

ILLINOIS POLLUTION CONTROL BOARD
September 20, 1985

AMEROCK CORPORATION,)
)
) Petitioner,)
)
) v.) PCB 84-62
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

MR. CHARLES F. HELSTEIN OF THOMAS, HINSHAW & CULBERTSON APPEARED ON BEHALF OF THE PETITIONER;
MR. THOMAS DAVIS APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon the May 29, 1984 filing of a petition for a five year variance by Amerock Corporation (Amerock) from the hexavalent chromium (0.1 mg/l), total chromium (1 mg/l), copper (0.5 mg/l), cyanide (0.1 mg/l), nickel (1 mg/l), zinc (1 mg/l), total suspended solids (TSS) (15 mg/l) effluent standards of 35 Ill. Adm. Code 304.124 and from the ammonia nitrogen and biochemical oxygen demand (BOD) effluent standards located at 35 Ill. Adm. Code 304.301 and 304.120 respectively. As the petition was deficient, a more information order was entered on the same day. The requested information was received on August 15, 1984. Since upon subsequent examination no violations of the effluent standards for BOD, nickel or ammonia have been measured, this requested relief including Sections 304.120 and 304.301 has been dropped. Amerock has waived the one hundred-twenty day Board decision date.

The Illinois Environmental Protection Agency (Agency) filed its first recommendation on September 10, 1984. Meanwhile an objection had been filed, triggering the need for a hearing. Hearings were set and cancelled on January 25 and March 8, 1985. A hearing was held in Rockford, Illinois on May 24, 1985. The hearing transcript was received by the Board on July 10, 1985. The Agency recommends granting a one year variance from the requested effluent standards of 35 Ill. Adm. Code 304.124 except for nickel, with which Amerock agrees (R.6,14). The Agency maintains no relief is needed for ammonia nitrogen and BOD.

Amerock has two primary manufacturing facilities in Rockford, Illinois where alloys of copper, steel and zinc, plastics and other materials are converted by various processes

into products for the home. These processes include sheet metal fabrication, zinc die casting, plastic molding, burnishing, buffing, cleaning, electroplating, coloring, antiquing, painting and lacquering. Process wastewater containing cyanide is pretreated on site before discharge to the Sanitary District of Rockford sewer system. Five outfalls are permitted by NPDES Permit IL 0003344 to discharge stormwater runoff into Kent Creek (Creek). One of these is also permitted to discharge noncontact cooling water. Three unpermitted outfalls have recently been discovered by Amerock.

Section 309.102 of Title 35 of the Illinois Administrative Code in relevant part requires that an NPDES permit be required for "...the discharge of any contaminant or pollutant by any person into the waters of the state from a point source...." The Board's definition of pollutant located at 35 Ill. Adm. Code 301.340 parallels the federal definition [33 U.S.C. §1362(b); see 40 C.F.R. 122.2].

Section 12(f) of the Act mandates that the Board not require an NPDES permit for any discharger who is not required to have a permit under the Clean Water Act. The Clean Water Act general requirements for NPDES permits are presented in 40 C.F.R. Part 122 and require a permit for the discharge of any pollutants from a point source into waters of the United States [See 33 U.S.C. §§ 1311(a), 1342(a)(1)].

As defined in Section 301.340, pollutant in relevant part is an industrial waste. In turn, industrial waste is defined, in relevant part, as any "...wastes resulting from any process of industry, manufacturing, trade, or business...." (Section 301.285). Therefore, under this situation an NPDES permit can only be required if material discarded from the plant operations is discharged along with stormwater runoff.

