

TESTIMONY BEFORE THE WILDLIFE RESOURCES COMMISSION ON DECEMBER 18, 1968 BY WILLIAM
C. GOLDBERG, ATTORNEY FOR THE J. P. STEVENS COMPANY, REGARDING A FISH
KILL IN THE PEE DEE RIVER JULY 1968

Mr. Goldberg: Mr. Chairman, gentlemen of the Commission, on behalf of the J. P. Stevens company, I want to thank you for making available to us this report and the investigation of this fish kill. We have gone over the report and are still going over it. Also, we are investigating it, still investigating the matter. Now, it is not our purpose here today to criticize the report, but we do find it necessary to bring up certain errors contained in the report which we know to be of vital importance to the Commission in considering this matter. First, we are accused of, and one of the conclusions of the report is that we are in violation of, Section 70-117 of the Code in that we did not possess a permit issued by the Water Pollution Control Authority. This is entirely incorrect because, we in 1966, in order to help this situation there on the river constructed, or obtained a permit from the Pollution Board to construct this lagoon area that will hold about 50,000,000 gallons of waste. The Pollution Authority issued us this permit and I am going to pass it around. I have some copies of it here for each of one of you to see. They issued this permit to construct this lagoon area, and if you will notice right here on the permit, it states in parenthesis that this permit is to be used as a temporary permit until the completion of all work pending final tests and inspection. And this is the permit. In the permit, we are authorized to discharge into the Pee Dee river 10,000,000 gallons of industrial and sanitary waste. Now, bear in mind that the lagoon was completed in approximately July or August of 1967. Since that time we continued to operate on this permit and necessarily have to do so. That is the permit we are operating under now, until the final test and approval are made by the Pollution Authority. Now, as soon as those final tests are made, then of course, the Delta Finishing Company is in the position to apply for a permanent permit. But the conclusion in the report that states that we were in violation of Section 70-117, in that we were



operating without a permit is not correct. We do have a permit, and here it is today.

Now, secondly, the report concludes that this company was in violation on 70-133 of the code, in that we disregarded the express order of the Pollution Authority to discontinue the discharge of this waste. This, too, is inaccurate, because on the morning of July 4rd, we received a call at the office at Delta, from Mr. Bell of the Pollution Authority and our engineer, at the time the call came through - it was about 9:30 or ten o'clock in the morning - was out on the premises somewhere but when he got this emergency call, he immediately proceeded to cut off this valve that leads from the lagoon down to the discharge outlet into the river. Now, I have here a letter from Mr. Bell, of the Pollution Authority, verifying that he made this call and that he came on up to Wallace on the afternoon, about 2:30 or three o'clock that afternoon and the valve was shut down. Now, to fully understand the disposal, the physical setup of disposing waste, I have prepared for your use a diagram that I have passed out to all of you. Now, gentlemen, if you will notice in this diagram, it shows a black waste line that brings the waste down from Plant #2 that joins in to the line coming from #3 and all of this waste joins into one pipe and flows into this lagoon area. Now, the little white dots at the end of the lagoon area shows the cutoff valve. Now, when this valve is open this waste flows into a drainage ditch, which is colored in green. And this drainage ditch, in turn, flows into the Delta outlet, which flows into the Pee Dee river. Now, there is no question about the fact, that this valve was cut off around 9:30 or 10 o'clock, on the morning of July 3rd. Now, this is verified by Mr. Bell's letter. Mr. Thomas, will you give me a copy of that letter that I would like to read to them - but anyway, to go on and discuss the green ditch that you see that flows down into the outlet, you will notice that this ditch, carries not only water from the filter plant, but it also carries



the surface water this drains - Oh, I guess for two or three hundred acres of land which continuously flows into the river. Now, at the time your people, your investigators say, that they observed on the afternoon of 5:30 p. m. on the afternoon of July 3rd, they say that Delta was sending waste into the Pee Dee river. This is inaccurate because the valve had been shut off. Now here is a letter from Mr. Bell, the Pollution Control Consultant, to Mr. Thomas here that says in effect "In accordance with your request of this date please find attached here in a copy of my report of July 9, 1968, to Mr. Linton relative to the Pee Dee river fish kill." He goes on to say: "He says that he came up to Wallace about 3 o'clock that afternoon and the valve was shut off." Now, what your representatives, your investigators saw, Mr. Webb, is that the finishing company was continuing to run water in their filter plants, that had nothing to do with the waste. And this water was running down this green ditch and coming into the outlet. But there was no waste being discharged in the Pee Dee river at that time. And we were not in violation of any direct order from the Board, to discontinue the discharge of waste. Now here is this from Mars Bluff: "In reply to your letter of November 14, 1968, that this is to advise that the time of my visit to your holding basin was approximately 3 o'clock p. m. July 3, 1968. No effluent was being discharged to the ditch leading to the river." Now, is there any question in the Commission's mind about us flagrantly violating any order to stop discharging effluent?

