

ILLINOIS POLLUTION CONTROL BOARD  
September 23, 1983

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 83-62  
 )  
EFFINGHAM EQUITY COMPANY, INC., )  
an Illinois corporation, )  
 )  
Respondent. )

MR. JAMES L. MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON  
BEHALF OF THE COMPLAINANT.

PARKER, BRUMMER, SIEMER, AUSTIN & RESCH (MR. Q. ANTHONY SIEMER,  
OF COUNSEL APPEARED ON BEHALF OF THE RESPONDENT.)

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

This matter comes before the Board on the May 4, 1983 Complaint  
brought by the Illinois Environmental Protection Agency (Agency).

Count I of the Complaint alleged that on March 9, 1972 and  
March 10, 1972, overflows from the Respondent's 300 gallon water  
tank, contaminated with ammonia nitrogen, went into a storm sewer  
on Respondent's property that discharged, via a point source,  
into an unnamed tributary of Salt Creek, an Illinois water,  
causing water pollution in violation of Section 12(a) of the  
Illinois Environmental Protection Act (Act).

Count II alleged that, on August 24, 1982 and August 25,  
1982, overflows of contaminated water from the Respondent's  
55 gallon drum caused water pollution and a fish kill of an  
estimated 106,329 fish in the tributary of Salt Creek and in  
Salt Creek in violation of Section 12(a) of the Act.

Count III alleged that, on August 24, 1982 and August 25,  
1982, improper discharges of contaminated effluents from the  
Respondent's facility caused excessive concentrations of ammonia  
nitrogen and reduced levels of dissolved oxygen in receiving  
waters in violation of 35 Ill. Adm. Code 302.206, 302.208, 304.105  
and Section 12(a) of the Act.

Count IV alleged that, on August 24, 1982 and August 25, 1982, the Respondent's effluent discharges caused ammonia odors and the presence of ammonia nitrogen in the unnamed tributary of Salt Creek in concentrations harmful to human, animal, plant or aquatic life in violation of 35 Ill. Adm. Code 302.203, 304.105 and Section 12(a) of the Act.

Count V alleged that, on August 24, 1982 and August 25, 1982, the Respondent's improper discharges of effluent caused a fish kill in the unnamed tributary of Salt Creek and in Salt Creek during which an estimated 106,329 fish, having a total reasonable value of \$4,122.82, were killed in violation of 35 Ill. Adm. Code 302.203, 305.105 and Sections 12(a) of the Act.

Count VI alleged that, on August 24, 1982 and August 25, 1982, the Respondent allowed the discharge of effluent from its facility to occur without NPDES Permit authorization in violation of 35 Ill. Adm. Code 304.141(b), 309.102 and Section 12(f) of the Act.

A hearing was held on July 22, 1983. The parties filed a Stipulation and Proposal for Settlement on July 27, 1983.

Effingham Equity Company, Inc. (Effingham) is a local-member agricultural cooperative registered since the 1940's as an Illinois corporation under the Agricultural Co-operative Act of 1923, Ill. Rev. Stat. 1981, ch. 32, par. 440 et seq. (Stip. 2). The Respondent's agricultural sales and service facility (facility), which is located in the City of Effingham in Effingham County, Illinois, includes storage and application equipment for pesticides and ammonia nitrogen fertilizer. The facility's equipment includes both a 6,000 gallon pressurized fertilizer storage tank (6,000 gallon tank) and a larger 30,000 gallon pressurized fertilizer storage tank (30,000 gallon tank).

It is stipulated that, during an 8-hour period on both March 9, 1972 and March 10, 1972, one of the Respondent's employees used a hose connected to the 6,000 gallon tank (which contained liquid ammonia nitrogen) to convey ammonia vapors into a 300 gallon tank containing water. Overflow from the 300 gallon tank went into a storm sewer at the facility and was subsequently discharged via a point source into an unnamed tributary of Salt Creek. The process of emptying the 6,000 gallon storage tank was initiated in order to properly replace a pressure gauge on the tank. (Stip. 2-3).

Shortly after that incident, the Effingham County Health Department reported to the Agency on March 15, 1972 that a fish kill had been observed in the unnamed tributary of Salt Creek. The Agency inspection on March 15, 1972 indicated that between 150 and 200 small fish had died (primarily minnows, sandfish, catfish, and possibly one bass). (See: Exhibit 1). Water samples taken at 6 separate locations indicated that the Respondent's facility was the source of the water contaminants and responsible

for the fish kill. The fish kill resulted from the venting of vapors from the Respondent's compressed ammonia tank into a tank of water with a continuous overflow to a nearby storm sewer system during maintenance work on the tank's pressure gauge. (See: Exhibits 1, 2 and 3). Accordingly, the Agency wrote a letter to the Respondent on April 6, 1972 which delineated the water pollution problems discovered during the earlier Agency investigation of the fish kill and indicated that Effingham should take proper precautions to prevent any such highly polluttional discharges in the future. (See: Exhibit 3).

