

ORIGINAL



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CLERK'S OFFICE

JAN 29 2007

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 25, 2007

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PCB 07-70

Re: ***People v. J. B. Timmermann Farms, Ltd.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Jennifer Bonkowski".

Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

ORIGINAL
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JAN 29 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 J. B. TIMMERMANN FARMS, LTD.,)
 an Illinois corporation,)
)
 Respondent.)

PCB No. 07-70
(Enforcement - Water)

NOTICE OF FILING

To: David A. Oldfield, R.A.
J. B. Timmermann Farms, Ltd.
303 S. 7th Street
Vandalia, IL 62471

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.


FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 25, 2007

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STATE OF ILLINOIS
Pollution Control Board

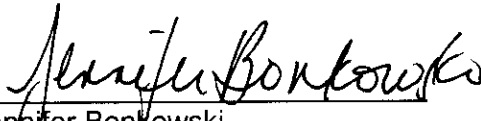
CERTIFICATE OF SERVICE

I hereby certify that I did on January 25, 2007, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: David A. Oldfield, R.A.
J. B. Timmermann Farms, Ltd.
303 S. 7th Street
Vandalia, IL 62471

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
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JAN 29 2007

PEOPLE OF THE STATE OF)
ILLINOIS,)
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 Complainant,)
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 vs.)
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 J. B. TIMMERMANN FARMS, LTD.,)
 an Illinois corporation,)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. **07-70**
(Enforcement - Water)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: Jennifer Bonkowski
JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 25, 2007

Breese Township, Clinton County, Illinois. David Timmermann is the corporate president of Timmermann Farms.

4. Section 12 of the Act, 415 ILCS 5/12 (2004), provides, in pertinent part, as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

5. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

6. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

7. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

8. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, prohibits offensive conditions in waters of the State:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal, color or turbidity of other than natural origin. . . .

9. Section 302.206 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.206, provides as follows:

Dissolved oxygen (STORET number 00300) shall not be less than 6.0 mg/l during at least 16 hours of any 24 hour period, nor less than 5.0 mg/l at any time.

10. On August 30, 2004, the Illinois EPA received a complaint regarding livestock waste discharging into Shoal Creek. In response to that complaint, the Illinois EPA followed the flow of livestock waste for five miles, to a culvert at the intersection of Highline Road and Drive-In Road in Section 28 of Breese Township in Clinton County. Dissolved oxygen readings taken along the five-mile stretch of creek containing the livestock waste were below 5 mg/l.

11. On September 1, 2004, the Illinois EPA conducted an inspection at the site to determine whether the livestock wastes were originating from the site. On that day, at the intersection of Highline and Drive-In Roads, water was very dark in color discharging through the roadway culvert. The water coming from the roadside ditch on the north side of Highline road was also dark in color. The flow of livestock waste was traced back to the Timmerman Farms site.

12. On or before September 1, 2004, a lagoon on site had overflowed subsequent to rainfall.

13. On September 1, 2004, livestock building roofs on site did not have guttering. Curbing to divert stormwater away from the feedlot areas was not present.

14. On September 1, 2004, the single-stage lagoon on site had no freeboard, and livestock wastes were still discharging from the northwest corner of the lagoon. The adjacent farm field was saturated with livestock wastes, and the wastes were flowing into a ditch along the access road. The ditch was discharging into the earthen swale, that discharges into a roadside ditch on Drive-In Road.

15. On September 1, 2004, discolored water in the ditch upstream of the lagoon was present. The flow of discolored water could be traced to the east. Leachate from a silage bunker was also discharging into the ditch along the access road. Curbing along the silage bunker to prevent runoff was not present.

16. On September 2, 2004, Timmerman Farms submitted an incident report concerning a lagoon overflow to Illinois EPA.

17. On September 2, 2004, the Illinois EPA inspected the site. Brown to black discolorations and turbidity were present in the Grassy Branch of Shoal Creek. Dissolved oxygen readings taken by the Illinois EPA found levels below 5 mg/l at five locations.

18. On September 14, 2004, the Illinois EPA again inspected Grassy Branch. Again, black colorations and turbidity were present. Dissolved oxygen readings taken by the Illinois EPA demonstrated levels below 5 mg/l at five locations.

19. On October 27, 2004, the Illinois EPA issued a Violation Notice ("VN") letter to Timmermann Farms, noting the violations. Timmermann Farms did not respond to the VN.

20. On February 14, 2005, the Illinois EPA issued a Notice of Intent to Pursue Legal

Action ("NITPLA") letter to Timmermann Farms. The Illinois EPA then held a NITPLA meeting with Mr. Timmermann on March 2, 2005. At that time, Timmerman Farms did not have an NPDES permit for the site.

21. Shoal Creek is a water of the State.

22. Lagoon waste is a contaminant.

23. Commencing on some date on or before September 1, 2004, and continuing until a date better known to Respondent, the Respondent caused or allowed the discharge of lagoon waste into waters of the State so as to cause or tend to cause water pollution by creating a nuisance.

24. By so causing and threatening to cause water pollution, and by violating the water quality standard of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and the dissolved oxygen level standard of Section 302.206 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.206, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois limited liability company:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

COUNT II
DISCHARGING WITHOUT AN NPDES PERMIT

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), requires an NPDES permit:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

24. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), provides that no person shall cause, threaten, or allow the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Illinois EPA.

25. On or before September 1, 2004, through at least March 2, 2005, Timmerman Farms did not have an NPDES permit for the site.

26. By causing or allowing or threatening the discharge of contaminants into waters of the State without an NPDES permit, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois limited liability company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of up to ten thousand dollars (\$10,000) per day of violation; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III

WATER POLLUTION HAZARD

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count III.

23. The Respondent caused or allowed lagoon waste to remain on the property adjacent to the facility, in close proximity to the Grassy Branch of Shoal Creek, for a period of several days beginning on or before September 1, 2004, through a date better known to Respondent. In so doing, the Respondent caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard through its proximity to the Grassy Branch of Shoal Creek.

24. Section 501.403(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 501.403(a), provides as follows:

- a) Existing livestock management facilities and livestock waste-handling facilities shall have adequate diversion dikes, walls or curbs that will prevent excessive outside surface waters from flowing through the animal feeding operation and will direct runoff to an appropriate disposal, holding or storage area. The diversions are required on all aforementioned structures unless there is negligible outside surface water which can flow through the facility or the runoff is tributary to an acceptable disposal area or a livestock waste-handling facility. If inadequate diversions cause or threaten to cause a violation of the Act or applicable regulations, the Agency may require corrective measures.

25. Section 501.404(c)(3) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3), provides as follows:

- (c)(3) The contents of livestock waste-handling facilities shall be kept at levels such that there is adequate storage capacity so that an overflow does not occur except in the case of precipitation in excess of a 25-year 24-hour storm.

26. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard via its failure to keep livestock waste levels at its facility such that there is adequate storage capacity, and through its failure to have adequate dikes, walls, or curbs to prevent excessive outside surface water flow, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, J. B. TIMMERMANN FARMS, LTD., an Illinois limited liability company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

JENNIFER BONKOWSKI
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 9/25/07