

ILLINOIS POLLUTION CONTROL BOARD  
February 17, 1982

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 81-142  
 )  
MIKE CAMERER and WILLIAM WIIST )  
d/b/a W-C FARMS, )  
 )  
Respondents. )

MR. VINCENT W. MORETH, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;

MR. W. THOMAS RYDER, ATTORNEY AT LAW, APPEARED ON BEHALF OF RESPONDENTS.

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

This matter comes before the Board upon a Complaint filed September 14, 1981 by the Illinois Environmental Protection Agency (Agency) naming as Respondents Mike Camerer and William Wiist, d/b/a W-C Farms. The Complaint alleges violations of §§12(a) and 12(d) of the Illinois Environmental Protection Act (Act), Rules 203(a) and 203(f) of Chapter 3: Water Pollution, Rules 104(d)(3)(C) and 104(e) of Chapter 5: Agriculture Related Pollution, and Agency guideline "WPC-2", all in connection with a hog facility. A public hearing was held at Hamburg on December 15, 1981, at which time the parties presented a stipulation and proposal for settlement. Members of the public attended but did not comment.

Respondents operate a livestock management facility known as W-C Farms within Section 30, T9S, R2W of the 4th P.M., Calhoun County.\* The only livestock are swine. The facility has a capacity of about 700 hogs. The Agency issued Respondents NPDES Permit No. IL 0061191 on February 19, 1980; however, the

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\*The stipulation also specifies "Hamburg Township". The Board notes that Hamburg is situated in T9S, R3W (rather than T9S, R2W). The Calhoun County Clerk's office has confirmed that Respondents own property in the Section specified above, but denied that there is any such entity as "Hamburg Township".

Complaint alleges no violations of NPDES conditions. The facility discharges to an unnamed tributary of the Mississippi River.

Following is a summary of the provisions which are involved in this action. Both Chapters 3 and 5 are being codified during the period in which this case is under consideration. The new section numbers will therefore be indicated.

§12(a) of the Act	Discharge so as to cause water pollution in violation of Board regulations.
§12(d) of the Act	Deposit of contaminants on the land so as to create a water pollution hazard.
3:203(a) <sup>1</sup> §302.203	Water quality standard prohibiting unnatural sludge or bottom deposits
3:203(f) §302.208	Water quality standard of 1.5 mg/l for ammonia nitrogen
5:104(e) §501.405	Quantity of livestock waste applied to land shall not exceed "a practical limit as determined by soil type..."
5:104(d) (3) (C) §501.404(c) (3)	Contents of livestock waste handling facilities shall be kept at levels so there is adequate storage capacity to retain a 25-year, 24-hour storm event.

The following is a summary of the allegations of the Complaint:

<u>Count</u>	<u>Section/Rule</u>	<u>Summary</u>
I	§12(a) and 12(d) Rule 5:104(e) "WPC-2"	Placement of hog waste on the land so as to create a water pollution hazard.
II	§12(a) and 12(d) Rule 5:104(d) (3) (c)	Overflow discharges from a hog waste facility
III	§12(a) Rule 3:203(a)	Violation of water quality standard prohibiting unnatural sludge or bottom deposits
IV	§12(a) Rule 3:203(f)	Violation of water quality standards for ammonia nitrogen

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<sup>1</sup>"3:203(a)" means Rule 203(a) of Chapter 3 and "5:104(e)" means Rule 104(e) of Chapter 5.

The facility includes a barn used to house animals. There is a pit beneath the barn in which livestock wastes are allowed to accumulate. Wastes are supposed to be pumped from the pit to a nearby waste holding lagoon. From the facts stipulated it is not clear whether the lagoon exists or is only proposed (Stip. 2).<sup>\*</sup> In any event, Respondents admit that they allowed the pit to overflow into the unnamed tributary on three specified dates in 1980 and that they pumped contents of the pits into the tributary on four specified dates between June 21, 1979 and March 10, 1980.

It is stipulated that the overflows were not the result of a large precipitation event. The Board finds Respondents in violation of Rule 104(d)(3)(C) of Chapter 5.

Respondents also admit that on two dates in September and October, 1979 they applied hog waste to a four-acre field with a slope greater than 5%. This field is adjacent to the unnamed tributary. Respondents admit that the waste was applied in an amount which exceeded the practical agronomic rate.

The complaint alleges violation of Agency guideline WPC-2 pertaining to application rates for livestock waste to land. Rule 104(e) refers to Rule 105 which allows adoption of Agency design and maintenance criteria. This has been codified as §502.305.

