

ILLINOIS POLLUTION CONTROL BOARD
November 17, 1988

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 88-138
)
JERRY GOSS, Individually,)
and JERRY GOSS D/B/A JERRY)
GOSS SWINE FARM)
)
Respondent.)

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

MR. JERRY GOSS, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon Complainant's August 29, 1988, filing of an eight count Complaint and Stipulation And Proposal For Settlement. The Complaint alleges that Respondent's facility caused water pollution resulting in the death of 21,470 fish; discharges without required NPDES permits; violations of water quality standards; and creation of a water pollution hazard. In specific, the Complaint alleges violations of Ill. Rev. Stat. 1986 ch. 111 1/2, pars 1012(a), 1012(f), 1033, 1042(c) and 35 Ill. Adm. Code 302.203, 302.206, 302.212, 304.105, 304.106, 304.120(c) and 501.404.

Hearing was held on November 2, 1988 at the Galesburg Municipal Airport; no members of the public were present. At hearing the parties introduced an executed Stipulation And Proposal For Settlement.

The Stipulation And Proposal For Settlement sets forth the following pertinent facts:

- 1) On or about June 21, 1987, Respondent caused or allowed swine waste to enter Middle Creek resulting in a fish kill of approximately 21,470 fish.
- 2) On or about June 22, 1987, Respondent caused or allowed the discharge of swine waste into Middle Creek without an NPDES permit.

- 3) On or about June 22, 1987 Respondent caused or allowed the discharge of swine waste into Middle Creek in violation of water quality standards.
- 4) On or about June 22, 1987 Respondent maintained manure stacks in such a manner so as to allow run-off to enter Middle Creek.

The Stipulation contains an admission of the violations, an agreement to cease and desist from current and future violations and an agreement to undertake a compliance plan which would correct the problems set forth in the complaint. Additionally, Respondent has agreed to pay \$2,277.11 into the Wildlife and Fish Fund; and has further agreed to pay a penalty of \$1,000 to the Environmental Protection Trust Fund.

In evaluating this action and proposed settlement agreement, the Board has considered the facts and circumstances in light of the criteria set forth at Ill. Rev. Stat. ch 111 1/2, par. 1033(c) and finds the Stipulation And Proposal For Settlement acceptable under 35 Ill. Adm. Code 130.180. Accordingly, the Board orders Respondent to comply with the Order set forth below.

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

ORDER

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

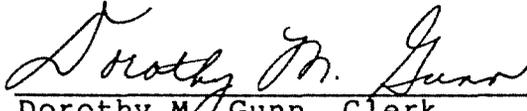
- 1) The Board hereby accepts the Stipulation And Proposal For Settlement executed by the parties and filed with the Board on August 29, 1988. The terms and conditions of the Stipulation And Proposal For Settlement are hereby incorporated and attached to this Order.
- 2) The Board makes the following findings of violations against Respondent:
 - a) Violation of Ill. Rev. Stat. ch. 111 1/2, pars. 1012(a), 1012(f), 1033 and 1042(c).
 - b) Violations of 35 Ill. Adm. Code 302.203, 302.206, 302.212, 304.105, 304.106, 304.120(c) and 501.404.
- 3) Respondent shall, by certified check or money order, pay the following:
 - a) Two thousand two hundred seventy-seven dollars and eleven cents (\$2,277.11) to the Wildlife And Fish Fund.

- b) One thousand dollars (\$1,000) to the Environmental Protection Trust Fund.
- 4) Respondent shall cease and desist from all current violations of the Environmental Protection Act.

IT IS SO ORDERED.

J. Theodore Meyer dissented and R.C. Flemal concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of November, 1988 by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

"Board"), approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

STATEMENT OF FACTS

1. Complainant, Illinois Environmental Protection Agency (hereinafter "Agency"), is an administrative agency established in the executive branch of the State government by Section 4 of the Illinois Environmental Protection Act (hereinafter "Act"), Ill.Rev.Stat., ch. 111-1/2, par. 1001 et seq., (1987), and charged, inter alia, with the duty of enforcing the Act, pursuant to Title VIII thereof and recovering civil penalties pursuant to Title XII thereof.

2. Respondents Jerry Goss and Jerry Goss doing business as Jerry Goss Swine Farm, (hereinafter collectively "Goss"), own and operate a swine farm, which is located near Galesburg, Knox County, Illinois.

3. Located at the facility are five swine confinement buildings, a breeding, a farrowing, a nursery, a grower, and a finishing building.

4. The breeding, nursery, grower and finishing buildings have waste storage pits beneath slatted floors, the farrowing building has a solid concrete floor.

5. On a regular basis the waste storage pits are drained by pulling a plug on an outlet and the waste is allowed to flow into Middle Creek.

6. The waste from the farrowing building is placed in stacks outside the east end of the building, this waste is also allowed to enter Middle Creek.

7. On or about June 21, 1987, but not limited to that day, Respondents caused or allowed swine waste to enter Middle Creek resulting in a fishkill of approximately 21,470 fish in violation of Section 12(a) of the Act.

8. On or about June 22, 1987, but not limited to that date, Respondents caused or allowed the discharge of swine waste from the outlets on the nursery and grower building waste storage pits into Middle Creek without an NPDES Permit in violation of Sections 12(a) and 12(f) of the Act.

