

ILLINOIS POLLUTION CONTROL BOARD  
October 20, 1988

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 84-83  
 )  
RUSSELL PERKINSON, )  
d/b/a PORKVILLE, )  
 )  
Respondent. )

MR. JOSEPH ANNUNZIO, ESQ., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

MARK J. ANSEL, ESQ., OF ERWIN, MARTINKUS, COLE AND ANSEL APPEARED ON BEHALF OF THE RESPONDENT, RUSSELL PERKINSON

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board upon a June 28, 1984 complaint filed on behalf of the Illinois Environmental Protection Agency (hereinafter "Agency") against Russell Perkinson, doing business as Porkville (hereinafter "Perkinson" or "Porkville"). The complaint, as amended on October 10, 1984, alleges nine counts against the Respondent, his operation of two swine waste lagoons and the discharge from these lagoons to an unnamed tributary of Spring Creek (hereinafter "tributary"). Hearings were held on May 19, 1986 and on July 22, 1987 in Watseka, Iroquois County. On May 26, 1987, the parties stipulated that thirty-three documents relevant to the hearing be introduced as evidence. A second stipulation of facts was entered on March 9, 1987. The Complainant filed a post-hearing brief on September 28, 1987. The Respondent filed a post-hearing brief on November 2, 1987 and the Complainants responded to the Respondent's post-hearing brief on December 9, 1987.

Based on the record, the Board finds that Respondent has violated Section 12(a) of the Illinois Environmental Protection Act (hereinafter "Act") as alleged in Counts I and II, has violated 35 Ill. Adm. Code 302.203 as alleged in Count III, has violated 35 Ill. Adm. Code 302.212(a) and 304.105 as alleged in Count IV, has violated 35 Ill. Adm. Code 302.212(b) as alleged in Count V, has violated 35 Ill. Adm. Code 302.206 as alleged in Count VI, has violated 35 Ill. Adm. Code 501.404(c) and (4) as alleged in Count VII, has violated 35 Ill. Adm. Code 501.404(c)(2) as alleged in Count VIII and has violated Section

12(f) of the Act and 35 Ill. Adm. Code 309.102 as alleged in Count IX. The penalties imposed have been reduced from the amounts recommended by the Attorney General in order to have the penalty more accurately reflect the evaluation of the events using the factors listed in Section 33(a).

#### BACKGROUND

Russell Perkinson, in partnership with his sons, owns and operates a swine farm known as Porkville, located in Iroquois County near the Village of Thawville. The farm, which produces several thousand swine annually, includes two lagoons in which swine waste, resulting from the operation at the farm, is deposited. Overflows, spills and leaks from the lagoon travel to a low point, enter a perforated metal riser pipe and are transported by a field tile which discharges to the tributary.

The complaint alleges that since June of 1979, the Respondent has caused or allowed the discharge of a substantial amount of swine waste into the tributary. The complaint centers on two occurrences. The first occurrence was on July 7 and 8 of 1983 when the Respondent allowed discharge of approximately 200,000 gallons of swine waste from its lagoons resulting in the death of over 100,000 fish in the tributary. The second occurrence was on or about July 16, 1984 when the Respondent caused or allowed the discharge of swine waste into the tributary killing approximately 4,206 fish. Besides the killing of the fish, both discharges altered the chemical and biological properties of the waters.

The Respondent does not dispute that the discharges of July 8, 1983 and July 16, 1984 occurred. Perkinson does, however, contest the assertion that his operation of the facility failed to take reasonable precautions to prevent discharges or that he should be held culpable for the damage due to the discharges. Perkinson notes his continued communication and cooperation with the Agency and maintains that the discharge of July 8, 1983 was the result of "malicious vandalism by a trespasser" and beyond his control.

The threshold issue that must be resolved in this case is the issue of liability. The parties agree that the proper standard of liability for violations of the Act and environmental law is "malum prohibitum". Malum prohibitum does not require the complainant to prove that the liable party had a culpable or guilty mental state. The Complainant only needs to show that the culpable party was in the position to control the wrongful act. In Meadow Lake Farms, Inc. v. Illinois Pollution Control Board, the Appellate Court upheld the standard by stating:

Petitioner was not charged with creating the refuse piles or with responsibility for the operation of the Peabody 43 mine which

resulted in the creation of the refuse pile. The Pollution Control Board merely found that the petitioner has ownership of the surface rights of the property which was the source of the violation, that the evidence showed that the pollution had its source on that property and that fish were killed, and that the petitioner had the capability of controlling the polluttional discharge. Therefore, petitioner was found to have violated section 12(a) of the Act, as well as violating the other rules and regulations related to water pollution. The findings of the Board were correct.

