

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-122
)
ROGER BLUNIER, individually,)
and ROGER BLUNIER, d/b/a)
PORK CHOP RIDGE,)
)
Respondents.)

MR. GERALD T. KARR, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. ROGER BLUNIER APPEARED PRO SE.

MR. THOMAS DAVIS AND MR. ERIC ACKERMAN (FROM THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY) WERE ALSO PRESENT AT THE HEARING.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board on a four-count Complaint filed on August 13, 1986 by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that, on, or about, September 12, 1984, the Respondents allowed the discharge of livestock waste from a waste storage lagoon into Panther Creek, an Illinois water, causing water pollution and a fish kill* in violation of Section 12(a) of the Illinois Environmental Protection Act (Act). Count I also alleged that, from February 20, 1974 and continuing intermittently until the filing of the Complaint, the Respondents caused, threatened, or allowed contaminants (i.e., livestock waste) to be discharged into Panther Creek in Woodford County, Illinois, so as to cause, or

*The Agency conducted an investigation of the Respondents' livestock waste discharge on September 19, 1984 which indicated that a fish kill had taken place, but the Agency personnel were not able to determine the number and value of the fish killed because of the length of time (i.e., a 7-day time interval) between the discharge and the discovery of the fish kill. (Stip. 3).

tend to cause, water pollution in violation of Section 12(a) of the Act.

Count II alleged that, from February 20, 1974 until August 13, 1986 (including, but not limited to, the dates of April 27, 1978; September 6, 1979; November 27, 1979; March 24, 1980; June 16, 1980; September 19, 1984, and September 20, 1984), the Respondents caused or allowed the discharge of livestock wastes into Panther Creek which caused unnatural sludge, turbidity, odor and unnatural color in violation of the requisite water quality standards, thereby violating 35 Ill. Adm. Code 302.203, 304.105, and 304.106 and Section 12(a) of the Act.

Count III alleged that, from February 20, 1974 until August 13, 1986 (including, but not limited to, the seven dates previously specified in Count II of the Complaint), the Respondents' livestock waste storage lagoon had an inadequate freeboard to prevent overflows (during periods that did not include a 25 year/24 hour storm) and was not impermeable so as to prevent water pollution, and by failing to maintain proper livestock waste storage facilities, the Respondents thereby violated 35 Ill. Adm. Code 501.404(c)(2) and 501.404(c)(3) and Section 12(a) of the Act.

Count IV alleged that, on September 19, 1984 and September 20, 1984, there were discharges of livestock wastes into Panther Creek from the Respondents' lagoon due to overflows (that were not the result of a 25 year/24 hour storm) and the Respondents failed to notify the Agency of this discharge in violation of the terms and conditions of their NPDES Permit No. IL 0062529, thereby violating Section 12(f) of the Act.

The parties filed a Stipulation and Proposal for Settlement on August 13, 1986 and a hearing was held on October 28, 1986 at which no members of the public were present. (R. 4).

Respondent Roger Blunier is the sole proprietor of a swine farm operation called Pork Chop Ridge, which is located near the municipality of Secor (population: 488) in Woodford County, Illinois. A lagoon, which was constructed to collect and store livestock wastes from about 1,500 to 2,000 swine, is located on the Respondents' property. It is stipulated that the normal drainage of the area around the livestock waste storage lagoon travels about 100 feet to a metal culvert. (Stip. 2). The metal culvert then empties into an unnamed tributary of Panther Creek, an Illinois water which is located in Woodford County. The Agency issued NPDES Permit No. IL 0062529 to the Respondents in September of 1981. This NPDES Permit prohibits discharges from the livestock waste storage lagoon except in the event of a 25 year/24 hour rainfall (i.e., 5.055 inches in 24 hours). (Stip. 2).

On December 10, 1985, the Respondents received written notice of the Agency's intent to bring an enforcement action for alleged violations and were offered an opportunity to meet with Agency representatives pursuant to Section 31(d) of the Act.

On January 3, 1986, the Section 31(d) meeting was held, and the formal Complaint was subsequently filed on August 13, 1986.

