

ILLINOIS POLLUTION CONTROL BOARD

April 4, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
v.) PCB 73-329
LESTER KIPLING, d/b/a Kipling)
Chicken Hatchery,)
Respondent.)

Mr. Lawrence Eaton, attorney for Complainant.
Mr. James Lucie, attorney for Respondent.

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

The Environmental Protection Agency (EPA) filed its Complaint against Respondent Lester Kipling on August 8, 1973. Complainant alleged that Respondent operated its facilities causing air pollution in violation of Section 9(a) of the Environmental Protection Act (Act). It was averred that violations occurred between July 1, 1970, and August 8, 1973 -- including approximately 50 specified dates during the summer of 1972. Mr. Kipling operates an egg production facility in the 600 block of North Coal Street, Colchester, McDonough County, Illinois. The pullets and feed are supplied by another party, who also markets the eggs. Respondent leases the premises, sees to it that the automatic equipment is functioning properly, and disposes of the by-product chicken manure. EPA alleged that the odor from this yet unhailed manure constituted a violation of Section 9(a) of the Act.

A hearing took place in Macomb, Illinois, on November 7, 1973. Complainant relied on 13 citizen witnesses and 2 EPA employees to establish its case. Lester Kipling was the only witness for Respondent. The Hearing Officer admitted witness testimony regarding the condition of the facility from February, 1973, until August, 1973, although no specific dates after February 1973, were named in the Complaint. Respondent objected on due process grounds in that he could not adequately defend against such evidence because of the general nature of the Complaint. We hold that the Hearing Officer's ruling should not be set aside. Rule 308(h) of the Pollution Control Board's Procedural Rules states that "Rulings of the Hearing Officer . . . will be set aside only to avoid material prejudice to the rights of the litigant." Information elicited from witnesses did not create any material prejudice here. The testimony only covered facts of a general nature without regard to specified times and created no problem of surprise or difficulty of defense.

The November 7, 1973, hearing established that Respondent violated Section 9(a) of the Act. Respondent's facility unreasonably interfered with its neighbors' enjoyment of life and property. First, interference clearly occurred during the summer of 1972. Specific dates include May 16 (Comp. Ex. #1, 2, 6, 7), May 17 (Comp. Ex. #1, 6, 7, 10), May 18 (Comp. Ex. #1, 6, 7, 10), May 19 (Comp. Ex. #1, 6, 7, 10, 11), June 6 (Comp. Ex. #1, 7, 10, 11), June 25, (Comp. Ex. #3, 10, 11), June 26 (Comp. Ex. #3, 10, 11), July 26 (Comp. Ex. #4, 7), and July 31 (Comp. Ex. #4, 7). Respondent admitted that manure was not hauled from the facility from May until September of that year (R-214). The complaints and observations of the citizens were quite similar and can briefly be summarized. High humidity made the odors worse (Comp. Ex. #1, 9, 10). House windows had to be closed in the summer because of the odor (Comp. Ex. #8). The smell was horrible and made one feel like vomiting (Comp. Ex. #2, 3, 7, 13). The odor seriously curtailed use of the yard and porch for normal outside activities (Comp. Ex. #3, 4, 6, 7, 8, 11, 12). Air conditioners had to be used to minimize the effects of the odors (Comp. Ex. #4, 6, 10). One citizen was reluctant to invite friends over to his home because of the smell (Comp. Ex. #4). Sleeping was affected (Comp. Ex. #1). Sewer odors are present intermittently in the area, but the smell of the chicken facility has an odor clearly distinguishable from that of the sewer (R-19, 34, 168).

Second, we find that the interference on the above mentioned dates was unreasonable, noting the factors in Section 33(c) of the Act. The interference was more than short-lived. The social and economic value of the pollution source must be balanced against the monetary and pragmatic costs to citizens burdened by the foul air. Most of the neighbors moved into the area after the operation began in the mid-1950's. They admitted having knowledge of the facility before they moved in, but typically added that they did not realize the seriousness of the odor problem until after they had purchased their homes (R-22, 79, 118, 142, 143). EPA introduced evidence of practical steps, such as improved housekeeping and regular manure removal, that could be taken to reduce the odor. Respondent admitted that changes could be made following the EPA plan that would result in a reasonable and practical method of odor reduction. Installation of an all-weather gravel road, where needed, to permit year-around truck access between the 10,000-bird facility and an acceptable manure-stockpiling and land disposal area, would also facilitate regular manure removal from the poultry house (R-219, 231, 239-243).

Testimony was offered by Respondent that he derived 75% of his annual income from operating the hatchery. Based on averages taken from the record (R-219-230), we estimate that Respondent earns approximately \$6,500 yearly in the egg-production business for wages (\$5,000) and depreciation (\$1,500) on equipment and buildings. This is based on a 75% egg production rate from the 10,000 hens when eggs are sold by the contractor for 30¢ per dozen. If Respondent is given 14% of the sale price and utilizes his facility two-thirds of the time, the result is the \$6,500 annual figure.

The EPA recommended a penalty and a compliance program. We think both suggestions are warranted here because of the severe disruption of neighborhood activities as well as the need for protection during the future use of this poultry facility.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent shall cease and desist from causing violations of Section 9(a) of the Act.
2. Respondent shall pay a penalty of \$500.00 for the violations of Section 9(a) as described in this Opinion. 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 made within 35 days of the adoption of this Order.
3. Respondent must institute an odor abatement program according to the following procedures:
 - A. Haul away all manure and thoroughly clean the premises within 35 days of the adoption of this Order.
 - B. When operations resume in the large building. Respondent must follow good management practices, including the following, to abate odors:
 - (1) Remove the manure from the facility on a weekly basis during the laying cycle, providing weather conditions permit; the manure can be temporarily stockpiled at a suitable receiving area if weather conditions do not permit immediate field application.
 - (2) Install a gravel road or its equivalent, where needed, to permit easy access between the hatchery and the manure disposal area, in the event that Respondent discovers this is necessary to comply with the weekly hauling schedule set out in B(1), above.
 - (3) Haul the manure when the wind direction is away from the nearest homes and during the week to avoid interference with weekend neighborhood activity.

- (4) Remove manure from the large building within one week of the termination of each egg-laying cycle. The large building must be thoroughly cleaned within two weeks of the termination of each laying cycle.
- (5) Maintain the continuous flow watering system to avoid the mixture of water with manure.
- (6) Experiment with the use of chemical deodorizing agents.
- (7) Install and utilize dust filtering devices if items B(1) through B(6) fail to effectively limit the odorous emissions.
- (8) Dispose of all dead poultry in compliance with the provisions of the Dead Animal Disposal Act (Ill. Rev. Stat., 1971, Chap. 8, Par. 149-167).
- (9) Notify the EPA in writing of the termination of each laying cycle in advance of its actual termination.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 4th day of April, 1974, by a vote of 5 to 0.


Christan L. Moffett, Clerk