

ILLINOIS POLLUTION CONTROL BOARD  
September 26, 1973

ORAN BUCKLES, )  
 )  
 Complainant, )  
 )  
 vs. ) PCB 73-210  
 )  
 KEITH POPE AND LEROY OSBORN, )  
 )  
 Respondents. )

Mr. Homer Harris, of Harris and Harris, Lincoln, Illinois,  
on behalf of Complainant;  
Mr. Dick H. Woods, Jr., of Woods and Bates, Lincoln, Illinois,  
on behalf of Respondents.

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

On May 21, 1973, the Illinois Pollution Control Board received from Oran Buckles, Complainant, a formal complaint that Keith Pope and Leroy Osborn, the Respondents, were discharging animal waste which drained across Complainant's land into Clear Creek. Complainant (Buckles) and Pope (Respondent) own adjoining real estate.

The regulations allegedly violated by the Respondent are:

Sections 12 (c) and (d) of Title III and Section 21 (b) of Title V of The Environmental Protection Act, Chapter 111-1/2, Illinois Rev. Stat., Par. 1012 (c) and (d) and Par. 1021 (b), together with applicable Rules and Regulations adopted by the Pollution Control Board. Also Chapter 100-1/2 (Nuisances) Illinois Rev. Stat., Par. 26 (1), (2) and (3).

The Respondent is claimed to be in violation as follows:

Respondent, by his tenant (Osborn), raises hogs by means of self contained houses with automatic feeding system. Animal waste is discharged or deposited in large concentrations into existing surface drains, grass waterways and underground title, from whence it eventually

surfaces on Complainant's land by means of underground horizontal holes or channels dug without permission on Complainant's land, and the mixture of animal waste and water then proceeds to drain into Clear Creek.

In an answer of June 28, 1973, and an amended answer of July 9, 1973, the Respondents, through their attorney, admitted the allegation in paragraph 1 (that Complainant Buckles and Respondent Pope own adjoining farm real estate) of the Complainant, and the allegation in paragraph 2 (that Respondents raise hogs by means of self contained houses with automatic feeding systems). However, Respondents deny the other allegations (in paragraphs 3 and 4) in the Complaint.

A hearing was held on July 10, 1973. At the hearing on July 10, 1973, Complainant Exhibits 9, 10, 11, and 12 were letters of August 30, 1972; September 28, 1972; January 17, 1973; and April 4, 1973, respectively, from the Illinois Environmental Protection Agency to Mr. Oran F. Buckles, Complainant, concerning alleged animal waste pollution by the Respondents. The letter of September 28, 1972, states that the Environmental Protection Agency investigated the alleged water pollution by Mr. Keith Pope on September 8, 1972, and reported their findings at that time as follows:

"The hog lot in question might have the potential for discharging polluttional materials into the stream under certain abnormal conditions, however no discharge was occurring at the time of the visit."

The other three letters from EPA related to arrangements for investigations.

Complainant (Buckles) owns and operates 40 acres of land in Section 23 east of Atlanta, Illinois, and lives on other land 1/4 mile farther east. Clear Creek crosses the southwestern portion of the 40-acre tract. There are two tile lines on this tract. The west field tile begins near the north boundary line and extends SSW to within about 8 feet from Clear Creek and about 8 feet from the two holes shown in Complainant's Exhibit 3 of the bank of Clear Creek. The short field tile begins approximately 250 feet west of the east Buckles-Pope boundary line and extends WSW about 1,000 feet in a grass waterway to within 400 feet of Clear Creek.

Immediately north and east of the Complainant's (Buckles) land, the Respondents (Pope, owner, and Osborn, operator) operate a 200-acre farm on which there is a confinement hog operation (concrete slatted floors over pits in a 50' x 36' farrowing house and a 100' x 27' finishing house) and about 30 beef cows and calves. Liquid and dry animal waste is applied on approximately 160 acres of Respondent's land, of which about 32 acres near the farmstead drain toward Complainant's land, and the remainder slopes in other directions. Mr. Pope started his hog confinement operation in 1962 with a lagoon west of the finishing house from 1962 to 1965. He drained the lagoon in 1965, westward through Mr. Buckles' land with the latter's agreement, and filled the lagoon. In 1968, Respondents increased the animal-waste storage capacity of the pits and blocked the previous outlet. Liquid animal waste has been pumped out of pits, hauled to the field, and knifed into the soil during approximately the past two years (Pope, page 75) to nearly three years (Osborn, page 120). In response to a letter of August 24, 1970, from EPA (Respondent's Exhibit 3), Respondents installed knives on the honey wagon and moved more sows away from the farmstead into the fields in order to reduce the possibility of runoff and pollution. Small amounts of dry manure are applied with a manure spreader and disced into the soil to minimize runoff. Mr. Osborn has farmed with Mr. Pope since 1965.

