

ILLINOIS POLLUTION CONTROL BOARD
February 26, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 85-155
)
MICHAEL DELANEY,)
)
Respondent.)

MR. JOSEPH J. ANNUNZIO, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. MICHAEL DELANEY APPEARED PRO SE.

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

This matter comes before the Board on a seven-count Complaint filed on September 3, 1985 by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that, on July 5, 1983, the Respondent caused or allowed the discharge of contaminants into Illinois waters from a point source by pumping the contents of a holding pond via a point source (i.e., a hose) into a roadside ditch which was tributary to an unnamed tributary of the Mackinaw River in violation of 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Illinois Environmental Protection Act (Act).

Count II alleged that, on July 5, 1983, the Respondent caused or allowed the discharge of effluent into Illinois waters from a point source containing concentrations of five-day biochemical oxygen demand (BOD₅) and total suspended solids (TSS) in excess of five times the numerical standard of 10 milligrams per liter (mg/l) BOD₅ and 12 mg/l TSS in violation of 35 Ill. Adm. Code 304.120(c) and Section 12(a) of the Act.

Count III alleged that, on July 5, 1983, the Respondent caused or allowed the discharge of effluent into Illinois waters having obvious color, turbidity, and odor in violation of 35 Ill. Adm. Code 304.106 and Section 12(a) of the Act.

Count IV alleged that, on July 5, 1983, the Respondent caused or allowed the discharge of effluent into Illinois waters which resulted in, or contributed to, the presence of odor,

unnatural color and turbidity in the receiving waters (i.e., the roadside ditch and unnamed tributary) in violation of 35 Ill. Adm. Code 302.105 and Section 12(a) of the Act.

Count V alleged that, on July 5, 1983, the Respondent caused or allowed the discharge of effluent into Illinois waters which resulted in, or contributed to, the receiving waters having an ammonia nitrogen concentration in excess of the numerical standard of 15 mg/l in violation of 35 Ill. Adm. Code 302.212(a) and Section 12(a) of the Act.

Count VI alleged that, on July 5, 1983, the Respondent caused or allowed the discharge of effluent into Illinois water which resulted in, or contributed to, the unnamed tributary having a dissolved oxygen concentration of less than 5.0 mg/l in violation of 35 Ill. Adm. Code 302.206 and Section 12(a) of the Act.

Count VII alleged that, on July 6, 1983, the contents of the Respondent's holding pond were pumped onto an adjacent cornfield, where the liquid was channelizing and flowing east across a soybean field and threatening to flow into a roadside ditch tributary to an unnamed tributary of the Mackinaw River, thereby threatening the discharge of contaminants into Illinois waters so as to cause, or tend to cause, a water pollution hazard in violation of Section 12(d) of the Act.

A hearing was held on October 24, 1985, at which a member of the press was present. (R. 3). The parties filed a Stipulation and Proposal for Settlement at the hearing and on November 8, 1985.

The Respondent, Mr. Michael Delaney (Delaney), owns and operates a swine and cattle raising facility near Secor, Illinois in Woodford County. On a yearly basis, Delaney's operations produce about 20 head of market weight cattle and about 1,000 head of market weight swine. Delaney initially buys swine as feeder pigs and then brings them up to market weight. The Respondent's livestock production takes place on open concrete feedlots. (Stip. 1; R. 5). The Agency has characterized the Respondent's operations as that of a small sole proprietorship. (R. 9).

After runoff from the open concrete feedlots is directed to the southeast corner of the concrete lots, it is then drained into a settling basin. The resulting effluent from this settling basin subsequently flows into a holding pond. The contents of the holding pond were intended to be applied to cropland, since the Respondent had been instructed by the local Soil Conservation Service office (which designed the entire system in conjunction with personnel from the University of Illinois) to apply the liquid from the holding pond to nearby cropland. (Stip. 1).

An Agency inspector visited the Respondent's site on July 5, 1983 in response to an anonymous complaint. The inspector observed a black liquid being pumped out of the holding pond upon first arriving at Delaney's facility. The inspector noted that the pumping unit consisted of a gasoline engine with about 10 to 15 feet of hose on either end and that the liquid was discharged through the hose (i.e., a "point source") into a roadside ditch which was tributary to an unnamed tributary of the Mackinaw River. (Stip. 1). Other than the Respondent's discharge of the black liquid from the holding pond, the Agency inspector saw no flows in the roadside ditch on July 5, 1983. (Stip. 1). It is undisputed that both the unnamed tributary of the Mackinaw River and the roadside ditch are Illinois waters to which the unauthorized discharge of contaminants from a point source is prohibited.

The Agency has estimated that about 36,000 gallons of liquid were pumped from the Respondent's holding pond into the roadside ditch. Because the holding pond was nearing its capacity, the Respondent deemed the pumping operation necessary. However, when directed to turn off the pumping unit by the Agency inspector, the Respondent promptly complied. (Stip. 2).

Grab samples taken at the roadside ditch at a site designated as Station B indicated that the concentration of BOD₅ was 3,420 mg/l and the concentration of total suspended solids was 250 mg/l, well in excess of five times the appropriate numerical standard set forth in 35 Ill. Adm. Code 304.120(c). Moreover, visual observation by the Agency inspector indicated that the contents of the roadside ditch contained foam, had a strong animal waste odor, and were black and turbid. (Stip. 2).

Another grab sample was taken by the roadside ditch at a concrete dropbox near its confluence with the unnamed tributary at a location designated as Station B-1. Subsequent sampling indicated that, at Station B-1, the roadside ditch had an ammonia nitrogen concentration of 350 mg/l. The visual observations of the Agency inspector confirmed that the contents of the roadside ditch at the sampling point had a strong animal waste odor and were black and turbid.

