

ILLINOIS POLLUTION CONTROL BOARD

January 3, 1974

Environmental Protection Agency )  
 )  
 v. )  
 ) PCB 73-55  
 Peter Eckrich and Sons, Inc., an ) PCB 73-174  
 Indiana corporation qualified to )  
 do business in Illinois; and )  
 E.W. Kneip, Inc., an Illinois )  
 corporation )

Michael A. Benedetto, Jr., Assistant Attorney General for the EPA.  
Charles W. Jirauch and Louis M. Rundio, Attorneys for Respondents  
Eckrich and Kneip.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

The Environmental Protection Agency (hereinafter called EPA) filed a Complaint on February 7, 1973, against Respondents, Peter Eckrich and Sons, Inc. and E.W. Kneip, alleging violations of the Environmental Protection Act (hereinafter called Act) and numerous violations of the Regulations:

(a) Rules and Regulations SWB-14 of the Illinois Sanitary Water Board (hereinafter called SWB-14),

(b) Rules and Regulations SWB-2 of the Illinois Sanitary Water Board (hereinafter called SWB-2),

(c) Chapter Three: Water Pollution Regulations of Illinois (hereinafter called Chapter Three),

(d) Rules and Regulations for Refuse Disposal Sites and Facilities (hereinafter called Rules and Regulations).

Respondent E.W. Kneip, Inc. is a wholly owned subsidiary of Respondent Peter Eckrich and Sons, Inc. Kneip owns and operates a meat packing facility, the Elburn Packing Company Division, located at 404 West Nebraska in Elburn, Kane County, Illinois. Eckrich was joined as co-respondent in that Eckrich was alleged to have exercised full control and direction of the activities of its subsidiary E.W. Kneip.

Count I of the Complaint charged that the Respondents caused or allowed the discharge of inadequately treated waste into Welch Creek so as to cause or tend to cause water pollution, deposited

"paunch manure" upon the land in close proximity to an unnamed stream running past Kneip's plant and eventually flowing into Welch Creek creating a water hazard, and operated a certain spray irrigation system without a permit, all in violation of Sections 12(a), (d), and (c) of the Act. Section 12(a) was alleged to have been violated on specific named dates from February, 1971, through December, 1972. Section 12(d) was allegedly violated on December 21, 1972; the permit violation was a continuing one dating from July 1, 1970.

Rules 1.03(a) and (d) of SWB-14 were said to be violated from July 1, 1970, through April 16, 1972, in that Respondents allowed substances which formed putrescent sludge and discharges harmful to human, animal, and plant life to flow into Welch Creek. EPA complained that Rule 1.02 of SWB-2 was violated in that Respondents allowed the treatment facility to be operated by an individual not properly certified from July 1, 1970, through the date of the filing of this Complaint on February 7, 1973.

The EPA averred that Rules 203(a), 403, 404(b), 405, 903(a) and 914 of Chapter Three were violated. EPA stated that Rule 203(a) was violated from April 16, 1972, through February 7, 1973, in that Respondents allowed deposits harmful to aquatic life to enter the waters of Welch Creek. During the same period, EPA charged that the Respondents spray irrigation system caused odor and turbid water in Welch Creek in violation of Rule 403 of Chapter Three. Rule 404(b) was allegedly violated from July 1, 1972, through February 7, 1973, and specifically on December 21, 1972, in that Respondents caused the effluent from the spray irrigation system to exceed 20mg/l of BOD<sub>5</sub>. Rule 405 of Chapter Three was supposedly violated from July 31, 1972, through February 7, 1973, and particularly on December 31, 1972, in that Respondents allowed more than 400 fecal coliforms per 100 ml of effluent to be emitted from the spray irrigation system. EPA also said that Respondents violated Rules 903(a) and 914 of Chapter Three from December 31, 1972, through February 7, 1973, in that no permit application had been sought for the use of the winter spray irrigation system.