Several photographs taken on March 23, 1973, by Mr. Larry B. Shroyer for the Complainant were introduced to show various holes dug to or near tile (Complainant's Exhibits 1, 4, 5, and 6), and a landscape view of Clear Creek. The disputed Complainant's Exhibit 3 purports to show two holes from which water is flowing into Clear Creek. Mr. Shroyer stated that there was a tile in one (left) of these two holes (page 28), but Mr. Buckles (Complainant) stated later (page 184) that there were no tile in these holes. The source of water in these holes was not traced or determined. Mr. Shroyer stated that he smelled animal waste odor coming from several of the holes that were dug, but he got no closer than 5 or 6 feet from the holes in Complainant's Exhibit 3.

In April, 1971, Mr. George Deavers installed a perforated plastic tile (5.7 inches in diameter) 3 feet deep in a waterway northwest of the Respondent's farm buildings. The tile starts 72 feet west of the farrowing house and ends at the soil surface

12 feet east of the Pope-Buckles property line. It was blocked at the upper end, and was not connected with any other tile nor with the finishing house or farrowing house. These facts were supported by Mr. Marvin Smalley, who came to see the new plastic tile and watched Mr. Deavers install it. There is no mechanism at the outlet of this tile to regulate flow (page 116) - merely a cover to keep things from getting into it.

Mr. Pope testified that he had neither spread nor knifed in any animal waste (1) on Mr. Buckles' land, or (2) along their property boundary, (3) nor had he discharged any of these materials over the tile line that was installed in April, 1971, or (4) into Clear Creek.

In April, 1972, Mr. Buckles saw water (with foam on it) flow down the east waterway (page 146) from Respondent's farmstead, and Complainant alleged that he saw Mr. Pope "kick off the trap door" on the south side of the finishing house to reduce the water flow. The clarity of Mr. Buckles' view of the south side of the finishing house was questioned (page 176), and he did not answer in the affirmative when asked whether he had "ever observed either Mr. Osborn or Mr. Pope removing or dumping any material from the red (hog) houses onto the surface of the ground surrounding these houses." Mr. Buckles never saw Respondents dump animal waste (1) at the beginning point of their tile that was installed in April, 1971, nor (2) into the Complainant's waterway. Also, in December, 1972, while ice from a storm was melting, Mr. Buckles saw yellowish water flow along his tile from the east and the north. The runoff water was alleged to have a hog odor.

In lengthy testimony, Mr. Buckles (Complainant) alleged that, beginning in March, 1972, numerous vertical and horizontal holes were dug along his tile lines to increase percolation and transmission of animal wastes from the Respondent's livestock operation through the Complainant's tile. The shorter, eastern tile on Complainant's land began about 250 feet west of the Pope-Buckles property line (page 174). Complainant believes that Respondent augered horizontal holes this distance, as well as auxiliary vertical holes to improve Respondent's drainage (pages 185 and 186). However, Complainant never saw Respondents dig these holes, nor did anyone tell him that the Respondents dug the holes (page 190).

In August, 1972, Complainant took a picture (his Exhibit 7) of foam in Clear Creek, north of the road bridge on the south boundary line. Similar material was observed by Complainant on March 2, 9, 14, 18, and 30 and April 4, 1973. Mr. Osborn testified that above Complainant's land along Clear Creek, within a two- or three-mile area, there were four farmers with livestock operations which had access to the creek and could contaminate it.


The Pollution Control Board recognizes that a livestock enterprise such as the one that is operated by the Respondents has a potential for discharging polluttional materials, and careful management must be exercised to prevent this.

It is, however, the opinion of this Board that the Complainant has not proven the allegations in the complaint.

ORDER

IT IS THE ORDER of the Pollution Control Board: That the complaint against the Respondent be and is hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 26<sup>th</sup> day of September, 1973, by a vote of 5 to 0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board

