

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1987

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
 Complainant,)
))
 v.) PCB 85-69
))
MAPLEHURST FARMS, INC., AN)
ILLINOIS CORPORATION,)
))
 Respondent.)

MR. MICHAEL J. MAHER, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. EDWARD T. GRAHAM APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on a Complaint and Amended Complaint filed by the Illinois Environmental Protection Agency (Agency) on June 4 and July 22, 1985, respectively. The matter concerns an incident alleged to have occurred in May of 1982. The Amended Complaint (Am. Comp.) merely substitutes the term "28 percent liquid nitrogen" for the term "anhydrous ammonia". In its five-count complaint, the Agency alleges that Maplehurst Farms, Inc. (Maplehurst) violated various sections of the Illinois Environmental Protection Act (Act) and regulations thereunder. An Agreed Stipulation and Proposed Settlement (Stip.) was presented by both parties at a Board hearing in this matter conducted on September 26, 1986.

Maplehurst is an Illinois Corporation which sells grains and fertilizer. Specifically, Maplehurst sells 28 percent liquid nitrogen. (Stip., p. 2). In its complaint, the Agency alleges that Maplehurst pumps the 28 percent liquid nitrogen from a storage tank into awaiting trucks at its truck loading facility. According to the Agency, the truck loading facility, at the time of the alleged violation, consisted of a gravel surface located on sloping ground which drained into a storm grate. The Agency asserts that the storm grate leads to a field tile which in turn discharges into an unnamed tributary of Kilbuck Creek, County of Ogle, Illinois, a water of the State of Illinois. (Am. Comp., p.2).

The alleged incident upon which the Agency bases its complaint involves a spill of 28 percent liquid nitrogen. The Agency contends that on or about May 10, 1982, Maplehurst caused, threatened or allowed 28 percent liquid nitrogen to be spilled in Maplehurst's truck loading facility and subsequently to be

discharged into an unnamed tributary of Kilbuck Creek. (Am. Comp. p.3). The specific allegations of each count is as follows:

Count I -- Violation of Section 12(a) of the Act:

That Maplehurst caused, threatened, or allowed the discharge of 28 percent liquid nitrogen so as to cause or tend to cause water pollution in Illinois in that the resulting discharge destroyed indigenous fish and aquatic life of Kilbuck Creek. (Am. Comp., p. 3,4).

Count II -- Violation of 35 Ill. Adm. Code 304.105, 302.212 and Section 12(a) of the Act:

That Maplehurst violated Board regulations (thereby violating Section 12(a)) by causing the exceedance of a water quality standard (thereby violating 35 Ill. Adm. Code 304.105) through the discharge of 28 percent liquid nitrogen. The general water quality standard alleged to be violated was 1.5 mg/l of ammonia nitrogen (as N) (35 Ill. Adm. Code 302.212, effective prior to September 7, 1982 as Rule 203, presently amended). (Am. Comp., p. 3,4).

Count III -- Violation of 35 Ill. Adm. Code 306.102(b) and Section 12(a) of the Act:

That Mapelhurst violated Board regulations (thereby violating Section 12(a)) by failing to take reasonable measures to prevent spillage of contaminants from causing water pollution (thereby violating 35 Ill. Adm. Code 306.102(b)). (Am. Comp., p. 5,6).

Count IV -- Violation of Section 12(d) of the Act:

That Maplehurst deposited 28 percent liquid nitrogen upon the land in such place and manner so as to create a water pollution hazard in that the resulting discharge caused or allowed indigenous fish and aquatic life of Kilbuck Creek to be destroyed. (Am. Comp., p. 6,7).

Count V -- Violation of 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act:

That Maplehurst caused, threatened or allowed the discharge of 28 percent liquid nitrogen from the field tile originating at the storm grate near Maplehurst's truck loading area into an unnamed tributary of Kilbuck Creek, a water of the State of Illinois without possessing a National Pollutant Discharge Elimination System permit for the discharge in question (thereby violating 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act).