The parties have also stipulated that, on August 24, 1982 and August 25, 1982, one of the Respondent's employees used a hose connected to the 30,000 gallon tank containing liquid ammonia nitrogen to convey ammonia vapors into a 55 gallon drum. Overflows from this 55 gallon drum went into a storm sewer at Effingham's facility and subsequently discharged into the unnamed tributary of Salt Creek. (Stip. 4-5).

The Effingham County Health Department, responding to complaints by nearby residents, notified the Agency that a spill of ammonia into a creek on the north side of town occurred during the night of August 25, 1982. Agency inspections during the afternoon of August 26, 1982 indicated that the creek just downstream of the Respondent's property had a strong ammonia odor, while the water just upstream had no ammonia odor. (See: Exhibit 4). Moreover, extensive water sampling and analysis by the Agency revealed the the presence of extremely high levels of ammonia nitrogen concentrations downstream of the Respondent's facility and a dissolved oxygen level of 4.7 mg/l in the unnamed tributary of Salt Creek.

Additionally, the effluent discharged from Effingham's facility resulted in the killing of an estimated 106,329 fish (including game fish such as large-mouth bass, sandfish, and catfish; commercial fish such as carp, buffalo, drum, and white sucker; and non-game fish such as minnows, shad, and darter) having a total reasonable value of \$4,122.82. (See: Exhibits 4, 5 and 6). It is undisputed that the effluent discharges from Effingham's facility on August 24, 1982 and August 25, 1982 occurred without the authorization of an NPDES Permit. (Stip. 6).

The proposed settlement agreement provides that the Respondent admits that violations occurred and agrees to: (1) remove all ammonia nitrogen fertilizer storage tanks from the current site within the City of Effingham and relocate these tanks outside of municipal limits within 1 year of the date of the Board's Order; (2) submit plans and specifications for the relocation of storage tanks to the Agency for review within 270 days of the date of the Board's Order; (3) appropriately modify the plans and specifications to remedy any deficiencies and resubmit the plans and speci-

fications to the Agency within 30 days of receiving a deficiency notice (if, within 30 days of the Agency's receipt of the storage tank plans and specifications, the Respondent receives written notice from the Agency of specified deficiencies that could cause a violation of the Act or applicable regulations); (4) properly dispose of any contaminated water resulting from the removal of gaseous ammonia from storage tanks on agricultural land in such a manner as to avoid causing, threatening, or allowing water pollution; (5) comply with the Act and all applicable regulations; (6) pay the sum of \$4,122.82 by a check drawn to the order of the Wildlife and Fish Fund of the State of Illinois Treasury; and (7) pay a stipulated penalty of \$4,000.00 by a check drawn to the Treasury of the State of Illinois and designated for deposit into the Environmental Protection Trust Fund. (Stip. 2-8).

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 notes that Count I of the Complaint, which relates to a 1972 incident involving the Respondent, appears somewhat inappropriate considering the 11-year delay in filing for enforcement. Although the Board recognizes that the 1972 fish kill episode is indicative of the Respondent's past actions and failure to expeditiously correct environmental problems, such enforcement proceedings will hopefully be prosecuted more promptly by the Agency in future cases.

The Board has previously reserved its decision in this case pending the Governor's signature on HB 1326 pertaining to the deposition of Board penalties into the Environmental Protection Trust Fund. On September 19, 1983, the Governor signed the above bill into law.

Accordingly, the Board finds that Effingham Equity Company, Inc. has violated 35 Ill. Adm. Code 302.203, 302.206, 302.208, 304.105, 304.141(b), 305.105 and 309.102 and Sections 12(a) and 12(f) of the Act. The Respondent will be ordered to follow the compliance plan and schedule set forth in the Stipulation and to pay the stipulated penalty of \$4,000.00. Additionally, pursuant to Section 42(a) of the Act, the Respondent will be ordered to pay \$4,122.82 into the Wildlife and Fish Fund of the Illinois Treasury as reimbursement for the reasonable value of the fish killed by its improper disposal of contaminated water.

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. The Respondent, the Effingham Equity Company, Inc., has violated 35 Ill. Adm. Code 302.203, 302.206, 302.208, 304.105, 304.141(b), 305.105, and 309.102 and Sections 12(a) and 12(f) of the Illinois Environmental Protection Act.
2. Within 35 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 \$4,000.00 which is to be sent to:

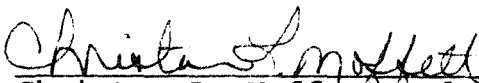
Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

3. Within 35 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 Wildlife and Fish Fund of the State of Illinois Treasury, pay the penalty of \$4,122.82 for the reasonable value of its 1982 fish kill. This payment shall be submitted to the Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, Springfield, Illinois 62706.

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on July 27, 1983, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 23<sup>RD</sup> day of September, 1983 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board