

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1987

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 86-94
)
RAYMOND LARSON, INDIVIDUALLY and)
RAYMOND LARSON, d/b/a LARSON FARMS)
)
Respondent.)

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

MESSRS. RAYMOND LARSON AND MR. H. CASE ELLIS APPEARED ON BEHALF OF THE RESPONDENTS.

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

This matter comes before the Board on a six count complaint filed on June 25, 1986 by the Illinois Environmental Protection Agency (Agency). On October 29, 1986, the Agency filed a Stipulation and Settlement Proposal (Stip.) which was signed by the Agency and the Respondents. A hearing in this matter was held on December 8, 1986; no members of the public were present. At the hearing, the Agency presented the Stipulation and Settlement Proposal as Exhibit #1 and requested that the Board accept this proposal as written. (R. 5).

Respondent Larson owns and operates Respondent Larson Farms which is a livestock operation located near Maple Park in DeKalb County, Illinois. Respondent Larson Farms is operated as a sole proprietorship. A lagoon, located on the property, was constructed to collect run-off from a corn silage pile. Respondents used the silage wastewater which was collected in the lagoon for surface application to Respondents' farmland. This farmland is drained by a system of field tiles which discharge into a ditch via 18-inch and 10-inch corrugated metal pipes. This ditch in turn empties into Battle Creek, a water of the State of Illinois. (Stip. p. 2-3).

The Agency's Complaint alleged various violations of the Environmental Protection Act (Act), Ill. Rev. Stat., 1985 ch. 111 1/2, par. 1001 et seq., and regulations promulgated thereunder. The Respondents have stipulated to the following violations:

Count I -- Fish Kill:

On or about November 20, 1982 and continuing intermittently up until the date of filing of the complaint in this action,

the Respondents caused, threatened, or allowed corn silage wastewater to be discharged into Battle Creek. This includes but is not limited to an occurrence on or about September 27, 1985 where Respondents allowed one discharge of corn silage wastewater from its lagoon and farmland into Battle Creek. An investigation on October 1, 1985 by the Department of Conservation discovered the death of approximately 142,000 fish along a 3.75 mile stretch of Battle Creek. The reasonable value of the fish killed and the amount to investigate the kill totaled \$8,865.03. By causing or allowing such discharge, Respondents have altered the chemical and biological properties of waters of the State rendering such waters harmful or injurious to fish or other aquatic life as well as rendering such waters harmful or detrimental or injurious to public health, thus violating Section 12(a) of the Act. (Stip. p. 3).

Count II -- Unnatural Sludge:

On or about November 12, 1982 and continuing intermittently until the date of the filing of the Complaint in this action, Respondent's discharges into Battle Creek have caused or contributed to unnatural sludge, debris, odor or turbidity in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.203 and 304.105. (Stip. p. 3-4).

Count III -- Dissolved Oxygen:

On or about November 20, 1982 and continuing intermittently until the date of filing of the Complaint in this action, Respondents' discharges into Battle Creek have caused or contributed to dissolved oxygen levels which do not meet water quality standards thereby in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.206 and 304.105 (Stip. p. 4).

Count IV -- Ammonia Nitrogen:

On or about November 20, 1982 and continuing intermittently until the date of filing of the Complaint in this action, Respondents' discharges into Battle Creek have caused or contributed to ammonia nitrogen levels being in excess of set water quality standards, in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.212(a) and 304.105. (Stip. p. 4).

Count V -- pH:

On or about November 20, 1982 and continuing intermittently until the date of filing of the Complaint in this action, Respondents' discharge into Battle Creek have caused or contributed to pH levels being outside the range set in the water quality standards, in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.204 and 304.105 (Stip. p. 4).

Count VI -- Hazard Created:

On or about November 12, 1982 and continuing intermittently until the date of filing of the Complaint in this action, Respondents have deposited corn silage wastewater on this farmland in the vicinity of Battle Creek in such a place and manner so as to create a water pollution hazard, in that as a result of said deposits in excess of practical limits, the corn silage wastewater, a contaminant, was discharged in Battle Creek, thereby causing a violation of Section 12(d) of the Act and 35 Ill. Adm. Code 501.405. (Stip. p. 4-5).

