7: Solid Waste, in connection with a hog operation in Stephenson County. On October 13, 1982, a stipulation and proposal for settlement was filed. On October 15, a public hearing was held in Dakota. No members of the public attended and the Board has received no public comment.

On August 20, 1980 the Illinois Attorney General filed a complaint in the Stephenson County Circuit Court alleging violation by respondents of Section 9(a) of the Act. On May 8, 1981, respondents filed with the Board a petition for variance from Section 9(a) of the Act and related rules (PCB 81-85). On January 7 and March 19, 1982, the Board granted a variance with conditions. On May 21, 1982, the Circuit Court action was dismissed without prejudice. This complaint was filed the next month, alleging the same violations as the Circuit Court action, along with the violations of Section 21 of the Act and the solid waste rules.

The hog raising operation in question is situated at Afolkey Road and East School Brick Road about 2.5 miles southwest of Dakota, Stephenson County. The facility was described in

detail in the opinion accompanying the variance order. At the request of the parties, the record and opinion and order are incorporated by reference from PCB 81-85.

The variance allowed respondents to operate while temporarily outside the terms of Section 9(a) of the Act and Rule 102 of Chapter 2 from January 7 through December 31, 1982, during which time respondents were to take certain steps to eliminate odor problems. The Board specifically disclaimed any retro-active effect of the variance and conditioned the variance on compliance with Chapter 7.

The following is a summary of the allegations of the complaint:

<u>Rule or Section¹</u>	<u>Time</u>	<u>Summary</u>
§9(a) 2:102	August 20, 1977	Cause or allow the emission of contaminants so as to cause air pollution
§21(a) ²	January 1, 1974- June 23, 1982	Open dumping
§21(d) ²		Conducting storage, treatment or disposal without a permit or in violation of Board rules
§21(e) ²		Disposal, treatment or storage of waste at a site which violates the Act or Board rules
7:201		Development of a new solid waste site without a permit
7:202(a)		Operation of a sanitary landfill without a permit
7:301		Operation of a sanitary landfill in violation of operating standards

¹2:102 is Rule 102 of Chapter 2; 7:301 is Rule 201 of Chapter 7. Sections are sections of the Act.

²References to Section 21 are to the current version of the Act, rather than the numbering in effect prior to September 3, 1981.

<u>Rule or Section</u>	<u>Time</u>	<u>Summary</u>
7:310(b)		Acceptance of liquid wastes without a supplemental permit
7:312		Operation of a sanitary landfill so as to cause air pollution

The hog operation used to take cheese whey as feed at a rate of as much as 30,000 gallons per day. When whey was not needed in this amount, the excess was dumped into lagoon #3. This is the basis of the allegations involving special waste disposal in violation of the Act and Chapter 7. Lagoon #3, as well as animal waste handling facilities, was thought to be the source of odor in the variance. These problems were to be addressed by discontinuation of whey dumping, cleaning of lagoon #3, improved operating practices and the use of "Micro-aid", a feed additive which is supposed to promote odorless conditions in waste pits and lagoons.

The parties have asked that the Board find respondents in violation of Section 9(a) of the Act and Rule 102 of Chapter 2 based on the record in the variance proceeding. The Board finds these violations from August 20, 1977 through July 17, 1981, the final specific date alleged for violation. Respondents also admit, and the Board finds, violation of Section 21 of the Act and Rules 201, 202, 301, 310 and 312 of Chapter 7 during the period of January 1, 1974 through January 1, 1980.

The parties have specified that the stipulation is to resolve all controversies regarding allegations "for the period of the Complaint and that a new Complaint, alleging the same violations for the same period of time..., cannot be alleged." Insofar as the complaint alleges continuing violations up to the date of filing, the Board will find that respondents did not violate Section 21 of the Act and Rules 201, 202, 301, 310 and 312 of Chapter 7 between January 1, 1980 and June 23, 1982; and that respondents did not violate Section 9(a) of the Act and Rule 102 of Chapter 2 from July 17, 1981 through June 23, 1982, the date of filing of the complaint. After January 7, 1982, this compliance with the air rules was pursuant to variance.

The stipulation provides solely for a \$5000 penalty; the compliance plan has been dealt with in the variance. The stipulation leaves the Agency in a position to file a new enforcement action should further problems arise.

The parties have stipulated that it costs \$0.10 per gallon to dispose of cheese whey in a permitted landfill. Respondents

were thus saving as much as \$3000 per day in disposal costs by improperly dumping the excess whey into lagoon #3.

The Board accepts the stipulation and proposed settlement pursuant to 35 Ill. Adm. Code 103.180. The Board finds the penalty is necessary to aid enforcement of the Act. In making this determination the Board has considered the factors set forth in Section 33(c) of the Act. This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

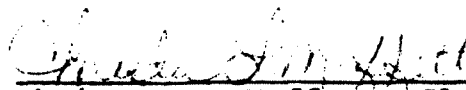
ORDER

1. Respondents Gilt Edge Farms, Inc., Hunter Barney and Lance Barney have violated Sections 9 and 21 of the Environmental Protection Act, Rule 102 of Chapter 2: Air Pollution, and Rules 201, 202, 301, 310 and 312 of Chapter 7: Solid Waste.
2. Within thirty days of the date of this order, respondents shall, jointly and severally, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$5000 which is to be sent to:

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

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 2ND day of January, 1982 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board