

ILLINOIS POLLUTION CONTROL BOARD

March 26, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 74-196
)
FOSDICK POULTRY PROCESSORS, INC.)
an Illinois corporation, a/k/a)
A.F. MURMANN COMPANY,)
Respondent.)

Mr. Stephen Z. Weiss, attorney for Complainant.
Mr. Walwyn M. Trezise, attorney for Respondent.

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

On May 24, 1974, the Environmental Protection Agency (Agency) filed a Complaint against Fosdick Poultry Processors, Inc. (Fosdick). An Amended Complaint was filed on June 28, 1974, charging violations of Section 12(a) and 12(b) of the Environmental Protection Act (Act), certain rules and regulations of the Sanitary Water Board (SWB-2 and SWB-11) prior to July 1, 1972, and various rules of the Water Pollution Regulations (Chapter Three) of the Pollution Control Board (Board) from July 1, 1972, to June 28, 1974. Violations allegedly occurred from July 1, 1970, until June 28, 1974, due to the manner in which Respondent operated its facilities. The Chapter Three effluent standards superceded SWB-11 on February 3, 1972.

Since August 26, 1970, Fosdick has owned and operated a poultry processing plant on the southwest bank of the Rock River at 6179 Kishwaukee Street, Rockford, Winnebago County, Illinois. A waste treatment facility is operated in conjunction with the processing operation. 14,000 to 16,000 chickens per day, equalling 13 million pounds of chicken per year, are processed at the facility. The effluent from the treatment plant, consisting of a grease trap, wet well, lift station, aerobic and anaerobic lagoon, chlorination contact tank, and gas chlorination unit, flows through a ditch for 75 feet and then into the Rock River.

The Amended Complaint specifically alleged that:

1. From July 1, 1970, until April 7, 1972, including certain specified dates, Respondent failed to provide for the removal of color, odor, and turbidity to below obvious levels in violation of Section 12(a) of the Act and Rule 1.08 par. 10(b)(3) of SWB-11.
2. From July 1, 1970, until July 1, 1972, including certain specified dates, Respondent failed to adequately reduce the organic pollution load of the treatment work's effluent to below 20 milligrams

per liter (mg/l) of BOD in violation of Section 12(a) of the Act and Rule 1.08 par. 10(a) and 11(b) of SWB-11.

3. From July 1, 1970, until July 1, 1972, including certain specified dates, Respondent failed to adequately reduce the organic pollution load of the treatment work's effluent to below 25 mg/l of suspended solids in violation of Section 12(a) of the Act and Rule 1.08 par. 10(a) and 11(b) of SWB-11.

4. From July 1, 1970, until July 1, 1972, including certain specified dates, Respondent failed to adequately reduce the organic pollution load of the treatment work's effluent to below 2000 fecal coliforms per 100 ml of effluent in violation of Section 12(a) of the Act and Rule 1.08 par. 10(a) and 11(b) of SWB-11.

5. From July 1, 1970, until April 7, 1972, Respondent operated its facility without an individual, properly certified, or under the direct or active supervision of a properly certified superintendent or chief operator, in violation of Section 12(a) of the Act and Rule 1.02 of SWB-2.

6. From April 7, 1972, until June 28, 1974, including certain specified dates, Respondent failed to reduce color, odor, and turbidity to below obvious levels in violation of Section 12(a) of the Act and Rule 403 of Chapter Three.

7. From July 1, 1972, until June 28, 1974, including certain specified dates, Respondent operated its facility at a level below (sic) 150 mg/l of BOD₅ in violation of Section 12(a) of the Act and Rule 404(a) pursuant to Rule 401(c) of Chapter Three.

8. From July 1, 1972, until June 28, 1974, including certain specified dates, Respondent, in operating its facility, failed to maintain the effluent discharge at a level below 185 mg/l of suspended solids in violation of Section 12(a) of the Act and Rule 404(a) of Chapter Three.

9. From July 1, 1972, until June 28, 1974, including certain specified dates, Respondent, in the operation of its facility with an untreated waste load of over 10,000 population equivalents (P.E.), failed to keep the effluent below the 100 mg/l of BOD₅ in violation of Section 12(a) of the Act and Rule 404(b) pursuant to Rule 401(c) of Chapter Three.

10. From July 1, 1972, until June 28, 1974, including certain specified dates, Respondent, in the operation of its facility with an untreated waste load of over 10,000 P.E., failed to keep the effluent below 125 mg/l of suspended solids in violation of Section 12(a) of the Act and Rule 404(b) pursuant to Rule 401(c) of Chapter Three.

11. From August 1, 1972, until June 28, 1974, including certain specified dates, Respondent failed to maintain the effluent discharged from its facility, at a level below 2000 fecal coliforms per 100 ml of effluent in violation of Section 12(a) of the Act and Rule 405 pursuant to Rule 401(c) of Chapter Three.