In its Amended Complaint, the Agency's requested relief includes:

1. That the Board enter a final order directing Maplehurst to cease and desist from further violations.
2. That the Board assess a penalty, not to exceed \$10,000.00, against Maplehurst for violations in Counts I through IV and an additional \$1,000.00 per each day during which these violations continued.
3. That the Board assess a penalty, not to exceed \$10,000.00, against Maplehurst for violations in Count V and an additional \$10,000.00 for each day during which these violations continued.
4. That Maplehurst be required to pay the Game and Fish Fund of Illinois State the value of the fish and aquatic life destroyed in the amount of \$6,704.96 plus any expenses incurred in determining the amount and value of the fish and aquatic life destroyed.
5. That the Board enter such additional final relief as it deems appropriate under the circumstances.

(Am. Comp., p. 8,9).

The Agreed Stipulation and Proposed Settlement states that Maplehurst voluntarily constructed a spill contaminant retention area in its truck loading area. This french drain pit is capable of retaining 15,000 gallons of liquid which could then be reclaimed and sold. The Agency, in the proposed settlement, has reduced the value of compensation for the killed fish and aquatic life from \$6,740.95 to \$1,982.63. This reduction reflects the fact that the Illinois Department of Conservation had established 5 counting stations rather than 17 as required by its procedures. It is also agreed that Maplehurst "denies all allegations of wrongdoing and of any acts or omissions alleged by the Agency as against Respondent's operation causing or allowing a violation of Section 12 of the Act or any fish kills." (Stip., p. 4).

The proposed settlement provides that Maplehurst "shall pay the Game and Fish Fund of the Illinois State Treasury \$1,982.63, an amount equal to the reasonable value of the fish destroyed." Under the settlement, Maplehurst would not be required to modify its operations any further or pay any additional amount. (Stip. p. 5).

The Board notes that the allegations of the Agency are serious. If Maplehurst had admitted to the violations complained of by the Agency, the terms of the proposed settlement would likely have been deemed insufficient to redress the alleged wrongs. However, the Board must view this proposed settlement in the context of the case's circumstances. Although Maplehurst has not admitted to any violations, it has modified its truck loading area to prevent future spills from occurring. In addition, by

the terms of the proposal, Maplehurst will pay \$1,982.63 to the Game and Fish Fund. In light of these actions and the fact that the incident which precipitated the complaint took place over 4 1/2 years ago, the Board concurs with the Agency in finding that this proposed settlement will properly resolve this matter.

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 Agreed Stipulation and Proposed Settlement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board orders the Respondents to comply with the Order set forth herein.

This Opinion and Order 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 Respondent shall pay one thousand nine hundred eighty two dollars and sixty three cents (\$1,982.63) to the Game and Fish Fund of the Illinois State Treasury. This payment shall be made within thirty days of the date of this Order. The payment shall be made by certified check or money order payable to the Game and Fish Fund of Illinois State Treasury and delivered to:

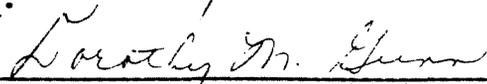
H. Alfred Ryan
Assistant Attorney General
Environmental Control Division
100 West Randolph Street
Room 13-178
Chicago, IL 60601

2. The Respondent shall comply with all the terms and conditions of the Agreed Stipulation and Proposed Settlement filed as PCB Hearing Exhibit #1 on September 30, 1986 which is attached hereto.

IT IS SO ORDERED.

J. G. Anderson concurred. J. T. 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 19~~7~~ day of February, 1987, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

STATE OF ILLINOIS)
)
COUNTY OF OGLE)

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
vs.)
)
MAPLEHURST FARMS, an)
Illinois Corporation,)
)
Respondent.)

PCB 85-69

AGREED STIPULATION AND PROPOSED SETTLEMENT

Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by NEIL F. HARTIGAN, Attorney General of Illinois and Respondent, MAPLEHURST FARMS, INC., by its attorney, Edward T. Graham, hereby agree to the following as a basis for settlement of this cause.

I. BACKGROUND

1. The Environmental Protection Agency ("Agency") is an agency of the State of Illinois created pursuant to Section 4 of the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111-1/2, pars. 1001 et seq. ("Act") and charged with the duty of enforcing the Act pursuant to Title VII thereof.

*PCB Hearing
Ex. No 1
9-26-86 skw*

2. Respondent Maplehurst Farms, Inc. is now and has been at all times pertinent hereto, an Illinois corporation engaged in the business of selling grains and fertilizer.

