

ILLINOIS POLLUTION CONTROL BOARD

December 20, 1973

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
Complainant, )  
 )  
v. ) PCB 72-465  
 )  
DEL MONTE CORPORATION, )  
 )  
Respondent. )

Mr. Alan R. Miller, on behalf of  
the Complainant, and  
Mr. Donald A. Manzullo and Gerald W. Fearer,  
on behalf of the Respondent.

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

On December 1, 1972, the Pollution Control Board received from the Environmental Protection Agency (hereinafter Agency) a Complaint which states:

" 1. That before, on and after August 19, 1971 and to the date hereof, Respondent owned, operated and controlled a cannery with waste treatment facilities in LaSalle County, at Mendota, Illinois proximate to Vermilion and Second Creeks.

2. That in the ownership, operation and control of its waste treatment facilities, Respondent has and continues to be in violation of the Environmental Protection Act (hereinafter cites as Act) and is in violation of the Rules and Regulations pursuant thereto in that in addition to other wrongful acts, Respondent has:

(a) caused, threatened and allowed the discharge of contaminants, as defined by the Act, into Vermilion and Second Creeks so as to cause water pollution in Illinois in violation of Section 12(a) of the Act;

(b) caused discharges producing color, odor or other conditions in such a degree as to create a nuisance, in violation of Rule 1.03 (c) of SWB-14, effective pursuant to Section 49(c) of the Act;

(c) on or about September 9, 1971 caused the discharge of substances in concentrations harmful to aquatic life causing a fish kill of 26,060 fish in Second and Vermilion Creeks with a value of \$914.52 in violation of Rule 1.03(d) of SWB-14, effective pursuant to Section 49(c) of the Act;

(d) on September 9, 1971 caused the dissolved oxygen content in Second and Vermilion Creeks to reach below 4.0 mg/l causing a fish kill of 26,060 fish with a value of \$914.52 in violation of Rule 1.05(a) of SWB-14, effective pursuant to Section 49(c) of the Act; and

(e) operated facilities for the treatment of industrial and other wastes which do not provide for the removal of color, odor and turbidity below obvious levels, in violation of Rule 1.08-10(b) (3) of SWB-14, effective pursuant to Section 49(c) of the Act."

On April 6, 1973, the Pollution Control Board received from the Agency an Amended Complaint which alleged the following additional violations by the Respondent:

" (f) caused, threatened and allowed the discharge of contaminated cooling water, as defined by the Act, into Second Creek so as to cause water pollution in Illinois in violation of Section 12(a) of the Act;

(g) constructed, installed and operated equipment capable of causing or contributing to water pollution, or designed to prevent water pollution, of a type designated by the Regulations of the Pollution Control Board, without a permit granted by the Environmental Protection Agency, in violation of Section 12(b) of the Act;

(h) deposited contaminants, as defined by the Act, upon the land in a place and manner so as to create a water pollution hazard, in violation of Section 12(d) of the Act;

(i) caused discharges, into Second Creek, producing color, odor or other conditions in such a degree as to create a nuisance, in violation of Pollution Control Board Regulations, Chapter 3-203 (a), effective pursuant to Section 27 of the Act;

(j) caused the discharge of contaminated cooling water, into Second Creek, in such a degree as to create a nuisance, in violation of Pollution Control Board Regulations, Chapter 3-402, effective pursuant to Section 27 of the Act;

(k) operated facilities for the treatment of industrial and other wastes which do not provide for the removal of color, odor and turbidity below obvious levels, and thereby caused discharges producing color, odor or other conditions in such a degree as to create a nuisance, in violation of Pollution Control Board Regulations, Chapter 3-403, effective pursuant to Section 27 of the Act."

On November 6, 1973, a hearing was held on this case by Mr. Donald G. Wetterauer, Hearing Officer, in Ottawa, Illinois. During this hearing the Complainant and Respondent submitted a joint Stipulation and Proposal for Settlement which included additional facts, results of water analyses, photographs, and a report of a pollution-caused fish kill.

Additional facts included in the joint Stipulation were that "The waste treatment facility consists of a 5-cell lagoon system with a spray irrigation field. The discharges from the treatment facility empty into Second Creek, which is a body of water of the State of Illinois. The principal effluent into the waste treatment facility is waste water from the canning of corn, peas, lima beans and other vegetable products, depending upon the season here. Prior to the completion of the spray irrigation field in 1972, the effluent from the 5-cell lagoon system was discharged directly into Second Creek. . . . Since 1972, Del Monte has operated a spray irrigation field and does not discharge directly from the fifth lagoon into the Second Creek. A permit has been issued on May 18, 1973, by the Environmental Protection Agency for the operation of this spray irrigation field, and the use of the field has resulted in elimination of the objectionable qualities of the effluent."