Count II alleged that Respondent Kneip owned property described as the South half of Northwest fractional quarter of Section 6, Township 39 North, Range 7 East of the Third Principal Meridian in the Township of Blackberry, Kane County, Illinois. Respondents allegedly violated Section 21(b) of the Act and Rule 3.04 of the Rules and Regulations on certain specified dates from July 1, 1970, through October 17, 1972, by causing or allowing the open dumping of refuse. EPA charged that Respondent Kneip's property was inadequately fenced during this same period in violation of Rule 4.03(a). Rule 5.06 was allegedly violated by Respondents during this same time because they failed to properly spread and compact the refuse "paunch manure" deposited on the property. Finally, EPA averred that from July 1, 1970, until

September 7, 1972, Respondents violated Rule 5.07(a) of the Rules and Regulations by failing to satisfy the cover requirements demanded by that Rule.

On April 27, 1973, Respondent sought a variance (PCB 73-174) from possible violations alleged in the EPA Complaint of February 7, 1973. On May 18, 1973, Respondent amended his variance petition by the addition of four suggested treatment schemes outlining alternate methods for compliance with the Act and Rules. Sometime during this month, the two cases were consolidated. EPA filed a Recommendation on May 31, 1973, stating that a variance should not be granted during the interim period that a compliance program was being carried out. Several hearing continuances were granted while EPA and Respondent Kneip attempted to work out a Settlement.

A hearing was held on August 7, 1973, in which a Stipulation of Facts and a proposed Settlement were made part of the record. Mr. Jirauch and Mr. Rundio were counsel for Respondents. Testimony was given concerning the low profitability of the meat packing business (R-30) and the importance of keeping the business in operation while a program of compliance was being carried out (R-39). The parties stipulated that:

1. Kneip has operated a meat packing facility at the Kane County site February, 1971.
2. "The meat packing facility has treated waste products generated from its operation by means of a grease separation and settling tank system and a spray irrigation system.
3. The spray irrigation system was installed in 1964-65 and has been in continuous use until the present on property belonging the Kneip.
4. The spray irrigation system consists of both a summer and a winter "ice pack" system.
5. The spray irrigation system has on occasions discharged directly or indirectly into surrounding drainage ditches and a swamp, which eventually feed into the Welch Creek, a tributary of the Big Rock Creek which flows into the Fox River.
6. A system of underground field drainage tiles empties at the headwall of Welch Creek. The exact locations of all of the branches of the system are unknown. It is known that most branches of the system extend through and beyond Kneip's property and thus these branches are capable of draining areas on and carrying emissions and discharges from property and sources other than Kneip's, the types and amounts of which are unknown.

7. Wastewater treated by Kneip's treatment facility on occasion discharges, generally after percolation, indirectly into certain underground drainage tiles as shown in Exhibit 1.

8. Kneip's efforts to locate the tiles and dig them up or block them has met with limited success. Kneip is unable to dig up or block portions of branches of the field drainage system which extend beyond its property because this could cause water to back up onto the property of others through which the tiles run, although it has yet to be determined that this will in fact occur.

9. At various times representatives of the EPA conducted analyses of water samples taken near or around Kneip's property and waste water treatment facility."

10. Water samples were taken from various locations near or on Kneip's property on various dates from September, 1971, through December 21, 1972. Analyses of these samples establish violations of Section 12(a) of the Act, Rules 1.03(a) and (d) of SWB-14; and violation of Rules 203(a), 403, 404(b), and 405 of Chapter Three. "Total area affected by pollution is more than nine stream miles. However, the proof is not conclusive that this pollution was principally caused by Kneip since the underground tiles carry emissions from beyond Kneip's property line, there are emissions from the Village of Elburn's municipal sewage treatment plant into the Creek, and there is a strong likelihood that there are other underground tiles and emission sources along this stretch of Welch Creek which may discharge into the Creek, but there is no evidence known to any party of the strength or duration of the (different) discharge(s). Measurements of the Agency's representative made on December 21, 1972, show that on that date the amount of pollutants increased at a point downstream from the point of Kneip's alleged discharges."

11. "Paunch manure" was deposited within several feet of a drainage ditch on December 21, 1972, in violation of Section 12(d) of the Act.

12. "On August 13, 1971, Kneip was refused an operating permit by the Agency for its wastewater treatment facilities and has never been granted one." This continued operation violates Section 12(a) of the Act and Rule 903(a) and 914 of Chapter Three.

13. "Kneip has failed to employ a certified operator for their wastewater treatment facilities" in violation of Rule 1.02 of SWB-2.

