

ILLINOIS POLLUTION CONTROL BOARD

May 8, 1975

DALE ECCLES, )  
Complainant, )  
v. ) PCB 74-297  
WALLACE COOK, )  
Respondent. )

Both parties appeared without counsel.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On August 9, 1974, Dale Eccles of Panama, Illinois, filed a formal Complaint against Wallace Cook, his neighbor. The Complaint alleged that Mr. Cook raised chickens on his own property and pastured a mule and a pony ("horses") within a few feet of Complainant's property, thereby creating an odor and fly problem in violation of Section 9(a) of Illinois Environmental Protection Act (Act). Violations allegedly occurred during the summer of 1974.

A hearing took place on January 17, 1975, in the Municipal Building in Greenville, Illinois. No members of the public attended the hearing (R. 87). The parties live approximately 125 feet apart (R. 15), with two vacant lots between their homes (R. 18, 22). Respondent moved into the neighborhood in the spring of 1974 and within one month stock-ed his property with chickens and two horses (R. 11). Mr. Cook kept the chickens on his own property but obtained a lease for the two vacant lots to graze his horses. At present Mr. Cook does not have any chickens but he gave no assurances that he wouldn't raise chickens when he was "better situated to take care of them (R. 79)." The fly problem has presently abated because of the colder weather but Complainant expected the warmer weather to bring back the problem (R. 12).

During the summer of 1974 the presence of horse manure in the vacant lots allowed large numbers of flies to breed (R. 12). Many of them got into Complainant's home. Complainant's wife stated that the odor problem from the chickens forced them to keep their windows closed and not operate their window fans at night (R. 70). Their daughter's bedroom window faces the vacant lots so that her window also had to be kept closed (R. 70). The odor disrupted their eating and sleeping habits.

A witness from the Bond County Health Department testified that Respondent had kept 500 chickens in a very confined area (R. 36). During a visit in late May, 1974, he noted odors from the chicken house and saw several hundred flies in the area (R. 36). Horse manure was observed a few feet from Complainant's window (R. 44). He believed that the flies could lead to health problems, because when large numbers of them are in an area, it is difficult to keep them out of a house. The flies carry excreta on their legs and can create a community disease situation (R.37). The fly and odor problem is caused by Respondent's chickens and horses, because the problem didn't exist before Respondent moved into the area (R. 47, 49, 50).

There is no local ordinance to regulate the ownership and care of animals on private property (R. 53, 62). Mr. Eccles had complained on another occasion when someone had kept horses in the vacant lot next to him. The horses were removed (R. 18). Complainant's main "bone of contention" centers on the odor problem created by the chickens (R. 18). A neighbor keeps six to ten dogs behind Complainant's property, but he doesn't consider such animals a problem (R. 17).

Respondent testified that he realized that the chickens had created an odor problem and he had gotten rid of them (R. 77). Respondent stated that some of the hens were not laying and he was going to cull them out anyway (R. 76). Respondent definitely plans to keep his two horses staked in the two vacant lots adjacent to his property (R. 79).

We find that Respondent has violated Section 9(a) of the Act during the summer of 1974 because Respondent, in the care of his chickens and horses, has caused unreasonable interference with Complainant's life and property. The factors in Section 33(c) of the Act establish that the interference was unreasonable. First, the degree of interference, although short-lived, was substantial. Eating and sleeping habits were disrupted. Second, the social and economic value of the pollution source is quite limited since it only temporarily provided a marginal income to one individual. Third, Respondent failed to practice good house-keeping methods for his chicken enterprise and overlooked proper staking procedures for the horses to reduce the interference with the interests of the Complainant. Fourth, Complainant was in the area before Respondent. The Board, however, does not give this factor great weight in this case because of the rural nature of the area.

In assessing a penalty we are guided, in part, by the factors in Section 33(c) of the Act. The unreasonable interference was serious but occurred for a relatively brief period. The nature of the area mitigates against a severe penalty. Respondent disposed of some of the chickens before the filing of the Complaint. The Respondent, an individual with limited means,

has made efforts to limit the interference. The facts of this case convince us that a severe penalty would not be warranted.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Illinois Pollution Control Board that:

1. Respondent has violated Section 9(a) of the Act during the summer of 1974 as set out in the Opinion.

2. Respondent shall pay a penalty of \$25.00 for its violations of the Act established in this Opinion. Payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 60 days of the adoption of this Order.

3. Before Respondent establishes any further chicken raising operations, he shall consult with Mr. Price, the sanitarian from the Bond County Health Department, and implement reasonable housekeeping practices for the care of the chickens. All chickens shall be confined to Respondent's property.

4. Respondent shall stake or otherwise restrain his horses so that they cannot graze within 75 feet of Complainant's house. In grazing the horses, Respondent shall see to it that the horses are moved at regular intervals to limit the accumulation of horse manure in any area.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 8<sup>th</sup> day of May, 1975, by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board