

ILLINOIS POLLUTION CONTROL BOARD
July 21, 1982

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 81-3
)
PAUL GOLDSTEIN and MIKE GOLDSTEIN,)
d/b/a GOLDSTEIN HOG FARM,)
)
Respondents.)

MR. RICHARD W. COSBY, FIRST ASSISTANT ATTORNEY GENERAL,
APPEARED ON BEHALF OF COMPLAINANT;

MR. PAUL GOLDSTEIN AND MR. MIKE GOLDSTEIN APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by D. Anderson):

This matter comes before the Board upon a Complaint filed January 9, 1981 by the Illinois Environmental Protection Agency (Agency) naming as Respondents Paul Goldstein and Mike Goldstein, doing business as Goldstein Hog Farm. The Complaint alleges violations of Section 12(a) of the Environmental Protection Act (Act), Rules 203(a), 203(f), 401(c), 402 and 404(c) of Chapter 3: Water Pollution, and Rules 104(d)(3)(C) and 104(d)(3)(D)(i) of Chapter 5: Agriculture Related Pollution. A public hearing was held in Effingham on January 22, 1982. No members of the public attended.

On February 20, 1981 the Agency served requests to admit facts on the Respondents who did not deny the requests. The Agency introduced the requests at the hearing as admissions pursuant to Procedural Rule 314(c) (R. 5). The Hearing Officer questioned the Respondents as to each question. Respondents admitted 1 through 5, disagreed with 6, 7 and 8 and commented on 8 through 18. Recognizing that Respondents are not represented by an attorney, and considering that little delay or prejudice to the Agency resulted from the failure to deny, the Board will consider Respondents' comments along with the matters admitted under the request to admit.

The Goldsteins' hog operation is situated on a 40-acre tract northwest of the intersection of U. S. 45 and Interstate 70, just north of Effingham, in Section 16, Township 8 North, Range 6 East of the Third Principal Meridian, Effingham County (Ex. 3, 5, 11). The Illinois Central tracks form the eastern boundary; Route 45 is immediately east of and parallel to the tracks. A small creek crosses the northern boundary of the

facility, flowing south. It turns to the east and crosses the tracks and Route 45 near the intersection with I-70. There it joins another small creek which is tributary to Salt Creek and the Little Wabash River (Ex. 11, 15).

Three barns are shown in Ex. 11. The most northerly seems not to be connected into the lagoon system. Near the middle of the property are the north and south confinement barns (R. 49, Ex. 11). There is a pit under the north barn and a lagoon to the immediate north of the south barn (the "north lagoon") (R. 50, 53, Ex. 17). These discharge to the "south lagoon", which is to the east of the barns (R.50, 54). This is located just west of the small creek, to which it discharges on overflow. The Agency believes the facility could accommodate 800 hogs (R. 18); Respondents say 400 (R. 6, 49).

The facility includes a fenced hog pasture through which the creek runs (Ex. 11). Under Rules 104(b)(1) and 104(c)(1) of Chapter 5, this is lawful for some livestock management facilities existing before the effective date of Chapter 5.

On May 6, 1980 the Agency issued the Goldsteins NPDES Permit No. IL 0061395 (Ex. 14, 15). This authorizes discharges only during large precipitation events. It requires maintenance of facilities to contain a 25 year, 24 hour precipitation event and various reporting and monitoring conditions. The Agency has not alleged violation of permit conditions.

The following is a summary of the allegations of the Complaint. Codified section numbers are indicated after Rule numbers.

<u>Count</u>	<u>Act/Rule</u>	<u>Date</u>	<u>Summary</u>
I	§12(a) 3:203(a) §302.203	9/23/77 12/6/79 3/25/80	Caused waters of the State to become "black, turbid and odorous and has allowed unnatural sludge or bottom deposits to accumulate"
II	§12(a) 3:203(f) & 402 §302.208 §304.105	12/6/79 3/25/80	Cause or contribute to violation of 1.5 mg/l ammonia nitrogen water quality standard
III	§12(a) 3:401(c) 3:404(c) §304.104	12/6/79 3/25/80	Cause or allow discharge of swine waste from lagoons in excess of effluent standards of 10 mg/l for 5-day biochemical oxygen demand (BOD) and

<u>Count</u>	<u>Act/Rule</u>	<u>Date</u>	<u>Summary</u>
			12 mg/l for total suspended solids (TSS)
IV	*5:104(d)(3)(C)	12/6/79	Failure to maintain lagoon storage capacity: adequate for 25 yr., 24 hr. storm; and, adequate to prevent water pollution
	5:104(d)(3)(D)(i)	3/25/80	
	§501.404(c)(3)		
	§501.404(c)(4)(A)		

An Agency inspection on December 6, 1979 disclosed that one lagoon had recently overflowed and lacked freeboard, space in which additional inflow could be stored without additional overflow. The south lagoon was overflowing into a draw which led directly to the creek to the east (R. 16, Ex. 17). The water was black and "septic looking" (R. 17). The Agency took samples in the creek upstream and downstream of the discharge and in the draw (R. 63, Ex. 1). The following table summarizes the results:

	Milligrams Per Liter		
	<u>Upstream</u>	<u>Discharge</u>	<u>Downstream</u>
Ammonia	0.9	430	5.0
BOD	7	3090	12
TSS	20	460	28

On February 13, 1980 the Agency observed the lagoons full with no freeboard. The lagoons were not overflowing because they were frozen (R. 20, Ex. 19).

On March 25, 1980 the Agency observed a lagoon overflowing into the creek (R. 23, Ex. 5, 20). The discharge was described as "black, turbid with a bad odor" (Ex. 2).