Meadow Lark Farms v. Pollution Control Board, 308 N.E. 2nd at 836.

However, in his post-hearing brief, Perkinson argues that the Agency is attempting to impose a liability standard equivalent to strict liability. Perkinson maintains that the discharge into the tributary on July 8, 1983 resulted from an independent, intervening cause in the form of a trespasser. As a result, Perkinson argues, he did not "cause or allow" the discharge and therefore, should not be held liable for the results.

The meaning of the phrase "cause or allow", as used in Section 12(a) of the Act, has been determined by the Illinois Appellate Court, Third District, in Freeman Coal Mining Corp. v. Illinois Pollution Control Board, 21 Ill. App. 3d 157, 313 N.E., 2d 616 (1974). In Freeman, the petitioner was an owner of a coal mine that maintained a mine refuse pile. Rainfall upon the pile resulted in an acidic contaminant which washed into an unnamed waterway causing water pollution. Id. at 618. The petitioner argued that it could not be held liable for "allowing such discharges because the discharges were the result of a natural force beyond the control of the petitioner" Id. at 619. In its decision in Freeman, the court restated that the Act is malum prohibitum and no proof of guilty knowledge or mens rea is necessary to a finding of guilt. The court went on to say, that the fact that the discharges were unintentional, or occurred despite efforts to prevent them, is not a defense. The owner of the property that creates the pollution has a duty, imposed by the legislation, to take all prudent measures to prevent the pollution. The efforts by the landowner to control or treat the pollution go to the issue of mitigation, not to the primary issue of liability. Id. at 621.

In the present case, it has been stipulated that the Respondent's property was the source of the subject pollution. The question of whether Perkinson fulfilled his duty to take all prudent measures to prevent pollution can be answered from the

facts in the case. At hearing, Perkinson emphasized the extent to which it cooperated with the Agency in trying to redesign the lagoon system and to operate the system in a manner that would not result in discharges (R at 50, 68, 116). However, Perkinson's duty extended beyond a requirement to follow Agency instructions. Perkinson failed to take obvious actions that could have prevented the discharges into the tributary. The Board is at a loss to understand why the lagoons could not have been designed in a manner that would have guaranteed that even if they did overflow or leak the swine waste would not flow to the drainage tile and into the tributary. This could have been accomplished by building a retaining wall around the entire lagoon area, by digging a drainage system away from the field drainage tiles or by providing a means of covering the inlet or outlet of the field tiles during discharges from the lagoon. Further, Perkinson's failure to take immediate action when the leak was discovered (R. at 92) and failure to notify authorities to mitigate the damages when they were aware that the swine waste was entering the tributary (R. at 101) also show a failure to take all prudent measures to prevent pollution. Therefore, Perkinson may be held liable on any count shown to have originated from his property and shown to have violated a provision of the Act or Board regulations, or other environmental law.

#### COUNT I

It is alleged that Perkinson violated Section 12(a) of the Act on or about July 7, 1983, by allowing the discharge of approximately 200,000 gallons of swine waste from its lagoon to the tributary and thereby caused the death of approximately 101,219 fish. Section 12(a) of the Act provides:

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.

In the Stipulation of Facts filed on March 9, 1987, the Respondent admitted that the discharge resulted from a man-made channel cut through his swine waste lagoon on his property. By causing or allowing this water pollution of the tributary, Perkinson violated Section 12(a) of the Act, Ill. Rev. Stat.

1985, ch. 111<sup>1/2</sup>, par. 1012(a).

COUNT II

It is alleged that Perkinson violated Section 12(a) of the Act on or about July 7, 1983 by causing or allowing the discharge of swine waste into the tributary and thereby causing the death of 4,206 fish.

In the Stipulation of Facts filed with the Board on March 9, 1987, the Respondent admitted that the discharge resulted from a temporary obstruction in the waste water alley which caused the system to back up and drain out of the inlet holes and carried swine waste to the rainwater drainage system and subsequently to the tributary. By causing or allowing this discharge to the tributary, Perkinson violated Section 12(a) of the Act.