12. From July 1, 1972, until June 28, 1974, including certain specified dates, Respondent failed to maintain the effluent discharged from its facility below 75 mg/l of BOD₅, which is 2.5 times the standard in Rule 404(a), in violation of Section 12(a) of the Act and Rule 404(h) of Chapter Three.

13. From July 1, 1972, until June 28, 1974, including certain specified dates, Respondent failed to maintain the effluent discharged from its facility below 92.5 mg/l of suspended solids, which is 2.5 times the limits set out in Rule 404(a), in violation of Section 12(a) of the Act and Rule 404(h) of Chapter Three.

14. From February 3, 1972, until June 28, 1974, Respondent failed to submit operating reports containing all the required information in violation of Section 12(a) of the Act and Rule 501 of Chapter Three.

15. From January 1, 1973, until June 28, 1974, Respondent operated its facility without an Operating Permit in violation of Sections 12(a) and 12(b) of the Act and Rule 903(a) of Chapter Three.

16. From January 1, 1973, until June 28, 1974, Respondent operated its treatment works without direct and active field supervision of a person who has been certified by the Agency as being competent to operate such a facility in violation of Sections 12(a) and 12(b) of the Act and Rule 1201 of Chapter Three.

A hearing was held in Rockford, Illinois, on October 8, 1974. A Stipulation and Proposal For Settlement (Stipulation) was entered into evidence. No citizens attended the hearing. The Statement of Facts indicated that the Respondent purchased the facility August 26, 1970, from its former owner at a cost of \$175,000. The facility was permanently closed because of financial difficulties in August 23, 1974. The following Analyses of Grab Samples were included in the Statement of Facts:

<u>Date Collected</u>	<u>BOD (mg/l)</u>	<u>Fecal Coliform (colonies per 100 ml)</u>	<u>Total Suspended Solids (mg/l)</u>
May 1, 1974	470	530,000	220
March 28, 1974	240	-	480
February 21, 1974	1,000	200,000	50
January 17, 1974	> 500	1,100,000	230
September 10, 1973	220	< 100	110
July 24, 1973	350	2,000	140
June 5, 1973	340	120,000	330
February 27, 1973	620	42,000	220
January 4, 1973	310	< 100	260
November 9, 1972	> 230	< 100	205

<u>Date Collected</u>	<u>BOD (mg/l)</u>	<u>Fecal Coliform (colonies per 100 ml)</u>	<u>Total Suspended Solids (mg/l)</u>
September 21, 1972	>240	< 100	300
August 8, 1972	95	< 100	270
June 22, 1972	240	150,000	75
May 16, 1972	> 89	< 100	118
April 13, 1972	>328	100	167
March 8, 1972	>253	45,000	368
January 25, 1972	>216	< 1,000	257
January 18, 1972	>234	19,000	120
January 12, 1972	>126	7,500	163
August 27, 1971	> 87	45,000	420
June 22, 1971	363	8,500	56
March 22, 1971	225	49,000	170
March 16, 1971	261	110,000	150
March 8, 1971	378	290,000	150
February 23, 1971	204	150,000	82
February 10, 1971	-	100,000	113
January 27, 1971	142	42,000	120
December 22, 1970	123	56,000	43
December 1, 1970	245	17,000	125
November 18, 1970	119	45,000	104
October 26, 1970	-	11,000	176
October 14, 1970	101	61,000	180
September 8, 1970	155	78,000	208

Also included in the Stipulation, taken from Ex. 19, was the following information:

"Said waste treatment facility had operated since August 26, 1970, at an average estimated daily influent flow when the poultry plant is operating of 112,000 gallons per day with 3,800 milligrams of BOD₅ per liter and 3,000 milligrams of suspended solids per liter."

We interpret influent here to mean the water moving from the processing facilities to the treatment plant.

The Analyses of Grab Samples alone does not establish violations because the samples do not meet the 24-hour composite sample requirement of Rule 401(c), which states:

- (c) Averaging. Except as otherwise specifically provided in this Part, compliance with the numerical standards in this Part shall be determined on the basis of 24-hour composite samples. In addition, no contaminant shall at any time exceed five times the numerical standard prescribed in this Part.

The Agency argues that the second sentence of this Rule enables us to find violations when the contaminant exceeds 5 times the numerical standard. The standard under Rule 404(a) is 30 mg/l

of BOD₅ and 37 mg/l of suspended solids. Under Rule 404(b), the limitation is 20 mg/l BOD₅ and 25 mg/l of suspended solids. The standard under Rule 405 is 400 fecal coliforms per 100 ml. The Agency correctly interprets Rule 401(c); the submitted evidence is sufficient to establish violations of Rules 404(a), 404(b), and 405 of Chapter Three. Violations of Rule 404(a) for suspended solids occurred on 9 dates from August 8, 1972, until May 1, 1974. No violations of BOD₅ occurred during this period because the wording in the Amended Complaint failed to give the Respondent adequate notice of the nature of possible violations. The Grab Sample data establish violations of Rule 404(b) for suspended solids for 10 specific dates from August 8, 1972, until May 1, 1974. Violations of BOD₅ under Rule 404(b) occurred on 11 specific dates from September 21, 1972, until May 1, 1974. Rule 405 for fecal coliform was violated 5 times from February 27, 1973, until May 1, 1974.