*"3:203" means Rule 203 of Chapter 3; "5:104" means Rule 104 of Chapter 5.

The Agency again took samples (R. 24, 65, Ex. 2, 5). The following table summarizes the results:

	Milligrams Per Liter		
	<u>Upstream</u>	<u>Discharge</u>	<u>Downstream</u>
Ammonia	0.2	194	3.0
BOD	8	937	16
TSS	480	300	65

On May 20, 1980 the Agency observed a lagoon with less than one inch freeboard (R. 27).

The Board finds that on December 6, 1979 and March 25, 1980 Respondents caused and allowed waters of the State to become black, turbid and malodorous and to violate the water quality standard for ammonia. The Board further finds that on the same dates, Respondents caused and allowed discharges in excess of five times the effluent standards for BOD and TSS. The Board further finds that Respondents failed to maintain adequate lagoon storage capacity to contain a 25 year, 24 hour storm event or adequate to prevent water pollution. The Board therefore finds that Respondents violated Section 12(a) of the Act, Rules 203(a), 203(f), 402 and 404(c) of Chapter 3: Water Pollution, and Rules 104(d)(3)(C) and 104(d)(3)(D)(i) of Chapter 5: Agriculture Related Pollution. No violation of the averaging rule, Rule 401(c), will be found.

Following each of the inspections of December 6, 1979 and February 13, 1980 the Agency notified Respondents of the violations and suggested remedial measures (Ex. 24, 25). Among the suggestions were the following:

1. Raise berms to lessen the frequency of discharge;
2. Maintain 25 year, 24 hour storm storage capacity;
3. Increase storage capacity to provide 4 to 6 months detention of all wastes;
4. Divert uncontaminated roof and surface water from the lagoons with gutters and terraces;
5. Establish a program for periodically knifing liquid wastes into cropland.

Respondents have generally taken at least some action in response to the Agency's suggestions, as will be detailed below. However, the Agency observed an overflow from the south confinement basin into the creek on June 2, 1981 (R. 42). This indicates that the remedial measures were not adequate.

During the period from March 25 through June 20, 1980 Respondents raised the lagoon berms (R. 23, 27, 29, Ex. 21 and 22). The Agency was dissatisfied with the use of concrete chunks in the berm, stating that they might prevent proper compaction (R. 30). The Agency believed the berm had adequate freeboard, although there is no data on its capacity or the volume needed to be stored in a storm event (R. 30).

The major problem appears to be excess rainwater entering the lagoon system causing overflow (R. 20). Guttering of barns has not been carried out (R. 28, 31, 45). However, a ditch has been cut between the barns to carry clean water directly to the creek (R. 43).

Another problem is surface runoff from the fields to the west of the barns (R. 31). The Soil Conservation Service provides free surveys to determine whether terraces are needed to control such runoff (R. 45). Respondents have not carried out the Agency's recommendation that such a survey be done to determine whether runoff through the lagoons can be controlled.

Respondents have acquired equipment to dewater the lagoons by application of wastes to cropland (R. 28, 32, 37, 80). The Agency disapproves of Respondents' method of filling their tank by gravity flow from the lagoon (R. 32, 37). However, there seems to be nothing per se illegal about the arrangement, assuming the system does not leak or spill matter into the creek during transfer. No question has been raised concerning compliance with permit conditions.

The Agency's initial investigation was in response to a neighbor's complaint that her cattle refused to drink the water in the creek. The Board finds the offensive discharges to be a substantial interference with the protection of the health, general welfare and physical property of the people downstream [§33(c)(1) of the Act].

The Board finds that the hog operation has social and economic value and that it is suitable to the area [§§33(c)(2) and 33(c)(3)]. The Board finds that it is technically practicable and economically reasonable to eliminate the discharges by diverting clean water from the system. The proper guttering of buildings and terracing of the land should enhance its value and increase its productivity in addition to improving water quality [§33(c)(4)].

After considering the mitigating factors and remedial measures already undertaken, the Board finds that a civil penalty in the amount of \$1000 is necessary to aid enforcement of the Act. Respondents will be ordered to cease and desist,

within 90 days of the date of this Order, discharges except in response to large precipitation events. They will be ordered to gutter the buildings and to meet with the Agency and Soil Conservation Service to develop a plan for diversion of surface water.

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

ORDER

1. Respondents Paul Goldstein and Mike Goldstein, doing business as Goldstein's Hog Farm, have violated Section 12(a) of the Environmental Protection Act, Rules 203(a), 203(f), 402 and 404(c) of Chapter 3: Water Pollution, and Rules 104(d)(3)(C) and 104(d)(3)(D)(i) of Chapter 5: Agriculture Related Pollution, substantially as alleged in the Complaint.
2. Within 45 days of the date of this Order, Respondents shall meet with representatives of the Illinois Environmental Protection Agency and the Soil Conservation Service, at a time and place set by the Agency, for the purpose of developing a plan to control surface runoff from the fields to the west of the hog barns.
3. Respondents shall implement the surface runoff plan as soon as practicable.
4. Within 60 days of the date of this Order, Respondents shall install gutters on the north and south hog confinement barns and provide for diversion of all water from the roofs around the lagoon system.
5. Within 90 days of the date of this Order, Respondents shall cease and desist all discharges from the lagoons except in response to precipitation events large enough to cause lagoons complying with Rule 104(d)(3) of Chapter 5 to overflow.
6. Within 90 days of the date of this Order, Respondents shall cease and desist all violations of Chapters 3: Water Pollution and 5: Agriculture Related Pollution.

7. Within 35 days of the date of this Order, Respondents Paul Goldstein and Mike Goldstein shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$1000 which is to be sent to:

State of Illinois
Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 21st day of July, 1982 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board