

ILLINOIS POLLUTION CONTROL BOARD
August 20, 1981

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 80-22
) PCB 80-193
) Consolidated
CATERPILLAR TRACTOR COMPANY,)
)
Respondent.)

JOHN VAN VRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;

RICHARD J. KISSEL AND JOANNA C. NEW, MARTIN, CRAIG, CHESTER & SONNENSCHNEIN, AND STEVEN C. HOFFMAN APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman)

The Board, on its own motion, hereby consolidates PCB 80-22 and PCB 80-193 for the purpose of decision.

This matter is before the Board on the July 29, 1980 complaint filed by the Illinois Environmental Protection Agency (Agency) alleging that Caterpillar Tractor Company (Caterpillar) has violated the Illinois Environmental Protection Act (Act) and certain sections of the Illinois Pollution Control Board rules and regulations, Chapter 3: Water Pollution, in the operation of its manufacturing facility located in Mapleton, Peoria County, Illinois (Mapleton Plant), and the variance petition filed by Caterpillar on October 17, 1980. Hearing was held in this matter on February 27, 1981. No citizen testified at the hearing and the Board has received no public comment in this matter. The Agency's May 22, 1981 motion to file its reply brief instanter is hereby granted.

The Agency's complaint contains three counts of alleged violation. Count I alleges violation of Sections 12(a) and 12(f) of the Act and Rules 401(a) and 901 of Chapter 3 in that Caterpillar caused or allowed the discharge of effluent from its Mapleton Plant with a pH greater than 9.0 in violation of the terms of its NPDES permit. Caterpillar admits the excursion. Count II alleges violation of Sections 12(a) and 12(f) of the Act and Rules 408(a), 410(a), and 901 of Chapter 3 in that Caterpillar caused or allowed the discharge of effluent from its Mapleton plant containing phenol concentrations in excess of 0.3 mg/l.

Caterpillar admits the excursion. Count III alleges violation of Sections 12(a) and 12(f) of the Act and Rules 501(c) and 901 of Chapter 3 in that Caterpillar failed to report quantities of biochemical oxygen demand, oil and grease, total suspended solids, trivalent and hexavalent chromium, phenol and total iron on its discharge monitoring reports required by Caterpillar's NPDES permit. Caterpillar argues that the conditions of its NPDES permit alleged in Count III to have been violated have been stayed pursuant to an appeal by Caterpillar to the United States Environmental Protection Agency (USEPA). The USEPA stayed its inclusion of mass discharge limitations for certain pollutants. When the State of Illinois subsequently assumed the NPDES authority from USEPA, the status of the appeal remained the same. No final Order concerning this matter was ever entered by USEPA. Thus the mass limitation conditions of the permit remain stayed. The reporting requirements per se were never stayed but reporting was contingent on a determination as to the mass limitations requirements.

The Board finds that Caterpillar has not violated its NPDES permit by not reporting the mass discharges in question, as alleged in Count III. Furthermore, from effluent concentration information supplied to the Agency, mass discharge concentrations are calculable. Since Caterpillar admits the allegations of Counts I and II, the Board finds Caterpillar in violation as alleged in those two counts. In determining what remedy is appropriate for these violations the Board considers the factors contained in Section 33(c) of the Act. The Board in this case balances the environmental impact of the admitted excursions with the efforts put forth by Caterpillar to correct the problems.

In considering the low level and the infrequency of Caterpillar's violations of the pH and phenol limitations the Board finds that little or no environmental harm has occurred. The question of Caterpillar's efforts to correct the violations, however, and, indeed, its ability to do so, are not as clear. With respect to the pH violations the Agency alleges poor planning on the part of Caterpillar, including lack of warning devices, corrective procedures described as too little and too late, and failure to have sufficient amounts of chemicals on hand to correct shifts in the pH level. Caterpillar, on the other hand, argues that it had been operating a newly installed system and had experienced numerous operational problems with the startup of its sludge dewatering system, which resulted in a buildup of high-pH lime. Caterpillar states that the automatic acid feed system will resolve any remaining pH control problems. Although acknowledging the problems inherent with the startup of the new facility, we nevertheless find that Caterpillar had had sufficient time in which to correct this environmental problem, especially considering the well known methods and readily available equipment for such control. The Board will therefore order Caterpillar to cease and desist further violation of the pH limitation contained in its NPDES permit.