Mr. Eltzroth: We will have to ask Mr. Fuller if he can answer that question.

Mr. Fuller: I will have to check on one of the letters that were answered.

Mr. Goldberg: Now another conclusion that the Report arrives at is that Delta Finishing company was in violation of Section 70-116, which infers that we were dumping waste into the river in violation of the standards adopted by the Pollution Authority. And let me read 700-116 to you: It says that "It shall be unlawful for



any person directly or indirectly to throw, drain, or otherwise to discharge in any waters of the State, or cause substance to be thrown into or otherwise discharge into such waters organic or inorganic matter that shall cause or tend to cause a condition of pollution in contravention of the standards adopted by the Authority. Now, the standards adopted by the authority, the Pollution Board has for years known what we have been discharging into the Pee Dee river. And it has been done without, as far as we know, adverse effect on the fish in the river. Now, we applied for this permit stating what we were going to use, what we were going to discharge into the river, and they issued us a permit to do it. Now, you might say: "Mr. Goldberg, this lagoon, you were cleaning it out and the fish died." But gentlemen, on three separate occasions before this lagoon --. As a matter of fact, right after it was built, the dam blew out. And the whole 40 or 50,000,000 gallons of waste just rushed into the Pee Dee river, about the same time of the year this happened.

At the time we were draining it, when the fish kill occurred, we were only putting about 8 or to 9 million gallons of waste in there. But, here right after it was filled and they had it full the dam broke and it rushed in there. No adverse effect to the fish. On two different occasions it was cleaned out just like it was the day of the fish kill. We experienced no adverse effect on the fish. So, we had no reason to believe, and certainly the Pollution Authority didn't have any reason to believe, that cleaning out this lagoon would cause this fish kill. Now, that is our experience, we were operating under a permit and we, frankly, do not think that we were in contravention of any of the standards adopted by the Authority. Now, frankly, to be frank with this Board, we don't know what killed these fish. And we don't believe anybody else does. By your own report, if you turn to Dr. H. J. Webb's letter in the back of the report, who dissected one of these sick fish, or



dead fish and let's look and see what he found in the flesh, and the viscera, which is the intestines as I understand it, and the gills. Now, here is what he found. He found DDT, 101 part per billion gallons. That is what he found in the flesh of this fish that he examined. In the intestines he found 54 parts per billion gallons. In the gills he found 225 parts per billion of DDT. Now, let me refer you or show you what the U. S. Department of Agriculture says about what will kill fish. They say that if you got in a fish farm 10 parts per billion of gallons of DDT that is sufficient amount of DDT in the water to kill a fish. Now, in the fish that they took out of the Pee Dee river they found 22½ times more DDT. All right, DDE and DDD, which are, I think the Dieldrin, too, which is a derivative, too. I think they are all parts of the DDT family. These things were found in an overwhelming amount in the gills and the intestines and the flesh of the fish. Now the only thing that Delta Finishing Company uses is this chemical Dieldrin, which is a moth proofer on cloth and stuff. They only found about 4½ or five times the amount applied, according to the USDA standard, sufficient to kill fish. Now, you must realize that on July 3rd, that is when the farmers and people are dusting their crops. They are using tons of fertilizer. The city of Cheraw is right on the bank there next to Delta is continuously spraying for mosquitoes. And all these things drain into the Pee Dee river. That is why I say that we don't know what kills the fish, and we don't believe your investigators do either - in all due respect to them. And that, gentlemen, just to give you a good example, about two months after this thing happened over in Cheraw, they had the same thing to happen at Wallace, North Carolina. And it killed all the cooters, the alligators, it killed just about every damn fish in the Capè Fear river up there in that vicinity. Now the J. P. Stevens Company has got a tremendous plant right on this river. And some short time before they installed what we think is the finest waste treatment facility in the world. We actually think