The Agency argues that other violations under Rule 404(a) can be found based on the language in Rule 404(h) by showing that more than 5% of the samples exceeded 2.5 times the numerical limits of Rule 404. Rule 404(h) reads:

(h) Compliance with the numerical standards in this Rule 404 shall be determined on the basis of 24-hour composite samples averaged over any consecutive 30-day period. In addition, no more than 5% of the samples collected shall exceed 2.5 times the numerical limits prescribed by this Rule.

We disagree with the Agency's interpretation. The word "samples" in sentence two of Rule 404(h) means the 24-hour composite samples referred to in sentence one of Rule 404(h), not 5% of any samples collected. We, therefore, find no violations of Rule 404(h) as alleged in the Amended Complaint.

The Analyses of Grab Samples does establish violations of the BOD, suspended solids, and fecal coliform standards during 1970, 1971, and early 1972. Under SWB-11, background concentrations are not relevant to determining a violation. Rule 1.08 par. 10(a) and 11(b) of SWB-11 for BOD were violated on 15 specific dates from September 8, 1970, until January 25, 1972. Rule 1.08 par. 10(a) and 11(b) of SWB-11 for suspended solids was violated on 17 specific dates from September 8, 1970, until January 25, 1972. Rule 1.08 par. 10(a) and 11(b) of SWB-11 for fecal coliforms was violated on 16 specific dates from September 8, 1970, until January 18, 1972. All these offenses constitute violations of Section 12(a) of the Act.

The Statement of Facts noted that since August 26, 1970, no certified operator was at the facility in violation of Sections 12(a) and 12(b) of the Act and Rule 1.02 of SWB-2 and Rule 1201 of Chapter Three. No Operating Permit was received from the Agency in violation of Sections 12(a) and 12(b) of the Act and Rule 903(a) of Chapter Three. Respondent admitted not submitting monthly operating reports to the Agency since February 3, 1972, in violation of Section 12(a) of the Act and Rule 501 of Chapter Three. The photographs (Ex. 3 through 14) taken on January 11, 1972, and on November 9, 1972, establish violations of the color and turbidity standards of Section 12(a) of the Act, Rule 1.08 par. 10(b)(3) of SWB-11, and Rule 403 of Chapter Three.

The Stipulation establishes that at the time of purchase, Respondent was not aware of any pollution problems, because the prior owner had recently installed a lagoon, and a chlorination and aeration system. The purchase agreement warranted that the premises shall be placed in such a condition that the Sanitary Water Board would issue it an operating license (Ex.17). Attempts were made beginning in 1971 to bring the facility into compliance. Consulting engineers were contacted and a project completion schedule was prepared by the engineering firm by September 1973 at a cost of \$12,316.26. Total cost of the proposed water treatment facility was estimated to be \$80,000. The Agency refused to issue a permit on July 15, 1974 (Ex. 20). The Statement of Facts included, as Exhibits 21 through 26, Respondent's tax records from 1970 through August 1974, which indicated the following taxable income:

<u>Year</u>	<u>Taxable Income</u>
1970	\$15,007
1971	0
1972	0
1973	0
1974 (through August)	0

Financial problems in 1971 and in later years have resulted in no taxable income for 1971, 1972, and 1973. Through August, 1974, Respondent had an additional operating loss of \$18,073. Respondent has total retained earnings (profits) of \$28,473, and therefore its assets exceed its other liabilities by \$28,473.

Respondent has violated the Act and regulations over a long period of time. The facility has now permanently closed due to serious financial difficulties unrelated to its pollution problems. We believe that Respondent made some good faith efforts to achieve compliance as evidenced by various Exhibits in the record. Based on all these factors, only a nominal penalty will be assessed. It would not further the purposes of the Act to impose a higher penalty in this case.

This Opinion 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 violated Sections 12(a) and 12(b) of the Act, parts of SWB-2 and SWB-11, and certain Rules of Chapter Three from August 26, 1970, until June 28, 1974, at times and in the manner as set out with more particularity in the Opinion.

2. Respondent pay a penalty of \$500.00 for its violations of the Act and regulations 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. Pay-

ment shall be made within 35 days of the adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 26th day of March, 1975, by a vote of 4 to 0.

Christan L. Moffett (g.)
Christan L. Moffett

