

ILLINOIS POLLUTION CONTROL BOARD

August 23, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-150
)
 MAGGIE BELL HICKS and TERRY HICKS,)
)
 Respondents.)

MESSRS. BRIAN S. REYNOLDS AND REED NEUMAN, ASSISTANT ATTORNEYS GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MRS. MAGGIE BELL HICKS APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed May 23, 1978 by the Environmental Protection Agency (Agency) against Respondents Maggie Bell Hicks (Respondent) and Terry Hicks. The complaint charges that the Respondents violated Section 9(a) of the Environmental Protection Act (Act) by causing air pollution in the form of odor emitted from a hog operation on the outskirts of the city of Nokomis, Montgomery County. Hearings were held in Hillsboro on April 19, 20 and 26. Respondent Maggie Bell Hicks appeared pro se and indicated that she had no money for an attorney (R. 3). Terry Hicks did not appear and the Agency moved to drop him as a party after there was testimony that he is no longer a partner in the operation (R. 229).

The Hicks hoglot is located on a 1.8 acre tract across a lane from the south city limits of Nokomis, near the southeast corner of the city (Ex. 1). A Mr. Singler owns another hoglot about 500 feet east of Respondent (R. 5). The sketch map shows about twenty houses within three blocks of the Hicks lot (Ex. 1). The Hicks and Singler residences are closest to the hoglots. Mr. Singler did not testify, but the occupants of about one-half of the houses shown testified for or against Respondent. Five neighbors testified for the Agency. All had rural backgrounds, general knowledge of farm odors and agreed that there was a hog odor in the area (R. 20, 37, 50, 63, 72). Mr. Wilbur Pieper had hauled hogs for five years and was therefore particularly qualified to judge the odor (R. 50, 182).

One of Respondent's witnesses testified that in the summer the whole town stunk (R. 122, 124). The odor had been present for twenty years but hadn't been so bad for the last ten years (R. 125).

Two witnesses denied that there was any odor (R. 137, 151). They were both sisters of Respondent (R. 142, 152). Since Respondent and some of her other witnesses seem to acknowledge that there was an odor, the Board will disregard this testimony (R. 121, 124, 157).

There was general agreement that Mrs. Hicks started keeping hogs on the lot in 1974 (R. 161). Hogs had run on the ground for twenty years, but the barns were built around 1974. Prior to that time Mr. Singler's hogs were on the lot (R. 159). Witnesses for the Agency agreed that the odor first became noticeable in early 1975 (R. 20, 30, 38, 57, 65, 73). These witnesses all agreed that the odor was only present when the wind was out of the south, the direction of the Hicks hoglot (R. 16, 22, 30, 39, 51, 57, 63, 66, 79, 180). Mr. Bowers testified that the hog odor became stronger as one drove toward the lot and disappeared after the lot was passed (R. 38). Mr. Zueck had been east, south and west of the hoglot and smelled nothing when the wind was out of the south, but had smelled hogs upwind on the north side (R. 74, 83).

A number of other possible odor sources are mentioned in the record. Mr. Singler has hogs about 500 feet east of Mrs. Hicks (R. 5). The Agency witnesses testified that they didn't smell hogs when the wind was blowing from the east or southeast from Mr. Singler's direction (R. 22, 30, 39, 58, 65, 69). Mr. Bowers explained that Mr. Singler ran just a few hogs on a lot of land which had vegetation and that they therefore didn't stink, whereas Mrs. Hicks had forty to fifty hogs on 1.8 acres of bare ground (R. 39, 44). There is testimony also that Mr. Singler occasionally keeps hogs and other livestock in his backyard, inside the corporate limits and between the Hicks hoglot and most of the witnesses (R. 143, 168, 190).

Another possible odor source is a Mr. Barnstable who has a feedlot which is not shown on the sketch map, but which is southeast of Mrs. Hicks, a greater distance from town (R. 29, 33, 52, 58, 135, 157, 174). At one time Barnstable kept turkeys which had an odor (R. 29, 33). However, he apparently now has a hog feedlot. Respondent's witnesses testified that it emitted hog odors (R. 135, 174). One of the Agency's witnesses seemed to be unaware that there were hogs at Barnstable's (R. 29, 33). However, another witness, Mr. Pieper, testified that Barnstable's was about one-half mile southeast of him and that he didn't smell hog odor when the wind blew from that direction (R. 52, 58, 59, 181).

On cross-examination of Mrs. Zueck, Mrs. Hicks made reference to an open sewer (R. 28). Apparently this was a septic tank runoff problem which has been taken care of. Mrs. Hicks did not present evidence that this was the odor source.

On cross-examination Mr. Pieper admitted that he had an out-house which he could sometimes smell. He put quicklime on it when this happened and could distinguish hog manure from human excrement (R. 183, 185).

Three of Respondent's witnesses suggested that the odor was from manure spreading or application of farm chemicals or liquid fertilizer (R. 122, 126, 133, 146, 157). It was brought out on cross-examination that liquid fertilizer application takes place only in spring; whereas, the odor persists throughout the summer (R. 127). Mrs. Hicks testified that Mr. Singler had a practice of spreading manure and waiting until the next day to chisel it in (R. 157). This produces quite an odor for which Mrs. Hicks is blamed. Respondent's witnesses were able to distinguish odors from fresh spread manure from odors caused by manure accumulation (R. 135).