that. Now immediately the hue and cry was out on this tremendous fish kill which was a helleva lot bigger than the one at Cheraw - that the J. P. Stevens Company did it. And they had investigators down there, the federal government, investigators from the North Carolina pollution authority and everything. There was some question about whether or not this treatment plant was working and they were just about to put it on J. P. Stevens until they got to tracing the thing - the material back to some warehouse, and they found out...I think some filling station man had poured any amount of insecticide in the storm sewer....That is what happened. Now, we have pictures, of cans, empty cans of insecticide that were found down, near the Pee Dee river, near the old bridge that used to cross the Pee Dee river right in this vicinity. And we don't feel like J. P. Stevens Company should be blamed for this fish kill...You've got the city of Cheraw with you. If you look on the diagram, you will see this place in red here. Their outlet is on there 250 yards below the Stevens outlet....And they discharge over, approximately a million and a half gallons of sewage and industrial waste. They have one plant on their line that is a finishing plant, and I don't know that they use exactly the same chemicals that we do in processing their cloth and finishing their products, but nevertheless there is some of it. You have the Burlington Mills. They use chemicals in some of their processing. They are a finishing plant but nevertheless they have some processing that they use toxic chemicals in. All of this flows into the Cheraw sewage. Now, as to amount and value of the fish kill, we submit to you - It is highly speculative. As a matter of fact the writer of this report says on page 8, "as mentioned previously it was impossible to determine accurately the numbers and weights of the various fish species killed during the pollution caused the fish kill investigation of the Pee Dee river." It is such a speculative sort of thing that I agree with -- I am not arguing law, and I don't want to get into that but it is so speculative I don't know whether or not you could introduce this as evidence at a trial involving fish kill in this state. But I want to tell



you what we are doing. Delta Finishing Company, the J. P. Stevens company, is in the process of spending anywhere from four to five hundred thousand dollars on a treatment plant. The city of Cheraw is in the process of spending about a million and a half, I am told, on a treatment plant. So, regardless of what killed the fish, the river is in the process of being cleaned up. And we are making every effort to go forward with this thing as quickly as possible. We have put in a pilot operation to a new laboratory facility that will tell us what we need to do in order to make this waste harmless before it goes into the river. We plan to put in additional sedimentations, we plan to install aerators that will put oxygen back into the water, and we are adopting methods that will reduce the PH factor in the water. And in the lagoon areas that we now have, we are going to build in connection with the treatment of this waste, we are going to reduce the heat in there. And we are also breaking down, developing a process to break down this into elements of certain bacteria, and that will make it harmless. And we feel like that we are doing everything in the world possible. And we want to ask this Board to cooperate with us. The J. P. Stevens company is, if not the largest, one of the largest employers in our state. It is one of the biggest tax payers in the State, if not the largest. Regardless of that, we don't ask this Board to give us any special consideration. The only thing that we ask you to do, and we feel like that the treatment that we will get from this Board is like the treatment that you would give anybody else. In other words we feel like the -- I notice on television this Allstate man comes on and he says, "Everybody is in good hands with Allstate." So, we feel like that we are in good hands with you, gentlemen, because we know that you are just as interested in industrial development in this state and our industries in this state prospering and getting along fine. Now, we don't have any desire, never have had, to harm any of the wildlife or the fish, and we are going forward as quickly as possible. Now, I don't have any authority from my company. I have discussed this matter several times and they never have answer-



ed my questions. They said, "Billy, you just go down there and talk to the Board. We want to do what is right within reason." But I feel like that you have had an expense in this investigation of almost \$2,000. I know that it cost you something to print and prepare this report and I feel like that I could get my client, as a contribution to the Wildlife Department, and that is the way we want it. (At this point the recorder was cut off briefly.)

Mr. Eltzroth: Is it not your position that it took them two years to make tests and inspections and that they didn't give you anything further after that?

Mr. Goldberg: That is exactly what happened.

Mr. Eltzroth: You mean that they never gave you anything further -

Mr. Goldberg: The Pollution Board has never-- you see, we finished it in 67.

Mr. Eltzroth: Yes.

Mr. Goldberg: This happened about a year later.

Mr. Eltzroth: In 68.

