

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
)
 v.) PCB 75-56
)
)
RANDALL L. LOVELESS,)
)
)
 Respondent.)

DISSENTING STATEMENT (by Mr. Dumelle):

My reason for dissenting on this Order is that I feel the non-maintenance of the lagoon berm did not demonstrate good faith by the Respondent. As the Illinois Environmental Protection Agency Motion for Modification points out

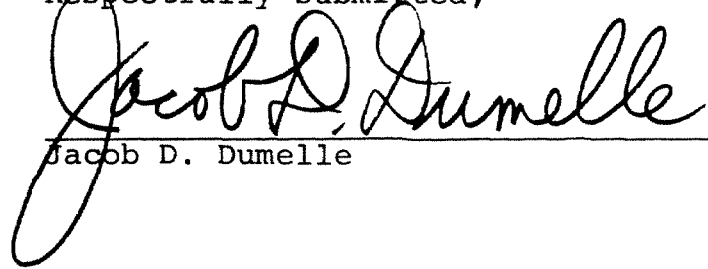
...as recently as three months before suit was filed, a large discrete fissure measuring twelve to fourteen feet wide and approximately ten feet deep, existed on the berm of the 6.2 acre lagoon permitting the contents of the lagoon to flow into the unnamed tributary and then to Spanish Needle Creek (R. 295-296).

The "fissure" is simply an eroded channel. It would have been a simple matter for the Respondent to have filled this channel in a few hours work with a bulldozer or endloader. Most feedlots and especially one with thousands of head of cattle, would have at least an endloader to handle manure or some other bladed equipment also suitable for earthmoving.

While the Board may agree that the economics of cattle raising were grim in the period covered by this complaint, I


don't feel we should characterize this obvious maintenance neglect as "good faith". Thus I would have accepted reconsideration and again weighed the possibility of a penalty in this proceeding. Cases of first impression ought not all to be without penalty.

Respectfully submitted,



Jacob D. Dumelle

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Statement was submitted on the 30th day of August, 1976.



Christan L. Moffett, Clerk
Illinois Pollution Control Board