COUNT III

It is alleged that Perkinson violated 35 Ill. Adm. Code 302.203 and 304.105 by causing or allowing the discharge of swine waste from Perkinson's property on July 7, 1983 causing unnatural bottom deposits, floating debris, odor, environmental color and/or turbidity in the tributary. 35 Ill. Adm. Code 302.203 provides the following water quality standard:

Waters of the State shall be free from unnatural sludge or bottom deposits, floating debris, visible oil, odor, unnatural plant or algal growth, unnatural color or turbidity, or matter of other than natural origin in concentrations or combinations harmful to human, animal, plant or aquatic life.

35 Ill. Adm. Code 304.105 provides in pertinent part:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard.

On March 9, 1987, the parties stipulated that at the time of the July 7, 1983 and July 16, 1984, fish kills, it was found that a discharge pipe located at the tributary which discharged Respondent's swine waste caused that tributary to be contaminated with unnatural brown algae growth, a brown, black or reddish

color, floating debris, turbidity, bottom deposits and swine waste odor. This is a violation of Section 12(a) of the Act, Ill. Rev. Stat. 1985, ch. 111<sup>1</sup>/<sub>2</sub>, par. 1012(a), and a violation of 35 Ill. Adm. Code 302.203.

COUNT IV

It is alleged that Perkinson violated 35 Ill. Adm. Code 302.212(a) and 304.105 or or about July 8, 1983 by allowing or causing the discharge of swine waste so as to cause ammonia nitrogen concentrations in the unnamed tributary to exceed applicable water quality standards. 35 Ill. Adm. Code 302.212(a), effective since September 7, 1982, provides the following water quality standard:

- a) Ammonia nitrogen (as N: Storet Number 31616) shall in no case exceed 15 mg/l.

In a Stipulation of Facts filed with the Board on May 6, 1986, the following ammonia nitrogen concentration measurements were taken in the tributary:

<u>Sampling Date</u>	<u>Location</u>	<u>Ammonia Nitrogen Concentration (mg/l)</u>
July 8, 1983	Upstream of Outfall	2.4
July 8, 1983	Approx. 1 and 1/3 miles downstream of the outfall.	41.
July 8, 1983	Approx. 2 miles downstream of the outfall.	36.
July 8, 1983	Approx. 3 miles downstream of the outfall.	39.
July 8, 1983	Approx. 4 miles downstream of the outfall.	44.
July 8, 1983	Approx. 5 and 1/3 miles downstream of the outfall.	35.

The data show that the outfall from Porkville contributed to the ammonia nitrogen concentration in the tributary exceeding 15 mg/l. By causing or allowing the outfall that resulted in the ammonia nitrogen levels stated above, Perkinson has violated Section 12(a) of the Act, Ill. Rev. Stat., 1985, ch. 111<sup>1</sup>/<sub>2</sub>, par.

1012(a) and 35 Ill. Adm. Code 302.212(a) and 305.105.

COUNT V

It is alleged that Perkinson violated 35 Ill. Adm. Code 302.212(b) by causing or allowing the discharge of swine waste from Porkville on July 16, 1984 so as to cause concentration of un-ionized ammonia in the tributary to exceed applicable water quality standards. Section 302.212(b) provides the following water quality standard:

- b) If ammonia nitrogen is less than 15 mg/l and greater than or equal to 1.5 mg/l, then un-ionized ammonia (as N) shall exceed 0.04 mg/l.

In a Stipulation of Facts filed with the Board on May 6, 1986, the parties entered information showing that the un-ionized ammonia concentration in the tributary, approximately forty yards downstream from the Porkville discharge, was 0.54 mg/l on July 17, 1984. By causing or allowing this discharge, Perkinson has violated 35 Ill. Adm. Code 302.212(b).

COUNT VI

It is alleged that on or about July 8, 1983, Respondent caused or allowed the discharge of swine waste as described above so as to cause the dissolved oxygen concentration in the tributary to exceed the applicable water quality standards established in 35 Ill. Adm. Code 302.206. 35 Ill. Adm. Code 302.206 provides the following water quality standard:

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.

In a Stipulation of Facts filed with the Board on May 6, 1986, the following data on dissolved oxygen concentrations were supplied.