Mr. Goldberg: In a period of that year the Pollution Board has never made any tests or inspections. Now, I noticed in one of these reports that we got from somebody, Mr. Linton was asked that question. And his answer to it was that they had a number of plants operating in the state under a similar permit and that they did not have the personnel to get around and make all the necessary tests. This is what we operate under today, this permit, and until they make these final tests, Mr. Chairman, that's when we apply for our permanent permit. Now, you can verify that with the Pollution Authority, but that is it. We wouldn't think of going in there and dumping this stuff in the Pee Dee river without a permit.

Mr. Eltzroth: Is it your position that you intentionally dump this into the reservoir at this time?

Mr. Goldberg: No, we started on June 30. You see the mill closes down for



a week, and they use this opportunity to make repairs and clean up. On June 30th, we started emptying this thing. On July 2nd -

Mr. Eltzroth: Did you get any authority from the Pollution Control Board to empty your reservoir?

Mr. Goldberg: We didn't have to have any authority. We had it under this permit.

Mr. Eltzroth: Do you have that under the permit, Senator, or do you have under the permit the right to dump the effluent after it has passed through the reservoir? Which do you have?

(All talk at once.)

Mr. Eltzroth: The way I read this is that following the construction of the reservoir you would have the right to use the effluent from the reservoir after it had been treated as was designed by the Sirene Company.

Mr. Goldberg: Oh, no.

Mr. Eltzroth: That is the way you read it? That is the way I read it.

Mr. Goldberg: The only thing that we put in was a lagoon area. We didn't treat it.

Mr. Eltzroth: You used it as a purpose of sedimentation, didn't you?

(Talk together)

Mr. Goldberg: We used it as a serving basin.

Mr. Eltzroth: Well, let me ask you a question, Senator. After the effluent from the three plants was put into the lagoon ---

Mr. Goldberg: Two plants.

Mr. Eltzroth: Two plants. It shows plant two and three here. There isn't a plant one?

Mr. Goldberg: No, that is just to designate. They had a plant one in location.



Mr. Eltzroth: I see. Well, after these two plants had fed this into the lagoon then isn't it true that the effluent that went into the ditch and went into the river came from the top of the lagoon rather than from the bottom of the lagoon?

Mr. Goldberg: On occasion. Most of the time --

Mr. Eltzroth: Well, what would be the purpose of the lagoon if you weren't going to use it for sedimentation?

Mr. Goldberg: There is no purpose.

Mr. Eltzroth: Other than as a sediment base. --- ?

Mr. Goldberg: Occasionally. They don't always drain it from the top. They sometimes, during the period of the operation, drain it from the bottom, too. They don't wait to --

Mr. Eltzroth: Well, when they drain it from the bottom what purpose has the lagoon served? In so far as pollution is concerned?

Mr. Goldberg: Well, Mr. Thomas, maybe you can answer that.

Mr. Thomas: I don't know that I can answer it to this extent. Other than this extent. We never have, and never intended to drain the settlement solids out. The intention was that the solids would be on the bottom below the valve, and would stay there.

Mr. Eltzroth: Do you have a valve that would drain the bottom of the lake?

Mr. Thomas: The valve does not drain the bottom, as such.

Mr. Eltzroth: So, then it is the settlement -----

Mr. Thomas: It is the settlement basin.

Mr. Eltzroth: I see. Ordinarily, under the --- Well, let me change that. Under the designs that were designed by the J. E. Sirene company, for which you have this permit. (Can't quite get two words.)

Mr. Thomas: Yes, sir.

Mr. Eltzroth: Is it not true, sir, that your effluent from the lagoon comes from the top of the lagoon rather than from the bottom?



Mr. Thomas: That is right.

Mr. Eltzroth: And on this particular occasion were you draining from the bottom? (They talk together, and it sounds as if Mr. Thomas said: "We were draining from the top." (Can't make it out. They talk together.)

Mr. Thomas: That is right, sir.

Mr. Eltzroth: And did you get permission from the Water Control Authority to do this?

Mr. Thomas: We did not. We did not think it was required under our permit. We were not putting more than the amount authorized to go into --- (here it sounds as if Mr. Eltzroth said: "So many gallons a day.")

Mr. Thomas: That may have been a wrong decision but we did not think that we were required to.

Mr. Eltzroth: I see.

Mr. Thomas: Because we were not putting more than 10,000,000 gallons of effluent into the river.

Mr. Eltzroth: This is a 50,000,000 reservoir? A minimum of 50,000,000 gallon reservoir. Is that correct?