According to the Stipulation and Settlement proposal, the Respondents have agreed to cease and desist from any and all violations of the Act and the rules and regulations of the Board. Respondents have also agreed to pay eight thousand eight hundred and sixty five dollars and three cents (\$8,865.03) to the State of Illinois Wildlife and Fish Fund. (Stip. p. 6). The Board notes that at hearing the Agency stated that this sum has already been paid by the Respondents. (R. 4). In addition, the Respondents have agreed to pay five hundred dollars (\$500.00) into the Environmental Protection Trust Fund within 30 days of the Board's adopting of this proposal. (Stip. p. 6).

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 Stipulation and Settlement Proposal 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 Respondents have violated the following:

- Count I: Section 12(a) of the Act;
- Count II: Section 12(a) of the Act and 35 Ill. Adm. Code 302.203 and 304.105;
- Count III: Section 12(a) of the Act and 35 Ill. Adm. Code 302.206 and 304.105;
- Count IV: Section 12(a) of the Act and 35 Ill. Adm. Code 302.212(a) and 304.105;

Count V: Section 12(a) of the Act and 35 Ill. Adm. Code 302.204 and 304.105;

Count VI: Section 12(d) of the Act and 35 Ill. Adm. Code 501.405.

2. The Respondents shall cease and desist from any and all violations of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1985 ch. 111 $\frac{1}{2}$, par. 1001 et seq.) and Rules and Regulations of the Board.
3. The Respondents shall pay eight thousand eight hundred and sixty five dollars and three cents (\$8,865.03) to the State of Illinois Wildlife and Fish Fund.
4. Within 30 days of the date of this Order, the Respondents shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, jointly and severally pay the stipulated penalty of five hundred dollars (\$500.00) which is to be sent to:

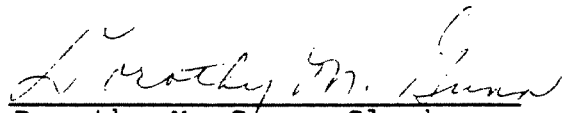
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

5. The Respondent shall comply with all the terms and conditions of the Stipulation and Settlement Proposal filed on October 29, 1986, which is attached hereto.

IT IS SO ORDERED.

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 22nd day of January, 1986, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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

AGREED 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 "the Act"), Ill.Rev.Stat., 1985 ch. 111-1/2, par. 1001 et seq., 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. Respondent Raymond Larson owns and operates Larson Farms, a livestock operation, which is located near Maple Park in DeKalb County, Illinois.

3. Respondent Farms is operated as a sole proprietorship.

4. A lagoon is located on Respondents' property which was constructed to collect run-off from a corn silage pile.

5. Respondents have at all times pertinent to the complaint which has been filed in this action used the collected silage wastewater from the lagoon for surface application to the farmland.

6. Drainage systems of filed tiles, which drain Respondents' farmland, discharge through an 18-inch and 10-inch corrugated metal pipe into a ditch which empties into Battle Creek, County of DeKalb, Illinois, a water of the State of Illinois.

7. On or about November 20, 1982, and continuing intermittently up until the time of filing of the Complaint in this action, Respondents caused, threatened or allowed contaminants, corn silage waste water, to be discharged into Battle Creek, County of DeKalb, Illinois, a water of the State of Illinois, so as to cause or tend to cause water pollution in Illinois. This includes, but is not limited to, an occurrence on or about September 27, 1985 where Respondents allowed the discharge of corn silage waste water from its lagoon and farmland into Battle Creek. An investigation on October 1, 1985 by the Department of Conservation discovered the death of approximately 142,000 fish, along a 3.75 mile stretch of Battle Creek. The reasonable value of the fish killed and the amount to investigate the kill totaled \$8,865.03. By causing or allowing such discharge Respondents have altered the chemical and biological properties of waters of the State rendering such waters harmful or injurious to fish or other aquatic life as well as rendering such waters harmful or detrimental or injurious to public health, thus violating Section 12(a) of the Act.