<u>Sampling Date</u>	<u>Location</u>	<u>Dissolved Oxygen Concentration (mg/l)</u>
July 8, 1983	Upstream of Outfall.	13.8
July 8, 1983	Approx. 1 and 1/3 miles downstream of the outfall	0.2
July 8, 1983	Approx. 2 miles downstream of the outfall.	2.5
July 8, 1983	Approx. 3 and 1/3 miles downstream of the outfall.	1.6
July 8, 1983	Approx. 4 miles downstream of the outfall.	2.0

This data shows that the discharge from Porkville contributed to the violation of the dissolved oxygen concentration standard. By causing or allowing the discharge, Perkinson has violated 35 Ill. Adm. Code 302.206.

#### COUNT VII

It is alleged that the Respondent has failed to keep the contents of the livestock waste-hauling facilities (the lagoons) at levels to prevent an overflow when less precipitation than a 25-year, 24-hour storm event occurred and as so not to cause water pollution, in violation of 35 Ill. Adm. Code 501.404(c)(3) and (c)(4). 35 Ill. Adm. Code 501.404(c)(3) provides:

The contents of livestock waste-hauling 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.

35 Ill Adm. Code 501.404(c)(4) provides in pertinent part:

Existing livestock management facilities which handle the waste in a liquid form shall have adequate storage capacity in a liquid manure-holding tank, lagoon, holding pond, or any combination thereof so as not to cause air or water pollution



as defined in the Act or applicable regulations.

The fact that the water pollution described above originated from the Porkville lagoons shows that the lagoons were insufficient to hold the water and is sufficient evidence to find Perkinson in violation of 35 Ill. Adm. Code 501.404(c)(4) under the malum prohibitum liability standard. Perkinson has violated 35 Ill. Adm. Code 501.404(c)(4) and is therefore liable under Count VII without requiring a determination of his liability under 35 Ill. Adm. Code 501.404(c)(3).

#### COUNT VIII

It is alleged that since on or about July 27, 1982, Respondent's lagoon has not been impermeable or sealed as to prevent groundwater or surface water pollution and allowed seepage of wastewater through the walls of the lagoons, thereby violating Section 12(a) of the Act and 35 Ill. Adm. Code 501.404(c)(2). 35 Ill. Adm. Code 501.404(c)(2) provides:

Holding ponds and lagoons shall be impermeable or so sealed as to prevent groundwater or surface water pollution.

Facts stipulated to by the parties on March 9, 1987, as well as testimony by David Perkinson (R. at 96) and Eric Ackerman (R. at 23), indicate that there was seepage from the storage lagoons. This constitutes a violation of 35 Ill. Adm. Code 501.404(c)(2).

#### COUNT IX

It is alleged that the Respondent violated Section 12(f) of the Act by violating Attachment B, paragraphs 1(a), 2(c) and (3) conditions of his NPDES permit, as well as 35 Ill. Adm. Code 309.102, by allowing the discharge that occurred on or about July 7, 1983. Respondent was issued NPDES Permit No. IL0061611 for his swine farm on June 26, 1980. An effective date of July 26, 1980 and an expiration date of April 30, 1985 were included in Respondent's NPDES Permit. Section 12(f) of the Act provides in pertinent part:

No person shall:

- 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 NPDES permit for point source discharges issued by the Agency under Section 39(b), or in violation of any regulations adopted by the Board with respect to the NPDES program.

35 Ill. Adm. Code 309.102 provides:

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.

Attachment B, paragraph 1(a) of Respondent's NPDES Permit provides the following discharge limitation:

During the period beginning with the effective date and lasting through the expiration date, the permittee shall not discharge process wastewater pollutants to navigable waters except overflow from facilities caused by either catastrophic or chronic precipitation events.

Attachment B, paragraph 2(c) of Respondent's NPDES Permit provides the following monitoring requirements:

The permittee shall monitor and record the liquid level of retention facilities daily when the available storage is for less than a 25 year, 24 hour precipitation event.

Attachment B, paragraph 3 of Respondent's NPDES Permit provides as follows on reporting of discharges:

When a discharge occurs, the permittee shall notify the permit issuing authority as follows:

- a) By telephone, (309) 691-2000, within 24 hours of occurrence or during the first business day following a discharge that occurs on a weekend or

holiday, for discharges resulting from precipitation events.