Similarly, another grab sample was taken at the unnamed tributary at a location about 200 feet south of its confluence with the roadside ditch at a location designated as Station C. Test sample results indicated that the unnamed tributary at Station C had an ammonia nitrogen concentration of 35 mg/l and a dissolved oxygen concentration of 3.8 mg/l. The Agency inspector's visual observations indicated that the contents of the unnamed tributary at the sampling point contained foam, an animal waste odor, and were black and turbid. (Stip. 2).

An additional grab sample of the unnamed tributary which was taken at a location about 3/4 of a mile downstream of Station C and designated as Station C-1 revealed that the unnamed tributary at that point contained an odor and was black and turbid. (Stip. 2).

One day later, on July 6, 1983, the Agency inspector revisited the Delaney site and observed that liquid from the holding pond was being pumped onto an adjacent cornfield. This liquid was channelizing and flowing east to a nearby soybean field located to the east of the holding pond, thereby threatening to possibly flow into the roadside ditch. (Stip. 3). The Agency has stipulated that the "Respondent believed in good faith that the discharge to the cornfield on July 6, 1983 was the proper measure to prevent further pollution". (Stip. 4). The Agency inspector present at the scene observed that there was no adverse impact at Station C-1 or further downstream in the unnamed tributary on July 6, 1983, although he did spot one dead minnow near Station C. (Stip. 4).

The parties have stipulated that, beginning in 1984, the Respondent bought 200 feet of fire hose and has pumped liquid from the holding pond south across a road and then onto a cornfield. (Stip. 4). The Agency has stated that "the liquid is distributed evenly in the cornfield by means of a perforated hose" and has concluded that "this cornfield is adequate in size and slope to prevent the entry of the liquid into waters of the State, and no further polluttional episodes have taken place". (Stip. 4).

At the hearing, Mr. Michael Delaney's undisputed testimony indicated that he has been in compliance ever since the 1983 incident. In reference to the improper discharge of contaminants resulting from the pumping of the contents of the holding pond on July 5, 1983, the Respondent testified that "we in no way thought it would ever cause harm the way we were disposing of it, and as soon as they told us it would, we changed". (R. 13-15).

The proposed settlement agreement provided that the Respondent admitted virtually all of the violations alleged in the Complaint and agreed to: (1) cease and desist from further violations; (2) follow an agreed upon compliance plan to take all necessary measures to prevent the entry of liquid from the holding pond, or other livestock waste material, into Illinois waters, and (3) pay a stipulated penalty of \$500.00 into the Environmental Protection Trust Fund within 30 days of the date of the Board's Order. (Stip. 3-6).

Although the Respondent's actions did not result in any significant fish kill, the Board believes that the character and degree of injury to the health, general welfare, and physical property of the People of Illinois was potentially significant

because the Respondent's discharge was of a very high strength and adversely affected the roadside ditch and unnamed tributary for a distance of at least three-fourth of a mile downstream from the initial discharge. The Respondent's facility is suitable to the area in which it is located providing that livestock waste is appropriately handled and the facility clearly has a social and economic value when properly operated.

The Board believes that mitigating circumstances in this case include the facts that the Respondent: (1) is a small sole proprietorship which reasonably relied on the instructions of the local Soil Conservation Service office and University of Illinois personnel pertaining to its discharges; (2) acted in good faith at all times; (3) was cooperative with the Agency; (4) immediately followed the directives of the Agency inspector; (5) took prompt and specific actions to correct and eliminate the environmental problems and assure immediate compliance; and (6) has avoided any further pollution incidents since 1983. (Stip. 1-4).

Additionally, the Board notes that the Agency has emphasized that the "Respondent in good faith did not believe that the discharge of liquid from the holding pond into the roadside ditch would result in effluent and water quality violations or other adverse impact to the receiving waters." (Stip. 4). Moreover, the Agency has stressed that the "Respondent was cooperative with the Agency and responded to the directives of the Agency inspector" and "believed in good faith that the discharge to the cornfield on July 6, 1983 was the proper measure to prevent further pollution." (Stip. 4).

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 settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that the Respondent, Mr. Michael Delaney, has violated 35 Ill. Adm. Code 302.203, 302.206, 302.212(a), 304.106, 304.120(c), 309.102(a) and 501.404(c)(4)(A) and Sections 12(a) and 12(f) of the Act. The Respondent will be ordered to cease and desist from further violations, to follow the agreed-upon compliance plan, and to pay a stipulated penalty of \$500.00 into the Environmental Protection Trust Fund.

This Opinion 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. As admitted in the Stipulation, the Respondent, Mr. Michael Delaney, has violated 35 Ill. Adm. Code 302.203, 302.206, 302.212(a), 304.106, 304.120(c), 309.102(a) and 501.404(c)(4)(A) and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.
2. The Respondent shall cease and desist from all further violations.
3. The Respondent shall take all necessary measures to prevent the entry of liquid from the holding pond, or other livestock waste material, into waters of the State of Illinois.
4. Within 30 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$500.00 which is to be sent to:

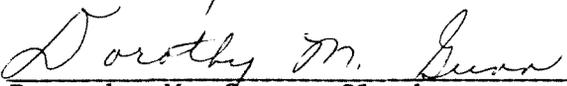
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

The Respondent has waived any right to have any unused portion of the stipulated penalty returned from the Environmental Protection Trust Fund.

5. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on November 8, 1985, which is incorporated by reference as if fully set forth.

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 26th day of February, 1986 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board