In August and September, 1971 the effluent ranged in B.O.D. from 29 mg/l to 53 mg/l, and in Total Suspended Solids from 124 mg/l to 242 mg/l, as is indicated in the accompanying "Summary of Laboratory Analyses and Field Observations." The joint Stipulation of November 6, 1973, states that "Presently the quality of the effluent is as follows:

Total Suspended Solids - 14.5 mg/l average  
B.O.D. - 1.5 mg/l average."

Of the sampling sites in the accompanying table, location A-1 (Upstream), B-1 (Lagoon effluent), C-1 (Downstream at U.S. 34), and C-2 (Downstream at County Road 19) are especially significant. Sampling site C-3 is downstream from the confluence of Second Creek (along which the Del Monte complex is located) with effluent from Mendota S.T.P. On September 9, 1971, the stream-dissolved oxygen went from 9.0 mg/l upstream (sample A-1, clear water and abundant fish) from the Del Monte effluent discharge to 1.4 mg/l downstream (sample C-1, green water with fishy odor, numerous dead fish but none observed alive) from the effluent discharge.

On September 9, 1971, Mr. James Langbein, Fishery Biologist, Illinois Department of Conservation, observed the fish kill along Second Creek near the Del Monte complex and submitted his report (Complainant's exhibit No. 8) on September 10, 1971. Mr. Langbein examined and sampled four locations as follows, which were near the respective Agency sample sites that are indicated in parentheses:

DEL MONTE CORPORATION  
SUMMARY OF LABORATORY ANALYSES AND FIELD OBSERVATIONS \*

Location and date (1971)	B.O.D. mg/l	T.S.S. mg/l	Stream D.O. mg/l	NH <sub>3</sub> -N mg/l	NO <sub>3</sub> mg/l	T. Coli/ 100 ml	F. Coli/ 100 ml	pH	Field observations	
									Water	Fish
<u>A-1 Upstream</u>										
8.19	2.2	17	-	-	-	7,000	5,000	8.5	Clear	Abundant
9.9	1.0	3	9.0	2.8	1.10	800	450	8.8	Clear	Numerous
9.14	3.0	27	-	0.43	1.45	1,600	1,170	8.2	Clear	Abundant
<u>B-1 Lagoon Effluent</u>										
8.19	53	242	-	-	-	5,000	4,000	8.9	Green, no odor	-
9.9	29	124	4.0**	9.4	0.70	0	0	8.6	Green, odorous	Running from dis- charge
9.14	32	210	-	10.8	0.16	12,200	800	7.4	Green, odorous	Present
<u>B-2 Retort Effluent</u>										
8.19	2.1	12	-	-	-	91,000	29,000	8.0	Clear, no odor	-
9.9	0.9	4	4.0**	0.26	0.05	2,070	790	8.2	-	-
9.14	22	12	-	2.05	0.12	900	410	7.6	Clear, no odor	-
<u>C-1 Downstream (U.S. 34)</u>										
8.19	5.2	22	-	-	-	7,000	6,000	8.2	Green, scum	Present
9.9	14	66	1.4	6.0	0.65	11,000	430	8.4	Green, fishy odor	Many dead, none alive
9.14	3.4	13	-	1.55	0.13	1,500	210	7.6	Green, no odor	Present

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DEL MONTE CORPORATION  
SUMMARY OF LABORATORY ANALYSES AND FIELD OBSERVATIONS (CONCLUDED) \*

Location and date (1971)	B.O.D. mg/l	T.S.S. mg/l	Stream D.O. mg/l	NH <sub>3</sub> -N mg/l	NO <sub>3</sub> mg/l	T. Coli/ 100 ml	F. Coli/ 100 ml	pH	Field Observations	
									Water	Fish
<u>C-2 Downstream (County Road 19)</u>										
8.19	-	-	-	-	-	-	-	-	-	-
9.9	36	110	8.8	3.4	0.44	6,000	590	8.4	Green, fishy odor	Many dead, none alive
9.14	3.8	33	-	1.35	0.17	11,000	1,800	7.8	Green, no odor	Present
<u>C-3 Downstream (After D-1 confluence)</u>										
8.19	-	-	-	-	-	-	-	-	-	-
9.9	14	79	-	7.5	0.50	150,000	24,000	8.4	Green, fishy odor	Many dead
9.14	-	-	-	-	-	-	-	-	-	-
<u>D-1 Mendota STP Effluent</u>										
8.19	-	-	-	-	-	-	-	-	-	-
9.9	247	36	-	-	-	9,000,000	1,100,000	6.3	-	-
9.14	-	-	-	-	-	-	-	-	-	-

- \* From Complainant's exhibits #1 through #5.  
\*\* Test ran on stream 400 feet below these discharges.  
- Test not run.