- b) By telephone (217) 782-3637, and (309) 692-2000, immediately upon occurrence, for discharge resulting from non-precipitation events (e.g., dike or structural failure, equipment breakdown, human error).
- c) In writing within five (5) days of occurrence, with the following information:
  - 1) Cause of the discharge;
  - 2) Period of discharge; including exact dates and times;
  - 3) An estimate of the discharge volume; and
  - 4) Corrective steps, taken if appropriate.
- d) The completed report shall be mailed to the IEPA at the following address.

Illinois Environmental Protection  
Agency  
Div. of Water Pollution Control  
2200 Churchill Road  
Springfield, IL 62706

It has been stipulated that the Respondent caused or allowed the discharge of July 7, 1983, therefore violating Attachment B, paragraph 1(a) condition of NPDES Permit No. IL0061611. Testimony at hearing also showed that the Respondent failed to notify the Agency of the discharge (R. at 101) in violation of Attachment B, paragraph 3 conditions of the NPDES permit. The Board finds that the Respondent was not in violation of Attachment B, paragraph 2(c) of the permit. The testimony of David Perkinson (R. at 94) and Ken Hanford (R. at 83) shows there was a practice to observe the lagoon on a daily basis. It was also shown that Mr. Hanford kept a record of the lagoon level (R. at 72). The fact that the records were not discernible by Mr. Perkinson or Mr. Ackerman does not necessarily mean they were not accurately kept or could not be understood and explained by Mr. Hanford.

However, the violation of the NPDES permit show that the Respondent violated 12(f) of the Act and 35 Ill. Adm. Code 309.102. The Respondent is therefore liable under Count IX.

PENALTY

To determine the applicable penalty that should be assessed for the violations committed by the Respondent, the Board will review the factors listed in Section 33(c) of the Act. The first criteria is the character and degree of injury of the health and general welfare of the people. It is unquestioned that the pollution of an Illinois waterway has an adverse effect on the people of Illinois. In the incident of July 8, 1983, the consequential damage to the tributary and to Spring Creek was substantial. The damage done to the biological and chemical characteristics of the waterways could take a considerable amount of time to correct. The continuing problem with seepage and events like the discharge of July 16, 1984 will prolong the recovery period and make it more difficult to restore vegetation and fish to the tributary and to make the water useful for other purposes. Further, there is a foreseeable expense of treating the water to allow others to use it, the loss of the game fish, as well as the unnecessary expense in enforcing the applicable rules and prosecuting the violators.

The second factor is the social and economic value of the pollution source. While the swine waste lagoon is an essential part of an operation like Porkville, and while efficient farm operations are an important contributor to the economy of this State, its value is outweighed by the unacceptable pollution activity from the operation.

The third factor is the suitability of the pollution source to the area it is located. While the swine waste lagoon obviously needs to be located in close proximity to the Porkville operation, it should be designed and constructed to prevent seepage and overflow from readily entering the tributary. The runoff should be directed to another lagoon or sump area where it can be reclaimed without polluting the tributary.

The fourth factor under Section 33(c) is the technical practicability and economic reasonableness of reducing or eliminating the deposits resulting from the pollution source. It is both technically feasible and economically reasonable to eliminate the discharge. The Respondent could have avoided pollution by taking reasonable precautions to ensure that any discharge from the lagoon would not flow to the tributary. It also may have been possible to mitigate the damage done by the discharge if the Respondent had notified the proper authorities, as required by the NPDES permit, in a timely manner.

The final 33(c) factor is the economic benefits accrued by the noncomplying pollution source because of its delay in compliance with pollution control requirements. There is no indication from the record that the Petitioner was motivated by potential economic benefits. Instead, this situation appears to have resulted from a lack of respect for the Act and a lack of

concern for the environment. However, there is undeniably a benefit to a noncomplying party for the expense and effort he has not expended in coming into compliance and Perkinson realized such a benefit in this matter.

In the complaint, the Attorney General recommended the following penalties be invoked:

In accordance with Section 42(a) of the Act, Respondent to pay a monetary penalty not to exceed \$10,000 for each violation under Counts I through VIII found herein, and an additional penalty of not to exceed \$1,000 for each day during which said violations shall have continued.