The Board has held that an NPDES permit can be required for stormwater discharges only if pollutants discarded from plant operations are discharged along with stormwater runoff. Cargill, Inc. v. IEPA, 47 PCB 127 (PCB 81-37, May 27, 1982). In Cargill, due to a paucity of facts, the Board found insufficient evidence to support such a determination. On appeal, the Board was affirmed, the Court stating:

[T]he Board's findings that Cargill's discharge contains no process wastes, that no material discarded from the plant operation was discharged along with stormwater runoff, and that contaminants may result from rainwater running over roofs and parking areas picking up contaminants from fallout of non-localized air emissions, natural debris and cars which use the area are supported by evidence in the record. Therefore, Cargill is not required to obtain an NPDES permit because it does not discharge "pollutants" as so defined in the FWPCA nor adds contaminants to stormwater.

IEPA v. Cargill, Inc. et al., No.82-650, Rule 23 Order, 2nd District, June 16, 1983.

The stormwater discharge regulations have been amended since the Board's decision in Cargill. Amended at 48 Fed. Reg. 3983 (1983), 40 C.F.R. 122.26 states that "[s]eparate storm sewers...are point sources subject to the NPDES permit program." A separate storm sewer is defined as "a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either" in an urbanized area pursuant to criteria at 39 Fed. Reg. 15202 (May 1, 1974) or if not in such an urbanized area, is designated by the Director of the state NPDES permit program to be under such program [40 C.F.R. 122.26(b) and (c), July 1, 1984]. Amerock is within an urbanized area (39 Fed. Reg. 15202).

For those in a similar situation but not in an urbanized area would have to meet 40 C.F.R. 122.26(b)(3) which provides as follows:

(3) Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers are point sources that must obtain NPDES permits but are not separate storm sewers.

Therefore, the Board finds that Amerock does need an NPDES permit for its stormwater discharges pursuant to 40 C.F.R. 122.26.

Returning to the Amerock evidence, a contamination problem was discovered by Amerock. Chemicals are being discharged in excess of permit limits during rainfall or snow melt periods. (R.9-10). Amerock believes the problem may stem from air emissions from plant operations being deposited on the 750,000 square feet of roof (R.17, 12), however it stresses that it is in compliance with all air pollution regulations (R.18). This air emissions theory appears to be supported by Amerock's installation of air pollution control devices for chromium which reduced the chromium discharge to the creek by a factor of ten (R.11). However, the Board need not determine exactly from what point on the Amerock property the contaminants emanate. The Board need only find and does so find that the contaminants from plant operations are being discharged to waters of the State.

Two citizens at hearing expressed concern about the situation and objected to a variance that lasts five years (R.31 and 33).

Amerock has been sampling all discharge pipes during rainfall or snowmelt events since September 1984 (R.10-11, Agency Amended Rec. 2). The creek water has also been sampled upstream and downstream of the plant since that time (Id., R.12). Amerock represented at hearing that it would be instituting biological monitoring of the creek (R. 12) and as of May 24, 1985 only needed to choose a consulting firm (R. 22). Grab samples of the creek bottom are already being taken in anticipation of this work (Id.). The sampling programs so far have identified the contaminants. What remains is to identify the sources and to obtain and implement engineering recommendations. Amerock and the Agency agree that a five-year variance is not needed and both assert that to deny a one year variance for further study would be to impose an arbitrary or unreasonable hardship on Amerock because the pollution control technology is not feasible until the contaminant sources on the property are found (R. 25).

The Board agrees but will grant variance relief for a period of 15 months. The Board finds that to deny Amerock a fifteen month variance would be to impose an arbitrary or unreasonable hardship. An Amerock official testified that while no biological studies have been performed, there are fish in the creek (R. 16) and other wildlife which have been observed in the area such as turtles, ducks, and insects (R. 25). While the evidence is marginal, the Board finds that the grant of variance will have minimal adverse effects on the environment for the term of the variance and will maintain the status quo which has existed for about 30 years (R.-18) for only that fifteen month period.

