

ILLINOIS POLLUTION CONTROL BOARD
October 8, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 79-215
)
 JOHN POPP AND G.E. LOGAN,)
)
 Respondents.)

ALICE N. KOHN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF
COMPLAINANT;

ROBERT A. WILSON, HAROLD E. KARP, AND CONSTANTINE E. DRANIUS,
IDARIUS, DRANIUS AND ASSOCIATES, APPEARED ON BEHALF OF RESPONDENT
POPP; AND

JOHN G. PLAIN APPEARED ON BEHALF OF RESPONDENT LOGAN.

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

On October 19, 1980 the Illinois Environmental Protection Agency (Agency) filed a three-count complaint against John Popp and G.E. Logan alleging that actual or threatened water pollution of the Little Rock Creek had occurred as a result of respondents' operation of a hog feedlot near the Village of Hinkley, DeKalb County. Hearing in this matter was held on February 9, 1981. Pursuant to the Board's Order of October 30, 1980, for failure to respond to discovery requests, Popp was debarred from presenting evidence concerning 1) ownership of the feedlot, 2) provision of diversion, dikes, etc. to control runoff from the feedlot, 3) provisions of protection against Little Rock Creek's flooding the feedlot, and 4) his financial ability to pay any penalty imposed. Popp was not present at the hearing, but was represented by counsel who were given leave by the Board to withdraw from the case on April 16, 1981 because of Popp's failure to contact and to cooperate with counsel. Service of subsequent filings was ordered to be made to Popp himself.

The complaint concerns actions alleged to have occurred on or about March 8, 1979 and continuing until on or about July 23, 1979. Count I of the complaint alleges that Popp as owner and/or operator of the feedlot, and Logan as lessee-operator violated Section 12(a) of the Act by causing, threatening, or allowing discharge of contaminants into the environment through failure to

control surface runoff and to protect against creek flooding, and through improper maintenance of a manure stack located within 100 feet of Little Rock Creek. Count II alleges that placement of manure on the banks and in the flood plain area of the creek created a water pollution hazard in violation of Section 12(d) as well as Section 12(a) of the Act. Count III alleges that respondents' manure pile placement caused or allowed a violation of Rule 203(a) of Chapter 3: Water Pollution and of Section 12(a), which provides in part that waters of the state shall be free from unnatural sludge and bottom deposits, unnatural color and turbidity.

The testimony presented at hearing was that of Robert C. Taylor, an Agency Environmental Protection Specialist, respondent Logan, and two of his occasional employees, Tom and Ed Erhart. In September, 1978, Popp and Logan became joint venturers in a business named P & L Pork Company, which was begun to finish (or "fatten up") hogs for market. The finishing facility, located on a portion of property owned by Popp, had been in operation prior to the start of the Popp-Logan venture. Beginning September 6, 1978 Logan became the manager of the facility, and continued in that position until the joint venture terminated on June 1, 1979 (R. 12-15, 21). Shortly thereafter, the facility was dismantled.

The finishing facility was located in an area approximately 600 yards wide bounded to the east by fences in close proximity to East Sandwich Road and to the west by fences in close proximity to Little Rock Creek. The general drainage pattern in the area is for run-off to flow west from the road into the creek. The creek's flood plain is located within the area (Ex. 2)

The finishing facility, as based on a Cargill Company design, was constructed $4\frac{1}{2}$ feet higher at one end than the other so as to reduce the cleaning chores. Hog pens were located on a rectangular concrete pad measuring 150' X 90', approximately 200 feet west of the creek. The pad sloped into a driveway along its southern edge. Runoff from the driveway and pad area was designed to flow through a channel in the driveway into a depressed area containing a lagoon about 20 feet wide and eight feet deep (R. 16, 30, 60-62, 167, 171).

The facility housed from 200 to 500 hogs at a time. In the regular course of business provision was not made for on-site manure storage or for its transport off-site, as the facility design contemplated that manure would dry on the concrete areas and be blown away (R. 23)

Cleaning was however required about 4 times yearly. Logan testified that when he became involved with the feedlot in September, 1978, he discovered that a stack of manure 3'-4' high and 5'-8' in circumference had been placed on the east bank of the creek, in an area of the property susceptible to creek overflow and flooding. No efforts were made to remove this stack (R. 176).

The heavy snows of the winter of 1978 or 1979 interfered with normal operations at the feedlot. During one of his approximately bi-weekly inspection visits to the business in February, 1979, Logan determined that the snow--admittedly admixed with manure--would have to be removed from the concrete areas (T. 24). This material was cleared from the areas and piled on the ground to the southwest of the facility, although some was piled to the east of the facility so trucks could enter (T. 177, Ex. 2,6).