In accordance with Section 42(b)(1) of the Act, Respondent pay a monetary penalty not to exceed \$10,000 for each violation under County IX found herein, and an additional penalty of not to exceed \$10,000 for each day during which said violations shall have continued.

In accordance with Section 42(c) of the Act, Respondent pay the sum of \$10,376.48 to the Wildlife and Fish Fund in the State Treasury for the fish kill of July 7, 1983.

In accordance with Section 42(c) of the Act, Respondent pay the sum of \$443.26 to the Wildlife and Fish Fund of the State Treasury for the fish kill of July 16, 1984.

That the Board order such additional final relief as it shall deem appropriate under the circumstances.

The Board feels that the Attorney's General recommendation may be appropriate in light of the environmental damage that resulted from the violation. However, these penalties would invoke a conceivably unmanageable burden on the Respondent. The Board's intent in fashioning a penalty is to use the factors from Section 33(c) of the Act to both compensate for environmental damage and to deter the violator from allowing further violations.

The nine counts in the Complaint center around two instances on which the Respondent clearly violated his NPDES permit and consequently Section 12(a) of the Act. As a result of this violation of the permit, the fish kills in the tributary occurred

and the ammonia nitrogen concentration, the dissolved oxygen concentration and the unionized ammonia concentrations in the tributary were disrupted. The remaining charges of discharging swine waste because of improperly operating the lagoon and allowing pollution by not containing seepage from the lagoon are presented as continuing violations, but are only substantiated at the time of the discharges. By eliminating the violations that caused the pollution, the resultant violation of pollution standards would be avoided. Therefore, in formulating its penalty the Board will treat the violations as two individual events it is trying to deter.

The Board imposes a fine of \$10,000 for the violations that resulted from the discharge of July 7, 1983. Based on the factors in Section 33(a), this event had a significant degree of injury to the health, general welfare and physical property of the people, with very limited social value and could have been easily avoided or mitigated. Other factors besides those listed in Section 33(c) also were involved in the determination of the penalty. One of these factors is the less than commendable effort put forth by the Petitioner in avoiding or controlling the discharges and the apparent lack of regard the Petitioner has shown for preserving the waterways of the state. The Board is also disturbed by the Petitioner's failure to recognize his responsibility for the problem.

The discharge of July 16, 1984 had a much less significant degree of injury to the health, general welfare and physical property of the people although it also could have been avoided by redirecting the flow. Consequently, the fine imposed for the July 16, 1984 violations will be \$1,000.00.

The Board further orders the Respondent to pay \$10,376.84 for the fish kill of July 7, 1983 and \$443.26 for the fish kill of July 16, 1984 to the Wildlife and Fish Fund of the State Treasury, in accordance with Section 42(c) of the Act.

The Board also orders the Petitioner to cease and desist from further violation of its NPDES permit, the Act or Board regulations. Because it has been four years since the events in this cause occurred, the Board has no way of knowing the present conditions of the Porkville operation. However, the Board considers these four years as time that the Petitioner should have used to redesign his swine-waste system to assure no further discharges occurred. Therefore, the Board will look unfavorably upon any further enforcement actions brought against the Petitioner.

This Opinion constitutes the Board's finding of facts and conclusions of law in this matter.

ORDER

Russell Perkinson d/b/a Porkville is hereby found to be in violation of Sections 12(a) and 12(f) of the Act, 35 Ill. Adm. Code Sections 302.203, 302.212(a) and (b), 304.105(a), 302.206, 501.404(c)(2) and (4) and 309.102 as well as conditions in paragraphs 1(a) and 3 of the NPDES permit no. IL0061611.

- 1) Within 45 days of the date of this order, Perkinson shall pay a penalty in the amount of \$11,000.00 which is to be sent to:

Environmental Protection Trust  
Fund  
Fiscal Service Division  
Illinois Environmental Protection  
Agency  
2200 Churchill Road  
Springfield, IL 62706

In addition, Perkinson shall pay a penalty of \$10,820.10, within 45 days of the order, which is to be sent to:


Wildlife and Fish Fund  
Fiscal Service Division  
Illinois Environmental Protection  
Agency  
2200 Churchill Road  
Springfield, IL 62706

2. Perkinson shall cease and desist from operating in violation of its NPDES permit, and allowing violation of the Act and Board regulations.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$ , par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20<sup>th</sup> day of October, 1988, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board