9. On or about June 22, 1987, but not limited to that date, Respondents caused or allowed the discharge of swine waste into Middle Creek in violation of Section 12(a) of the Act and Water Quality Standards 35 Ill. Adm. Code 302.203, 302.206, 302.212(b) and (e), 304.105, 304.106 and 304.120(c).

10. On or about June 22, 1987, but not limited to that date, Respondents continued to maintain manure stacks outside in a manner which allowed the run-off from the stacks to enter the Middle Creek in violation of Sections 12(a) and (d) of the Act and Ill. Adm. Code Sections 501.404(b)(1), 501.404(c)(3) and 501.404(c)(4)(A).

11. On four separate occasions Respondents were notified by the Agency of either these apparent violations, or the fishkill or both. Respondents failed to respond.

PROPOSAL FOR SETTLEMENT

As a result of settlement discussions between the parties and of actions taken or to be taken by Respondents, the parties believe the public interest will be best served by resolution of this enforcement action under the terms and conditions provided herein. This proposal for settlement is expressly conditioned upon and effective only with the approval thereof in all respects by the Board. All statements contained herein are agreed to for the purposes of settling this action only and shall be null and void and of no effect in any further proceeding or cause of action if the Board does not approve this proposal for settlement in its entirety.

TERMS OF SETTLEMENT

Respondents and the Agency have agreed to the following Terms of Settlement. These terms shall be in full settlement of the action filed herein by the Agency and Respondents' liability for all violations alleged in the complaint.

1. The Agency contends and Respondents admit the facts set out in the Complaint constitute the following violations of the Act and the Board Regulations:

Count I: Section 12(a) of the Act.

- Count II: Sections 12(a) and 12(f) of the Act.
- Count III: Section 12(a) of the Act and 35 Ill. Adm. Code Sections 302.203 and 304.105.
- Count IV: Section 12(a) of the Act and 35 Ill. Adm. Code Sections 302.206. and 304.105.
- Count V: Section 12(a) of the Act and 35 Ill. Adm. Code Sections 302.212(b) and (e) and 304.105.
- Count VI: Section 12(a) of the Act and 35 Ill. Adm. Code Sections 304.105 and 304.106.
- Count VII: Section 12(a) of the Act and 35 Ill. Adm. Code Sections 304.105 and 304.120(c).
- Count VIII: Sections 12(a) and 12(d) of the Act and 35 Ill. Adm. Code Sections 501.404(b)(1), 501.404(c)(3) and 501.404(c)(4)(A).

2. Respondents agree to cease and desist from any and all violations of the Illinois Environmental Protection Act and Rules and Regulations of the Illinois Pollution Control Board.

3. Respondents agree to perform and complete the following compliance program by the dates noted:

- a. Clean-up the manure solids located on the east side of the confinement buildings by August 1, 1988;
- b. Reseed the disturbed area where the manure stacks were located by September 1, 1988;
- c. Construct an outside waste storage pit from concrete, including backfilling around pit, capable of containing waste from the farrowing, nursery and grower buildings by August 1, 1988 and reseed backfilled area by September 1, 1988;

- d. Install permanent piping to convey the swine waste from the confinement buildings to the waste storage pit by August 1, 1988;
- e. Regrade property around new storage pit so as to divert clean surface water away from storage pit by August 1, 1988;
- f. Install a three (3) foot high fence around the storage pit by August 1, 1988;
- g. Backfill old earthen pit by August 1, 1988 and reseed area by September 1, 1988.

4. Respondents agree to pay \$2,277.11 into the Wildlife and Fish Fund as the reasonable value of the fish killed, included in this amount is the expenses in determining the amount and value of the fish and aquatic life destroyed.

5. The parties enter into this Stipulation and Proposal for Settlement and Respondents agree to pay a penalty specified in this paragraph in order to avoid the substantial costs, inconveniences, and uncertainties of further litigation. In order to resolve this dispute and as a condition of settlement, Respondents agree to pay a penalty of one thousand (\$1,000.00) dollars payable to the "Environmental Protection Trust Fund" within 30 days from the date on which the Board adopts a final order approving, accepting and incorporating this Stipulation and Proposal for Settlement. The Agency deems the payment to be appropriate to aid in the enforcement of the Act under the circumstances of this case.

WHEREFORE, Complainant and Respondents jointly request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

For Complainant

For Respondents

Illinois Environmental Protection Agency

Jerry Goss and Jerry Goss Swine Farm

By: Joseph Svoboda
Joseph Svoboda
Manager, Enforcement Programs

By: Jerry Goss

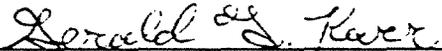
Dated: 8/23/88

8-6-88

gkst0h

CERTIFICATE OF SERVICE

I, GERALD T. KARR, an attorney, hereby certify that a true and accurate copy of the attached Notice Filing, Complaint and Stipulation and Proposal for Settlement was served upon Mr. Jerry Goss, Rural Route #5, Galesburg, IL 61401, by placing same in an envelope and depositing in the United States Mail, first-class postage prepaid, from 100 West Randolph Street, Chicago, IL 60601 on this 29th day of August, 1988.



GERALD T. KARR
Assistant Attorney General