The proposed settlement agreement provides that the Respondents admit all** of the violations alleged in the Complaint and agree to (1) cease and desist from further violations; (2) abide by all terms and conditions of all permits issued by the Agency; (3) follow an agreed-upon livestock waste lagoon compliance plan, and (4) pay a stipulated penalty of \$1,200.00 into the Illinois Environmental Protection Trust Fund within 30 days of the date of the Board's Order. (Stip. 5-8). The Agency has agreed to delete the requirement of a liner for the livestock waste storage lagoon from the Respondents' NPDES Permit. (Stip. 7).

In reference to the issues of the Respondents' good faith and environmental harm, the Agency has stipulated that:

"...Respondents, at all times pertinent to the Complaint filed in this action, have made good faith efforts to comply with the Act and Board Regulations, as such any harm to the environment or public due to the above described violations was minimal." (Stip. 5).

Additionally, at the hearing, Mr. Thomas Davis (an Agency representative) stated:

"I would just like to say for the record and to the Board that Mr. Blunier has been quite cooperative during the enforcement action

** Due to a typographical error in item #1 on page 6 of the Stipulation and Proposal for Settlement, the admitted violation of Count II of the Complaint does not specify or list violations of 35 Ill Adm. Code 302.203, 304.105, and 304.106. Instead, it inadvertently lists (and therefore repeats) the admitted violations of Count III of the Complaint. The Board hereby takes official notice of this typographical error, and therefore will construe item #1 on page 6 of the Stipulation so that it includes the intended admissions of violations of 35 Ill. Adm. Code 302.203, 304.105, and 304.106, as well as the listed violation of Section 12(a) of the Act, under the heading entitled "Count II". (See: item #8 on page 3 of the Stipulation which constitutes an agreed statement of fact as to the aforementioned violations).

against him and that we anticipate him continuing his cooperation." (R. 5).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board hereby finds that the Respondents have violated 35 Ill. Adm. Code 302.203, 304.105, 304.106, 501.404(c)(2), and 501.404(c)(3) and Sections 12(a) and 12(f) of the Act. The Respondents will be ordered to: (1) cease and desist from further violations; (2) follow the agreed-upon compliance plan for the livestock waste lagoon, (3) abide by all the terms and conditions of all permits issued by the Agency, and (4) pay the stipulated penalty of \$1,200.00 into the Illinois Environmental Protection Trust Fund within 30 days of the date of the Board's Order.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondents have violated 35 Ill. Adm. Code 302.203, 304.105, 304.106, 501.404(c)(2), and 501.404(c)(3) and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.
2. The Respondents shall cease and desist from all further violations.
3. The Respondents shall abide by all the terms and conditions of all permits issued by the Agency.
4. The Respondents shall follow the following compliance program in reference to the livestock waste storage lagoon:
 - (a) A minimum freeboard of two (2) feet shall be maintained at all times on the lagoon;
 - (b) An easily visible freeboard marker shall be installed in the lagoon, with a mark designating the level at which two (2) feet of freeboard remains;
 - (c) A comprehensive waste management program shall be submitted to the Agency by December 1, 1986;

- (d) The lagoon shall be dewatered and 80%-90% of the accumulated solids (sludge) shall be removed. When applying the sludge to cropland, the sludge shall be injected beneath the surface, or, if applied to the surface, it shall be incorporated into the soil that day. All land applications shall be performed in accordance with Subtitle E [Agriculture-Related Pollution] Regulations;
 - (e) The Respondents shall maintain adequate pumps and piping in operable condition to dewater the lagoon;
 - (f) Fallow land must always be available for dewatering of the lagoon;
 - (g) The Respondents will control all weeds and vegetative growth on, and around, the lagoon dikes;
 - (h) For the cropland that is irrigated, the crops should be planted on the contour;
 - (i) The Respondents shall submit reports to the Agency on a monthly basis which include the amount of freeboard available and the records for land applications of the wastes.
5. As per item #3 on page 7 of the Stipulation and Proposal for Settlement, the Agency shall delete the requirement of a liner for the livestock waste storage lagoon from the Respondents' NPDES Permit.
6. Within 30 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, jointly and severally pay the stipulated penalty of \$1,200.00 which is to be sent to:

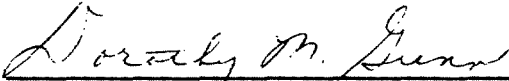
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

7. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on August 13, 1986, which is attached and incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of December, 1986 by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board