Mr. Thomas: It was designed for that, sir. It is notAt the end of construction it would never hold 50,000,000 gallons.

Mr. Eltzroth: What would it hold?

Mr. Thomas: 40I have it here in my papers here, but in the neighborhood of 42,000,000.

Mr. Eltzroth: 42. And so if the design load was based on the size of the system then the 10,000,000 gallon should have been changed to 8.4 roughly.

Mr. Thomas: In all probability.

Mr. Eltzroth: And you never received any further orders from the Water Pollution



Control after this letter of March 29, 1966. (Not quite clear.)

Mr. Thomas: No, sir.

Mr. Goldberg: Let me read you this, Clyde.

Mr. Eltzroth: Just a second, Senator. (A couple of words sounds like he said something aside to Major Cantey. Too low to even pick up.) I think that is probably what he said (aside to some one). Let me ask you one other question. It's your opinion, as an engineer and I think you are an engineer, sir.

Mr. Thomas: No, sir. I am not an engineer. No, sir. Not an accredited one.

Mr. Eltzroth: As to your opinion, based on your experiences, does the further down you would drain this lagoon the greater concentration of chemicals you would have?

Mr. Thomas: It would seem that that would be correct in so far as the bottom is concerned, when you get right down to where the settling is, sir.

Mr. Eltzroth: Yes.

Mr. Thomas: I am told by engineers, now. I am told that that theory does not always work in practice because of currents in the water, because of heat and so on. That you do get a mixture of which you might not ordinarily expect.

Mr. Eltzroth: Yes, sir. Thank you. Senator, excuse me a minute.....

Mr. Goldberg: You asked me about this permit. A federal man came down here and talked to Mr. Linton about it and his report came. And he reports in this report that in talking to Mr. Linton that he says: "This permit allowed the company to discharge up to 10,000,000 gallons of waste to the Pee Dee river. After a period of time in which tests would be conducted to demonstrate that no adverse effect on the water quality on the Pee Dee would result. And if this were in fact shown, then a discharge permit would be issued permanently." To this date, this permit has not been issued. I am talking about the regular permit. And the company is continuing



to discharge under the construction permit. Mr. Linton stated that because of the limited staff that he had, sufficient data was not yet available to determine the effects of the waste from the plant to the Pee Dee river. Mr. Bell stated that there were a number of similar installations scattered around the state. That is where I got the information. Now, we don't want to take up any more of you all's time. If there is any information you want, don't hesitate to ask for it. We will be glad to give you anything you want. One of the things that really disturbed us in this thing was: In this report was the allegation that we had flagrantly violated an order of the Authority to shut down. And, actually, as soon as they got that order the operation was shut down. Now, I don't say that your investigators did not see water coming out of the Delta outlet but it was not waste. It was water coming out of the filter plant. I don't know that it may have had some color to it because you see right here, Mr. Chariman, as this water reaches here, when you throw this colored waste into that portion of that ditch, it's bound to pick up on the sides a certain amount of discoloration, dye and so forth. So, when this fresh water came out of our filter plant and went down the ditch it naturally picked up a little color. And I don't say that your investigators saw something that they didn't see. What they did see was not waste. They saw the water that was coming out of the filter.

Mr. Eltzroth: When you say "not waste", you mean that it was not waste from the lagoon?

Mr. Goldberg: It was not waste from the plant. This water was from the filter plant.

Mr. Eltzroth: I see.

Mr. Goldberg: Now, if there are any other questions, I will be happy to try to answer them for you. Mr. Thomas, was there anything else?

Mr. Thomas: I would like to clarify one point. You asked me awhile ago if the



design was for a 50,000,000 gallon, lagoon. The design was for a 50,000,000 gallon lagoon. At the stage of evaporation then, as determined afterwards, after this has occurred, the capacity as shown then was approximately 42 million, eight hundred and some odd thousand gallons, or approximately 43,000,000.

Mr. Eltzroth: Are there any other further questions from the Commissioners?
Any questions, Mr. Webb?

Mr. Mishoe: Did that bring up that Jeff was ---

Mr. Fuller: That time that our report shows it to be was 6:30 that the gate was still open. I will check with the man to determine whether or not he actually checked the lagoon. I can't give you an answer right now, other than what is in the report.

Mr. Eltzroth: Thank you very much, gentlemen. We appreciate your appearing.

Mr. Goldberg: Glad to see all of you again.

Eddie Finlay

ERF: jmc