On March 8, 1979, in response to a complaint to the Agency from "a neighbor in proximity to the feed lot", Robert Taylor attempted to inspect the feedlot but was denied access to the property by Mrs. Popp. Standing on East Sandwich Road, however, he observed "a long pile of material" which appeared to be manure, stacked southwest of the facility (R. 46-50). During the course of a March 27, 1979 joint inspection of the property made with two representatives of the DeKalb County Health Department, at the Health Department's own suggestion, Taylor was able to make close observation and to take photographs (Ex. 3-10) of this and other material piled in the P & L Pork feed lot.

Logan had testified that the cleared material was piled in a mound 6' high, 8'-10' wide and 50'-60' long, which extended to within 100'-150' of the creek. Mr. Logan estimated that 90-95% of the mounded material was snow, which "manure ended up on top of" because of the removal of material from a flat surface (T. 174, 181). It was Taylor's testimony that the mound was 6'-8' high, up to 10' wide, and 100'-120' long, extended to within 100 feet of the creek bank, and was more manure than snow. Taylor noted that the lagoon, which was designed to receive runoff from the facility was nearly full. (R. 63). Taylor also testified that flooding a few days earlier had apparently washed residue from the flat or surface areas of the property into bushes and shrubbery to the west which were in close proximity to the river (T. 98, 99, Ex. 8).

Neither Popp nor Logan were present during this inspection. They were advised of the Agency's findings by telephone, and by letters of April 2 and 25, 1979. Logan's reply to the latter letter stated by his belief that the inspection "was improperly made during flood stage [and that the Agency showed] an apparent lack of understanding of winter snow conditions and wet field conditions... when and only when field conditions warrant, the "contaminant" will be spread on adjacent fields..." (Ex. 1).

During the last week of April, the melted remnants of the formerly frozen large mound, then measuring 4'-6' high and wide, and 15'-20' long and composed of "mainly manure" (R. 216-217), was removed from the area and spread on a cornfield, according to the testimony of the Erharts. The entire facility itself was dismantled on or about June 1, 1979 at or under Popp's direction. Taylor's June 5-6, 1979 inspection confirmed that the large mound had been removed (Ex. 11). However, Taylor found manure actually

stacked on the creek's east bank, and observed manure deposits in the creek as far as 100'-150' downstream of the facility (T. 129-131, 140-142, Ex. 12-15). On Taylor's last inspection of the facility July 23, 1979 the manure was still stacked on the creek banks (T. 147).

Logan denied that the facility itself had ever been flooded or that the lagoon had overflowed or that he had cut trenches to drain the lagoon to the creek (R. 177, 189). He also testified that he never saw and had no knowledge of anything to do with the manure deposits on the Creek bank, or whether the manure on the property away from the facility was affected by flooding (R. 194).

The Board finds that respondents Popp and Logan have committed the violations alleged in the complaint occurring between March and July 13, 1979. The testimony, as illustrated by Taylor's photographs, prove that manure was piled in close proximity to Little Rock Creek and that no provision was made to prevent pollution of the creek, with the result that the creek was contaminated by runoff and fecal material.

In considering penalties for this violation, the Board must consider the factors set forth in Section 33(c) of the Act in addition to other mitigating factors. Location of the P & L feedlot in an area susceptible to flooding and in close proximity to the creek without provisions for secure storage of manure stacks seriously undercuts its social value. The extensive pollution of the Little Rock Creek could have been reasonably avoided either by early removal of manure from the site or by use of dikes, walls, or the like.

Here, as in prior opinions, the Board acknowledges that the severe 1978-1979 winter disrupted normal operations and is properly argued as a mitigating factor, as are resulting wet field conditions during the thaw period. Balanced against this factor, however, is the failure to increase supervisory oversight and to erect stack barriers to prevent manure runoff, under these unusual circumstances, and certainly to properly clean the P & L site after its close. While Logan argues that he has no responsibility for events occurring after June 1, 1979, the Board finds that as a joint venturer, he bore responsibility to see that the venture was properly "wound down". However, in view of the fact that Logan was not the property's owner, and so could not exert control after June 1, 1981, a penalty of \$150 is assessed against Logan. As Popp himself had the ongoing responsibilities of a landowner of all the property and also closed the facility, a penalty of \$1500 is assessed against him.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondents John Popp and G.E. Logan are found to have violated Sections 12(a) and (d) of the Environmental Protection Act, and Rule 203(a) of Chapter 3: Water Pollution.


2. A penalty of \$1500 is hereby assessed against John Popp, and a penalty of \$150 is assessed against G.E. Logan.

3. Within 30 days of the date of this Order, each Respondent shall, by certified check or money order payable to the State of Illinois, pay the penalty assessed against him which is to be sent to:

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

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 8th day of October, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board