With respect to the phenol violation the Agency argues that Caterpillar has been violating the permit's limitation since 1977 and cannot project compliance until 1984. The Agency suggests that this is better addressed in a variance proceeding before the Board, and insists that an immediate cease and desist Order is appropriate in this case. Caterpillar argues that its determination of the cause of the violations has been hampered by problems related to increases in phenol discharge concentrations due to the disposal of waste core sand and other phenol-bearing material. These discharges had masked the fact that phenol pickup in the dust collector wastewater system was causing excessive phenol concentration levels. After receiving a preliminary engineering report from a consultant, Caterpillar established a program to determine the best method of control. Caterpillar has an ongoing inhouse research effort to determine the extent of the problem and the best method to be used to correct it. One witness indicates that the evaluation will be completed by January 1, 1982, and estimates that design and construction of appropriate facilities will require an additional 18 months to 2 years (R.79).

The Agency recommends the variance not be granted in PCB 80-193 citing the enforcement case in PCB 80-22. On May 28, 1981, pursuant to a stipulation and joint motion by both parties, the record in PCB 80-22 was incorporated in PCB 80-193. The Board will issue one order herein determining both cases.

The Board finds that, given the fact that certain occurrences masked the cause of the problem, it was not unreasonable for Caterpillar to have waited as long as it did before engaging in a detailed study of the situation. Caterpillar proceeded in a reasonable manner considering the facts in this case. Given the additional fact that the evidence in the record indicates little or no harm to the environment from the phenol violations (see Ex.9), the Board finds that it would impose an arbitrary and unreasonable hardship on Caterpillar to issue an immediate cease and desist Order with respect to the violations. Caterpillar will be ordered to submit by January 1, 1982 to the Agency for its approval a proposal for compliance with the phenol discharge limitation by January 1, 1984. In the interim period, Caterpillar will be ordered to report the status of its compliance program and the Board will impose a daily maximum phenol discharge limitation of 0.7 mg/l, which reflects Caterpillar's actual performance. (Exhibit 1.)

The Board finds that no purpose will be served by imposing a penalty for the violations found herein. The Board shall retain jurisdiction in this matter.

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

ORDER

1. Caterpillar Tractor Company is found to have violated Sections 12(a) and 12(f) of the Environmental Protection Act and Rules 401(a), 408(a), 410(a), and 901 of Chapter 3: Water Pollution Rules and Regulations, as alleged in Counts I and II.
2. Caterpillar Tractor Company is found not to have violated Sections 12(a) and 12(f) of the Illinois Environmental Protection Act and Rules 501(c) and 901 of Chapter 3: Water Pollution Rules and Regulations, as alleged in Count III.
3. Caterpillar Tractor Company shall immediately cease and desist further violation of its NPDES permit with respect to the pH of the discharge of the effluent from its treatment plant in Mapleton, Illinois.
4. Caterpillar Tractor Company shall submit to the Illinois Environmental Protection Agency by January 1, 1982 for its approval a proposal for final compliance with its phenol discharge limitation.
5. Caterpillar Tractor Company shall report to the Agency with regard to the status of its compliance program not less than every 3 months starting April 1, 1982.
6. Until January 1, 1984 or until Caterpillar Tractor Company completes its compliance program as approved by the Agency, whichever first occurs, the phenol discharge from its treatment plant in Mapleton, Illinois shall not exceed 0.7 mg/l as a daily maximum average concentration.
7. Caterpillar Tractor Company shall cease and desist violation of the phenol standard by January 1, 1984.
8. The Board shall retain jurisdiction in this matter.

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 20th day of August, 1981 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board