3. Respondent has, at all times pertinent hereto, owned and operated a facility in Rochelle, Ogle County, Illinois.

4. As part of its business activities, Respondent sells twenty-eight per cent (28%) liquid nitrogen fertilizer.

5. Respondent's facilities for the sale of 28% liquid nitrogen consist of a storage tank and a truck loading area. The 28% liquid nitrogen is pumped from the storage tank into trucks at the loading area.

6. At all times pertinent hereto, Respondent's truck loading area consisted of a gravel surface on sloping ground which drained into a storm grate.

7. A field tile originating at said storm grate discharged into a drop box and thence into an unnamed tributary of Kilbuck Creek, Ogle County, Illinois.

8. Kilbuck Creek, and the unnamed tributary thereto, in Ogle County, Illinois are waters of the State of Illinois.

9. The parties agree that supplying liquid nitrogen fertilizer to farmers in the area of the facility is of social and economic value.

10. The instant action complains of an alleged water pollution of waters of the State of Illinois resulting from Respondent's actions in violation of the Illinois Environmental Protection Act, and allegedly causing a fish kill extending for a length of 17 stream miles.

11. Specifically, the Agency alleges that on or about May 10, 1982, spills or discharges of fertilizer (28% liquid nitrogen) occurred at Maplehurst Farms which traveled from the fertilizer loading area into a storm drain and then into a field tile which terminated at a drop box discharging into a tributary of Kilbuck Creek.

12. The Agency alleges in its Complaint that Respondent thereby violated Section 12(a) of the Act, Ill. Rev. Stat., ch. 110 1/2, par 1012(a) by causing, threatening or allowing the discharge of 28% liquid nitrogen into an unnamed tributary of Kilbuck Creek, Ogle County, Illinois, a water of the State of Illinois so as to cause or tend to cause water pollution in that as a result of said discharge, indigenous fish in Kilbuck Creek were destroyed.

13. Respondent denies all allegations of wrongdoing and of any acts or omissions alleged by the Agency as against Respondent's operations causing or allowing a violation of Section 12 of the Act or of any fish kills.

II. SETTLEMENT TERMS AND FACTORS

1. Since the pertinent dates in the Complaint, Respondent has voluntarily taken steps to minimize the possibility of spills by constructing a spill containment retention area to catch and retain any spills or discharges of fertilizer in the loading area.

2. Respondent's retention area consists of a french drain pit capable of retaining 15,000 gallons of liquid which is then reclaimed and sold.

3. The Agency has calculated the total fish kill compensation to be \$6,740.95, reduced to \$1,982.63 to reflect the Illinois Department of Conservation's establishment of 5 counting stations rather than 17 counting stations as required under the Department's sampling procedures.*

* $(5/17 \text{ OF } \$6,740.95 = \$1,982.63)$

NOW THEREFORE, the parties to this proceeding hereby stipulate as follows:

A. This action is brought by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, for violations of Section 12(a) of the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111-1/2, par 1012(a).

B. The parties agree that this settlement resolves all controversies regarding the allegations of the Complainant's Complaint in the instant case.

C. The parties agree that, in the event this Agreed Stipulation And Proposed Settlement is not accepted by the Pollution Control Board, it shall be null and void and of no effect and may not be used in any proceeding, now pending or hereafter brought, for any purpose and the parties reserve their respective rights to pursue and defend this matter.

D. Respondent shall pay the Game and Fish Fund of the Illinois State Treasury \$1,982.63, an amount equal to the reasonable value of the fish destroyed.

This payment shall be made within thirty (30) days of the Order of the Board accepting this stipulation. Payment shall be made by certified check or money order payable to the Game and Fish Fund of the Illinois State Treasury and delivered to:

H. Alfred Ryan
Assistant Attorney General
Environmental Control Division
100 West Randolph Room 13-178
Chicago, Illinois 60601

E. This Agreement, when accepted by the Board, shall be binding on all signatories and their successors and assigns.

DATE: 9/4/86

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: Joseph E. Droboda

DATE: 9/26/86

MAPLEHURST FARMS, INC.

BY: Carl J. Lammich, Jr.