While the Board rarely grants variances without concrete plans for compliance, occasional fact situations require a certain flexibility as to this requirement. Anderson Clayton Foods v. IEPA, PCB 84-147 (January 24, 1985). Regarding Amerock, there is data identifying contaminants but not the sources. In addition, there has been good faith in reporting the contamination problem and total cooperation from Amerock. Therefore, the Board finds that Amerock be granted a variance from the following effluent standards of 35 Ill. Adm. Code 304.124: hexavalent chromium, total chromium, copper, cyanide, zinc and total suspended solids.

The time period of variance will run from June 1, 1985 and expire on September 1, 1986. The Board notes that Amerock has had considerable time prior to the date of this decision to move forward with the suggested studies. Water samples have been taken since September 1984. At the May 24, 1985 hearing Amerock represented that it was taking grab samples of the creek for biological analysis. Such analysis appeared to be close to starting. The September 1, 1986 variance termination date will give Amerock enough time for biological analysis, submittal of engineering recommendations, and implementation of those recommendations. While the study in Condition 2 of the Order is due toward the end of the variance period, its submission is a

mere formality. It is anticipated that implementation of engineering recommendations will occur before September 1, 1986.

The Agency has recommended that the Board impose sampling conditions on the variance (Agency Amended Rec. 1, 2). Amerock has agreed to these conditions (R. 22-24). Therefore, the Board will impose these conditions on the variance. Because of the Board's concern on the potential for bioaccumulation of certain heavy metals and to better appraise stream impact from these discharges, the Board will add another condition and will require sediment sampling and analyses from representative points upstream and downstream of Amerock's discharge.

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

ORDER

Amerock Corporation (Amerock) is hereby granted a variance from the following effluent standards located at 35 Ill. Adm. Code 304.124: hexavalent chromium, total chromium, copper cyanide, zinc, and total suspended solids, for its discharges of storm water runoff and snow melt runoff subject to the following conditions:

1. This variance begins on June 1, 1985 and expires on September 1, 1986.
2. Amerock shall perform a study regarding the sources of, and measures to eliminate, the discharge of contaminated storm runoff and snow melt runoff and shall submit a written report of its findings to the Agency's Compliance Assurance Section/DWPC, on or before June 1, 1986.
3. Amerock shall, to the extent feasible, install curbing and/or guttering to isolate contaminated flows from noncontaminated water as sources of contamination are discovered. A description of these activities shall be included in the report prepared pursuant to condition 2.
4. In addition to the sampling required by Amerock's NPDES permit, Amerock shall inspect each discharge location during and shortly after periods of rainfall and shall obtain one sample from each discharge per month. The samples from Outfalls 001, 002, 004 and 005 shall be analyzed for the parameters as required by the NPDES Permit and the discharges from the three unpermitted outfalls shall be analyzed for the parameters listed in the NPDES Permit for Outfalls 001 and 004. The results of these analyses shall be attached to Amerock's DMR's and submitted to the Agency.

5. Amerock shall take a grab sample of Kent Creek once each month upstream and downstream of its discharges at a time when discharges are occurring. These samples shall undergo a complete biological and chemical analysis and the results shall be attached to Amerock's DMR's and submitted to the Agency.
6. Amerock shall conduct a biological examination of the bottom of Kent Creek twice a year.
7. Amerock shall conduct a one-time stream sediment sampling program from representative points upstream and downstream of the runoff and snow melt discharge points. These samples shall be analyzed for hexavalent chromium, total chromium, copper, cyanide and zinc. The results shall be included in the report prepared pursuant to Condition No. 2.
8. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Compliance Assurance Unit, Water Pollution Control Division, 2200 Churchill Road, Springfield, IL 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period during which this matter is being appealed. The form of this certificate shall be as follows:

Certificate

I, (We) _____,
 having read the Order of the Illinois Pollution Control Board in
 PCB 84-62, dated _____,
 understand and accept the said Order, realizing that such
 acceptance renders all terms and conditions thereto binding and
 enforceable.

 Petitioner

 By: Authorized Agent

 Title

 Date

IT IS SO ORDERED.

Board Member J.D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30th day of September, 1985 by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board