

ILLINOIS POLLUTION CONTROL BOARD

December 21, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB 71-312
)
CUSTOM FARM SERVICES, INC.)

Dennis K. Muncy, attorney for the Environmental Protection Agency
John Lovett, attorney for Custom Farm Services, Inc.

Opinion and Order of the Board (by Samuel R. Aldrich):

On October 7, 1971, the Environmental Protection Agency ("Agency") filed a complaint against Custom Farm Services, Inc., alleging violations of Rules and Regulations SWB-14 and of the Environmental Protection Act ("Act"). Respondent owns and operates a plant for the manufacture and storage of chemical fertilizers, located in the unincorporated municipality of Leverett, Champaign County, Illinois.

The complaint alleges that Respondent: 1) caused or allowed the discharge of a contaminant, consisting of chemical fertilizer, from its plant so as to cause water pollution in the Saline Drainage Ditch and an unnamed tributary thereto, in violation of Section 12(c) of the Act; 2) caused a failure to meet minimum water quality standards by discharging toxic industrial substances in violation of Rule 1.03(d) of SWB-14; 3) caused a failure to meet minimum conditions for aquatic life sectors by discharging toxic substances into the waters in excess of the 48-hour median tolerance limits for fish, in violation of Rule 1.05(d) of SWB-14; 4) caused the death of fish in the Saline Drainage Ditch and an unnamed tributary thereto.

The nature of the incident which led to the filing of the complaint is outlined in a memorandum (Exhibit A) from John R. Crawford, an investigator for the Agency, to his supervisor, K. L. Baumann. The incident involved an accidental discharge of fertilizer from a ruptured storage tank on May 3, 1971. The discharge was reported to the Agency by Jim Merriman, District Supervisor for Respondent.

The spillage of fertilizer occurred about 75 yards from a stream tributary to the Saline Drainage Ditch. Darrell Ackermann, Plant Manager of Respondent's Leverett Branch, estimated that approximately 10 tons of fertilizer were lost during the spill. Material from the tank was observed entering the stream and laboratory analysis of water samples confirmed the source of the contaminants. Dead fish were observed at several points downstream from the point of discharge of the contaminants. An estimated 4842 fish were killed, most of which were minnows. According to the schedule of the Department of Conservation, Division of Fisheries, the value of the fish killed is \$162.34.

On November 29, 1971, the parties to the case submitted a Stipulation and Settlement Agreement. Both parties stipulate that the factual allegations contained in the complaint are true. The parties request that in lieu of a hearing, the Board accept the stipulation and proposed settlement which contains the following: entry of an order directing Respondent to cease and desist from further violations; assessment of a penalty of \$2000; reimbursement to the State for the value of the fish killed; construction of facilities sufficient to contain any possible spillage of hazardous materials in the future, such facilities to be in operation by May 1, 1972; submission of plans and specifications for the facilities to the Agency for its approval; posting of a performance bond in the amount of \$10,000 guaranteeing timely construction and operation of the necessary facilities.

The parties state in the Agreement that they believe the settlement is fair and just and that it would be in the best interests of the public for the Board to approve the settlement and enter the order requested by the parties without further hearing. We heartily agree. We have stated previously that a reduction in the time and expense of litigation is a desirable goal (see EPA v. Charles R. Rhodes, PCB 71-53, September 16, 1971). Section 333 of the Procedural Rules of the Board outlines settlement procedures to be followed in enforcement proceedings. The use of such procedures is to be encouraged. We are persuaded that the settlement in the instant case is fair and reasonable. The terms of the proposed order are entirely acceptable to us. Provision is made both for the payment of an adequate money penalty and for the future protection of the environment. The Hearing Officer invited public testimony on the conditions of the stipulation and agreement. None was submitted. We shall enter an order in complete accordance with that contained in the settlement agreement drawn up by the parties to the case.

ORDER

1. Custom Farm Services, Inc. shall cease and desist from violations of Rules and Regulations SWB-14 and of the Environmental Protection Act at its Leverett, Illinois, plant.
2. By May 1, 1972, Custom Farm Services, Inc. shall construct and place in operation at its Leverett, Illinois, plant such facilities as are necessary to contain any future spillage of hazardous materials.

3. Custom Farm Services, Inc. shall submit plans and specifications for the aforementioned facilities to the Environmental Protection Agency for approval, which authorization shall not be unreasonably withheld, prior to the commencement of the construction of said facilities.
4. Custom Farm Services, Inc. shall, within 30 days of the date of entry of this order, post a bond in the amount of \$10,000.00 in a form acceptable to the Environmental Protection Agency, such bond to be forfeited in the event the provisions of paragraph 2 of this order are not met.
5. Custom Farm Services, Inc. shall, within 10 days of the entry of this order, pay to the State of Illinois for deposit in the Fish and Game Fund in the State Treasury, the sum of \$162.34.
6. Custom Farm Services, Inc. shall, within 10 days of the entry of this order, pay to the State of Illinois, the sum, in penalty, of \$2000.00.

I, Christan Moffett, Acting Clerk of the Illinois Pollution Control Board, certify that Dr. Samuel R. Aldrich submitted the above opinion and order this 21st day of December, 1971 by a vote of 4-0.