Since the witnesses for the Agency all have farm backgrounds, they should be able to distinguish hoglot odor from the other types mentioned in the record. Manure spreading and chemical applications do not take place throughout the summer and hence are inadequate to fully explain the continuing odor. The testimony concerning wind direction and odor and the testimony that there was no odor upwind of the Hicks lot is quite convincing. The Board therefore finds that the Hicks hoglot is a source of odor in southeast Nokomis. Although it seems likely that other odor sources were present, this alone is not a defense.

Section 9(a) of the Act provides that: "No person shall cause . . . or allow the discharge or emission of any contaminant into the environment . . . so as to cause or tend to cause air pollution in Illinois, either alone or in combination with other sources."

Section 3(b) of the Act defines air pollution as: "The presence in the atmosphere of one or more contaminants in sufficient quantities of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."

The Agency has offered no evidence that the hog odor is injurious to life, health or property. The question is then whether it constitutes an unreasonable interference with the enjoyment of life or property.

The Complainant's witnesses testified that the hog odor was mostly a summer problem when the prevailing winds were out of the south and people were outside or had their windows open (R. 24, 40, 52, 66, 78). Three witnesses estimated that the odor was a problem

from 70-80% of the time in the summer (R. 41, 66, 78). All testified that they were forced to close the windows and use the air conditioner more because of the odor (R. 24, 27, 40, 54, 66, 69, 78, 80). All testified that guests had complained about the odor (R. 24, 25, 41, 53, 66, 79). One had had to wash clothes to remove the odor (R. 25). Another said it was hard to stay outdoors to take care of his garden because of the odor (R. 77). Mrs. Zueck had to take medication when she got upset about it (R. 34). The Board therefore finds that the odor constitutes an unreasonable interference with the enjoyment of life and property in violation of Section 9(a) of the Act.

The Board will consider Section 33(c) of the Act in fashioning its Order. The odor does not pose a direct threat to health or property but does constitute an unreasonable interference with the enjoyment of life and property. The social and economic value of the hoglot is not questioned. The primary questions involve its suitability to the area and the technical practicability and economic reasonableness of reducing the emissions.

It appears that there have been livestock operations in the area for at least twenty years (R. 125, 159). There are two other hog operations in the immediate vicinity. The area seems to be semi-rural with septic tanks, outhouses and livestock inside the corporate limits. The Board cannot find that the area is absolutely unsuited for a hog operation.

On October 20, 1975, in response to complaints received by the Agency from neighbors, a compliance conference was held in Springfield with Mrs. Hicks. The parties at that time reached an agreement intended to permit continued operation of the hoglot with minimal odor. The agreement provided that sows were not to be farrowed more than twice per year, the piglets were to be marketed at eight to ten weeks and manure was to be removed and spread on a field immediately to the south (Ex. 2).

The Agency conducted three inspections since the agreement was signed (R. 92, 102, 112). On April 1, 1977, there were about eighty-five swine on the lot: ten sows and seventy to eighty piglets aged above and below ten weeks (R. 102, Ex. 3, 4). There was manure half a foot deep in one building and a dead pig on the lot (R. 103, 112). In August of 1977 the hoglot was in compliance (R. 94). On March 2, 1978, there were eight to ten sows with twenty or thirty hogs about ten weeks old (R. 113). There was no excessive accumulation of manure (R. 115).

Mrs. Hicks testified that she had generally complied with the terms of the agreement. She had kept only ten sows, sold pigs at eight to ten weeks and kept a few gilts and pigs to butcher (R. 154). She cleans her barns twice a year and spreads rock in the water holes (R. 156). She has had lime spread to reduce the odor.

Mrs. Hicks is a sixty-four year old widow (R. 157). She once owned a restaurant but has since sold it (R. 162). She mentions having paid \$10,000 in medical bills (R. 158). She started the hog operation with Terry Hicks whom she had raised after his father was killed and who is nineteen years old and has recently moved away (R. 163). Mrs. Hicks' only income is social security and what she makes from the hogs (R. 157). Selling at ten weeks reduces her gross return which apparently amounts to a gross income of \$1500 to \$2250 per year based on fifty pigs at \$30 to \$45 apiece (R. 165). There is other evidence that the operation could produce 80-160 pigs per year (R. 102). She had about twenty-six animals at the time of the hearing: fourteen old sows, eight gilts, two boars and two for butcher (R. 167). She owns another two acre tract a little farther from town (R. 168).

It is not clear whether the Agency's position is that the odor problem has continued because the terms of the agreement were insufficient to stop it or because Mrs. Hicks has not complied with the agreement. The Agency has not presented expert testimony about what measures would in fact remedy the odor problems. The Board will order Respondent to cease and desist violating the Act and will order a new compliance conference. The Board finds that a \$100 penalty would aid in enforcement of the Act. However, the penalty is suspended because of economic hardship.

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


ORDER

It is the Order of the Pollution Control Board that:

1. Respondent Terry Hicks is dismissed as a party to this action.
2. Respondent Maggie Bell Hicks is in violation of Section 9(a) of the Environmental Protection Act.
3. Respondent Maggie Bell Hicks is assessed a \$100 civil penalty which is suspended.
4. Respondent Maggie Bell Hicks is ordered to cease and desist from further violations of Section 9(a) of the Act.

5. Within sixty days of the date of this Order the Agency shall schedule a compliance conference. Respondent Maggie Bell Hicks is ordered to attend this conference.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order were adopted on the 23RD day of August, 1979 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board