Rule 104(e) of Chapter 5 provides only that the quantity of waste applied not exceed "a practical limit." Relevant considerations are listed which include soil type, permeability, condition, slope, cover mulch and proximity of water. Although Rule 104(e) refers to Agency criteria, it does not require compliance with them. The criteria may be used as evidence that the waste does not exceed the practical limit, but it is not determinative.

The Board finds Respondents in violation of Rule 104(e) of Chapter 5 as alleged in Count I. This finding is based on the admission that the waste was applied in excess of the practical agronomic limit, not that it exceeded the WPC-2 levels.

Respondents admit that the pumpings, overflows and excessive waste applications caused waste to enter the unnamed tributary, thereby causing contamination of waters of the State. The Board therefore finds violation of §12(d) of the Act as alleged in Counts I and II.

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<sup>\*</sup>The lagoon "was built to store this waste" (Stip. ¶5). But Respondents lacked funds "needed to construct the waste holding lagoon" (Stip. ¶6).

Respondents admit that they caused unnatural sludge or bottom deposits and ammonia levels in excess of water quality standards. The Board therefore finds that Respondents caused violation of Rules 203(d) and 203(f) as alleged in Counts III and IV.\*

The Board also finds Respondents caused water pollution and violated Board regulations in violation of §12(a) of the Act.

Respondents have agreed to a compliance plan which is summarized as follows:

1. Respondents will cease and desist violations of the Act, Chapter 3 and WPC-2.
2. Respondents will properly dispose of wastes on a 23-acre field located adjacent to the facility or on a 160-acre farm owned by them in Jersey County. The waste will be hauled by tanker truck. Respondents will inform the Agency before depositing waste at other locations.
3. Respondents will maintain six inches free board in the pit and holding lagoon. The Agency apparently stipulates that this will meet the 25-year, 24-hour requirement.
4. Respondents agree that no waste from the facility will be deposited on adjacent land except the 23 acres specified in paragraph 2.
5. Respondents agree to comply with the NPDES conditions.
6. Respondents agree to have all equipment needed to comply with the stipulation within 60 days after entry of a Board order.

Respondents have agreed to cease and desist "violations" of WPC-2. As noted above, there is no such thing as a "violation" of Agency design criteria. The Board will construe this provision of the settlement as an agreement to comply with these criteria.

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\* Respondents have admitted violating these rules. Rule 402 is not alleged.

Respondents have agreed to deposit waste at two locations. There are provisions for notification of the Agency and inspections prior to disposal. There is no specific requirement of a variance or modification of this Order prior to disposal, as would be required if the Board actually ordered Respondents to conduct waste disposal at two sites only. The Board therefore construes the agreement as meaning only that Respondents shall initially deposit waste at only two locations and shall notify the Agency and submit to inspections prior to utilizing other areas.

There is no evidence of the degree of injury to health, welfare and physical property other than that presumed to arise from violation of the water quality standards (§33(c)(1) of the Act). Actual levels of ammonia are not disclosed. Respondents have admitted to gross pollution involving formation of sludge banks. The enforcement action was filed in response to citizen complaints (Stip. ¶9).

The hog operation has social and economic value. There is no evidence as to its suitability to the area [§33(c)(2) and §33(c)(3)].

It appears that it is technically practicable to eliminate these violations. Respondents contend that the improper maintenance and operation of the facility resulted from lack of funds due to a depressed hog market. However, the Board has long held that economic hardship alone does not excuse compliance with the Act and Regulations [§33(c)(4)].

The agreement provides a penalty of \$800 against the Respondents jointly. The Board accepts the stipulation, as construed above, pursuant to Procedural Rule 331. The Board finds that the penalty is necessary to aid enforcement of the Act.

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

#### ORDER


1. Respondents Mike Camerer and William Wiist, d/b/a W-C Farms, have violated §§12(a) and 12(d) of the Illinois Environmental Protection Act, Rules 203(a) and 203(f) of Chapter 3: Water Pollution and Rules 104(d)(3)(C) and 104(e) of Chapter 5: Agriculture Related Pollution, substantially as alleged in Counts I through IV of the Complaint.

2. Respondents shall cease and desist further violations of the Illinois Environmental Protection Act and Chapter 3: Water Pollution.
3. Respondents shall, pursuant to the settlement agreement, conduct any future field application of livestock waste in accordance with Illinois Environmental Protection Agency design criteria, designated technical policy WPC-2.
4. Respondents shall comply with the terms of the settlement agreement filed January 6, 1982 as construed in the Opinion. The agreement is hereby incorporated by reference.
5. Within thirty days of the date of this Order Respondents Mike Camerer and William Wiist, d/b/a W-C Farms, shall by certified check or money order payable to the State of Illinois pay a civil penalty of \$800 which is to be sent to:

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

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 17<sup>th</sup> day of February, 1982 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board