14. "While Kneip admits for purposes of this settlement that the effluent and emission measurements stated herein are accurate as to the samples collected, Kneip does not admit that these measurements and samples necessarily prove that Kneip's effluent discharges materially and detrimentally affected Welch Creek.

15. Kneip has been at all relevant times the owner of the property described as the South half of the Northwest fractional quarter of Section 6, Township 39 North, Range 7 East of the Third Principal Meridian in the Township of Blackberry, Kane County, Illinois.

16. Kneip, in the operating of the meat packing facility, allowed to remain on property belonging to it "paunch manure" on or about June 2, 1971, August 17, 1971, August 19, 1971, January 7, 1972, February 17, 1972, May 26, 1972, August 7, 1972, August 8, 1972, September 20, 1972, and October 17, 1972, in violation of Section 21(b) of the Act and Rule 3.04 of the Rules and Regulations.

17. Kneip, on the dates indicated in 16 above, failed to spread, compact, and cover the "paunch manure" in violation of Rule 5.06 of the Rules and Regulations.

18. Kneip investigated and experimented with the possibility of composting the "paunch manure" for over a year in connection with a permit issued to Kneip by the EPA in November of 1971. When Kneip's investigation and experiments revealed that composting was not practicable, Kneip arranged to have the "paunch manure" hauled to an approved sanitary landfill and notified the EPA of the decision in November of 1972.

19. Kneip has not placed new deposits of "paunch manure" on its land since November 7, 1972, and has as of on or about March 1, 1973, completely removed the previously accumulated "paunch manure." "

The conditions and provisions of settlement included the following important agreements:

1. Immediate interim action by Respondent Kneip will be taken to diminish pollutant discharge. This will include grading and construction of dikes near the irrigation fields; other immediate action will include the planting of foliage, daily grease basin skimming, and investigation of methods to solve the drainage-tile problem.

2. Kneip will undertake a long-range program to bring the Elburn packing plant into compliance with the Act and Rules. The program will include the implementation of "scheme one" as outlined in the amended petition for variance filed May 18, 1973. The final completion date is September 1, 1975.

3. Monthly progress reports will be supplied to EPA until compliance is achieved.

4. Eckrich is dismissed from this action with prejudice. "All violations alleged in the Complaint not expressly admitted by stipulation are hereby dismissed with prejudice.

5. Kneip will pay a fine of \$9,000 as the full and only penalty for any and all the admitted violations.

6. This settlement proposal is expressly conditioned upon complete approval by the Board of all stipulations, conditions, and provisions enumerated herein without change or modification of any kind, degree or nature; rejection by the Board of any stipulation, condition, or provision or any change or modification of any kind, degree or nature shall be rejection of the entire settlement proposal."

We hold that the settlement agreed to by the parties should be carried out. The violations are numerous and long-lasting so that the imposition of a \$9,000 penalty is reasonable and indeed warranted. Although the program of compliance will take twenty months, we believe that continued plant operation during this period can be justified if Respondent acts with diligence and good faith in satisfying the mandate of the Environmental Protection Act. Furthermore, the parties have bargained extensively and the proposal will result in the abatement of future pollution problems. For these reasons we accept the Settlement proposed and enter our Order accordingly.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

#### ORDER

It is the Order of the Pollution Control Board that:

1. Respondent Kneip cease and desist from violating the Act and Regulations established in this Opinion in such manner as set out in the Stipulation of Facts agreed to by the parties.

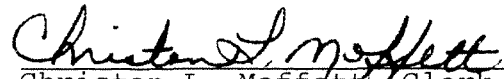
2. Respondent Kneip implement fully and completely within the prescribed time limits the program of compliance set out in the Conditions and Provisions of Settlement as agreed to among the parties and incorporated into the July 24, 1973, hearing.

3. Respondent Kneip report monthly to the EPA its progress under the compliance program. A variance is granted for one year from date of this Order contingent upon faithful performance of its schedule of compliance set out in the Conditions and Provisions of Settlement.

4. Respondent Kneip pay to the State of Illinois the sum of \$9,000 as a penalty for violations as set out in the proceeding. Payment shall be by certified check or money order addressed to the Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706. Payment shall be tendered within 35 days of the adoption of this Order.

5. Respondent Eckrich is dismissed from this action to the extent and in the manner agreed to among the parties.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 3<sup>RD</sup> day of January, 1974, by a vote of 4 to 0.

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