8. On or about November 12, 1982 and continuing intermittently until the date of the filing of the Complaint in this action, Respondents' discharges into Battle Creek have caused or contributed to unnatural sludge, debris, odor or turbidity in

violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.203 and 304.105.

9. On or about November 20, 1982 and continuing intermittently until the date of filing of the Complainant in this action, Respondents discharges into Battle Creek have caused or contributed to dissolved oxygen levels being in excess of set water quality standards, in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.206 and 304.105.

10. On or about November 20, 1982, and continuing intermittently until the filing of the Complaint in this action, Respondents' discharges into Battle Creek have caused or contributed to ammonia nitrogen levels being in excess of set water quality standards, in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.2129a) and 304.105.

11. On or about November 20, 1982 and continuing intermittently until filing of the Complaint in this action. Respondents discharges into Battle Creek have caused or contributed to pH levels being outside the range set in the water quality standards, in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 302.204 and 304.105.

12. On or about November 12, 1982 and continuing intermittently until the filing of the Complaint in this action, Respondents have deposited corn silage waste water on their farmland in the vicinity of Battle Creek, County of DeKalb, Illinois, in such place and manner so as to create a water pollution hazard, in that as a result of said deposits in excess of practical limits,

the corn silage waste water, a contaminant, was discharged in Battle Creek, thereby causing a violation of Section 12(d) of the Act and 35 Ill. Adm. Code 501.405.

PROPOSAL FOR SETTLEMENT

As a result of the settlement discussions had between the parties and of the actions taken by Respondents, the parties believe that the public interest will be best served by resolution of this enforcement action under the terms and conditions provided herein. This proposal 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 purposes of settling this action only and shall be null and void and of no effect in any further proceeding or cause or action if the Board does not approve this proposal for settlement in its entirety.

TERMS OF SETTLEMENT

RAYMOND LARSON and LARSON FARMS and the ILLINOIS ENVIRONMENTAL PROTECTION 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 as set out in the Complaint constitute the following violations of the Act and Board Regulations:

- Count I: Section 12(a) of the Act;
- Count II: Section 12(a) of the Act and 35 Ill. Adm. Code 302.203 and 304.105;
- Count III: Section 12(a) of the Act and 35 Ill. Adm. Code 302.206 and 304.105;
- Count IV: Section 12(a) of the Act and 35 Ill. Adm. Code 302.212(a) and 304.105;
- Count V: Section 12(a) of the Act and 35 Ill. Adm. Code 302.204 and 304.105;
- Count IV: Section 12(d) of the Act and 35 Ill. Adm. Code 501.405.

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 will pay eight thousand eight hundred and sixty five dollars and three cents (\$8,865.03) to the State of Illinois Wildlife and Fish Fund.

4. 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 five hundred dollars (\$500.00) into the Environmental Protection Trust Fund within thirty (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.

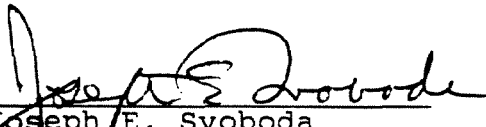
WHEREFORE, Complainant and Respondents jointly request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


For Complainant

For Respondents

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

RAYMOND LARSON and
LARSON FARMS

BY: 
Joseph E. Svoboda
Manager
Enforcement Programs

BY: 
Raymond Larson

DATED: 9/18/86

DATED: 10/22/86

gsapl

CERTIFICATE OF SERVICE

I, GERALD T. KARR, an attorney hereby certify that I caused true and accurate copies of the attached Stipulation and Proposal for Settlement, to be served upon,

Mr. H. Case Ellis
230 Corporate Corner
101 N. Virginia
Crystal Lake, Illinois 60014

Mr. Michael Shevick
Hearing Officer
127 North Dearborn
Suite 930
Chicago, Illinois 60602

by causing said copies to be mailed to the addresses indicated above by first class mail postage pre-paid, from 100 West Randolph Street, Chicago, Illinois 60601 on October 29, 1986.


GERALD T. KARR