Location 1, C.B. and Q. Railroad bridge (near B-1, Lagoon effluent). "Carcasses, primarily of minnows, but also of black bullheads and common white suckers. The air temperature was 88°F and the water temperature was 85°F. The stream's water was pea green in color."

Location 2, U.S. 34 bridge (near C-1, Downstream). "Water was very green. The water temperature was 85°F. . . . An abundance of dead fish, mostly minnows. No live fish were observed."

Location 3, road bridge (near C-2, Downstream). "I observed the first game fish carcasses of my investigation. Also, numerous white sucker carcasses were observed. The water was very green, indicating a very heavy algae bloom. The water temperature was 84°F."

Location 4, Route 13A bridge (near C-3, Downstream). "I observed an abundance of minnows (dead) in the 2.0 inch range. The water at this point was very green, indicating a very heavy algae bloom."

Mr. Langbein "learned from Jeffery N. Baile, 216 East 6th Street, Mendota, Illinois, that the fish kill had started on September 6, 1971. According to Jeffery, numerous fish were at the surface of the water, gulping air and swimming in circles near Route 34 bridge" (Location 2).

"This investigation showed that an estimated 26,060 fishes were killed, valued at \$914.52. The principal game fish killed were smallmouth bass and sunfish. Minnows made up the largest number of all fishes killed. The commercial species involved were carp, redhorse, and bullheads."

During the Hearing on November 6, 1973 two 15-year-old boys testified that in September, 1971 they saw dead fish at the bridge a half-mile downstream from Del Monte. Sherman Brumly saw "a lot of dead fish laying around on the bank and in the water" (R.7). On September 9, 1971 John Robeson saw "a lot of dead fish and there was suds around" (R.9). He also indicated that during his most recent (August or September, 1973) fishing in this area, Second Creek was "pretty good" (R.10) and the water was clear.

Color photographs (Complainant's group exhibit 6, taken August 19, 1971; and group exhibit 7, taken September 9, 1971) were submitted during the November 6, 1973 hearing which showed the following:

Del Monte plant = Exhibit 6, Figures 1 and 2.

Lagoon 1 = Exhibit 6, Figure 3.

Clear water at sample location A-1, Upstream from lagoon discharge = Exhibit 6, Figure 4; Exhibit 7, Figure 1.

Green water from lagoon discharge at sample location B-1 = Exhibit 6, Figure 5; Exhibit 7, Figure 3.  
Retort cooling water at sample location B-2 = Exhibit 6, Figure 6; Exhibit 7, Figure 2.  
Green water at sample location C-1, Downstream = Exhibit 6, Figure 7.  
Dead fish in stream at sample location C-2 = Exhibit 7, Figures 4, 5, and 6.  
Stream at sample location C-3 = Exhibit 7, Figures 7 and 8.

On the basis of evidence presented in this record, the Pollution Control Board finds that the Respondent is in violation of items (a), (b), (c), (d), and (e) in the original Complaint and items (g), (i), and (k) in the Amended Complaint. This Opinion constitutes the Board's findings of fact and conclusions of law.

Under these considerations and the proposed terms of settlement in the joint Stipulation, IT IS THE ORDER of the Pollution Control Board that:


(1) Del Monte will continue with operation of the spray irrigation field, for which a permit was issued on May 18, 1973, by the Environmental Protection Agency, in accordance with said permit and in accordance with the regulations of the Pollution Control Board and the provisions of the Environmental Protection Act.

(2) Respondent shall not discharge effluent into Second Creek in violation of the regulations of the Pollution Control Board and the provisions of the Environmental Protection Act.

(3) As a part of this settlement agreement, and to avoid needless litigation, Del Monte agrees to remit \$10,000.00 to the State of Illinois, of which \$914.52 shall be placed in the Game and Fish Fund in the State Treasury pursuant to Section 42 of the Environmental Protection Act. Payment shall be by certified check or money order made payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be tendered within 30 days of the adoption of this Order.

(4) This settlement in no way exempts Del Monte from any other obligations it may incur as a result of its operations in the State of Illinois, including any operations for which no permit has been issued.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 20<sup>th</sup> day of December, 1973, by a vote of 5 to 0.

  
Christan L. Moffett, Clerk