

ILLINOIS POLLUTION CONTROL BOARD  
June 18, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 )  
 v. ) PCB 75-353  
 )  
 )  
 EDWARD H. WEIDE, )  
 )  
 Respondent. )

Mr. Steven Watts, Assistant Attorney General, appeared on behalf of Complainant  
Mr. Paul Perona, Perona and Perona, appeared on behalf of Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) upon the September 9, 1975 Complaint of the Environmental Protection Agency (Agency) charging that Mr. Edward H. Weide (Weide) violated Rule 203(a) of the Water Regulations and Section 12(a) of the Environmental Protection Act (Act) on or about August 9, 1974. Weide is accused of causing or allowing the discharge of corn silage wastes into an unnamed tributary of Big Sandy Creek resulting in unnatural sludge or bottom deposits, odor, unnatural color, and a fish kill. Respondent is also charged with violation of Water Rules 203(f) (causing said stream's ammonia nitrogen level to exceed acceptable levels) and 203(d) (causing said stream's dissolved oxygen to be less than 5.0 mg/l).

Mr. Michael Conlin testified that he was called to investigate a fish kill in August, 1974. Mr. Conlin traced the upper limit of the fish kill to the entrance of an unnamed tributary to Big Sandy Creek (R.15-16). The fish kill covered 2.6 miles. The water being cloudy, dirty, and milky, and having a putrid odor (R.16). Mr. Conlin followed the unnamed tributary by sight and smell to white turbid water on Weide's pasture (R.17). He found the banks to be saturated with waste material (R.17). Mr. Conlin spoke to Weide, who admitted placing corn silage at that spot two days before (R.18).

Mr. Conlin set up three sampling areas each consisting of 150 feet, in light, moderate and heavy kill areas respectively (R.30-31). Mr. Conlin then counted the fish in these areas and projected a fish kill of approximately 25,000 fish (R.15 Comp. Ex. 1). Mr. Conlin testified that corn silage has a high BOD which could result in oxygen depletion thereby suffocating fish (R.23).

Mr. Weide testified that on August 9, 1974, he cleaned his silo putting the waste in a manure spreader. Using the manure spreader, Weide placed the silage in the ditch to help stop erosion; no water was seen in the ditch at that time. Mr. Weide neither cultivated under the silage nor seeded on top. A total of 6 to 8 cubic yards of silage was deposited, having a fairly high moisture content. The silage was placed on top of soil and concrete foundations which had been placed previously to control erosion (R.58-68, 129).

Mr. William Tucker testified that high organic material, such as corn silage, will cause oxygen depletion and could cause an instantaneous fish kill (R.81-86). In addition, he testified that the stream could recover in as little as 1 1/2 days (R.109). He measured the dissolved oxygen (DO) to be 9.3 + 10.3 ppm upstream and downstream from the discharge. At the point of discharge the DO was 0.6 ppm (Comp. Ex. 4, R.121).

On the 10th of August .60 inches of rain fell (Comp. Ex. 3). Mr. Weide testified that usually the ditch has water in the spring or after a hard rain (R.62). He estimated that 2 to 2 1/2 inches of rain fell two days after he spread the silage (R.128).

Mr. Jim Frank, an Agency Agricultural Advisor, testified that the best way to spread silage is with a manure spreader but that no silage should be spread closer than two to three hundred yards from any stream (R.73). Although corn silage is an acceptable cover material, it should be used on dry land; without cultivation or seeding, it would have minimal effect on erosion (R.75).

Mr. Weide testified that he is purchasing the 647 acre farm one mile south of Magnolia, Marshall County, Illinois. In 1974, 40 acres were planted in beans, 230 in corn, 20-25 in alfalfa. Three hundred acres were in pasture land (R.57). The area is rolling pasture with some timber (R.58). Mr. Weide also testified that the placement area was three hundred to four hundred feet from the flowing portion of the unnamed tributary (R.127). No information was

presented to the Board concerning the Respondent's financial condition. We must presume that Respondent could have placed the silage in an area farther from the stream at little or no additional cost.

Complainant's Exhibit 4 shows violation of Rules 203(d) and 203(f) as alleged in the Complaint. The Board also finds that Respondent has violated Rule 203(a) of the Water Regulations and Section 12(a) of the Act.

Complainant asks that a penalty be assessed on the basis of the cost of replacing the fish killed. The Agency estimates that 25,002 fish were killed having a value of \$4,354.76 (Complainant Ex. 1).

The Board finds that the sampling method utilizing 450 feet as against 2 1/2 miles leaves an excessive margin for error. In consideration thereof, the Board finds that an assessment of \$2600.00 is appropriate.

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

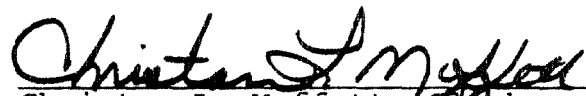
#### ORDER

It is the Order of the Pollution Control Board that:

1. Weide is found to have violated Rule 203(a), (d) and (f) of the Water Regulations and Section 12(a) of the Act.
2. Weide shall pay, as a reasonable value of the fish killed through said violations, \$2600.00 by certified check or money order payable to the Game and Fish Fund, State of Illinois, 2200 Churchill Road, Springfield, Illinois 62706 within thirty-five days of the date of this Order.
3. Weide shall cease and desist from depositing corn silage wastes in such a way as to contaminate the unnamed tributary to Big Sandy Creek.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18<sup>th</sup> day of June, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board