

ILLINOIS POLLUTION CONTROL BOARD
April 17, 1980

NICHOLS--HOMESHIELD, INC.,)
)
 Petitioner,)
)
 v.) PCB 79-177
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board on a petition for variance filed August 29, 1979 and an amended petition filed December 12, 1979 by Nichols-Homeshield, Inc. (Homeshield). The amended petition seeks a variance from Rules 404(f), 405 and 408 of Chapter 3: Water Pollution (Chapter 3) which set effluent limits for five-day biochemical oxygen demand (BOD), fecal coliform, total suspended solids (TSS) and fats, oils and greases (FOG). On October 31, 1979 and February 5, 1980 the Environmental Protection Agency (Agency) recommended denial of the variance. On March 3, 1980 Homeshield filed a response to the amended recommendation. On March 18, 1980 the Agency filed a reply and a motion for leave to file. The hearing was waived and no public comment has been received.

Homeshield operates a manufacturing plant in Chatsworth, Livingston County. It employs 140 persons and produces aluminum products for house exteriors, including gutters, piping and doors. The plant discharges into an unnamed ditch tributary to the North Fork of the Vermilion River which is tributary to the Illinois River. The plant has several outfalls which are summarized in the following table:

001	Process Wastes
001A	Septic tank effluent
002	Septic tank overflow
003	Noncontact cooling water
004	Septic tank overflow

The septic tanks receive 1540 gallons per day (gpd) (5800 l/day) "continuous discharge" from employee sanitary facilities. Once a month, and in the event of a breakdown of Homeshield's air-cooled compressor, there is a discharge of not more than fifty gpd (190 l/day) of air compressor cooling water via Outfall 003 (Amended Pet. 2; Amended Rec. 2).

On February 22, 1979 the Agency issued to Homeshield NPDES Permit IL 0060283 which authorizes the above-listed discharges. Homeshield first applied for this permit in October, 1978. There is confusion concerning why no NPDES permit application was filed before this date. Homeshield originally stated that it was advised that a permit was required in 1975 and that it applied and withdrew its application in June 1976 after its process water discharge from painting operations ceased due to transfer of painting to another facility (Pet. 4). Homeshield now contends that the references to the 1976 permit application were to an air permit and not an NPDES permit (Response 2).

In early 1978 Homeshield resumed its process water discharge without notifying the Agency. On August 16, 1978 the Agency discovered the discharge and advised Homeshield to apply for the permit which was issued in February, 1979 (Amended Rec. 2). Homeshield has appealed certain conditions of this permit, including the lack of interim discharge limits. This is pending before the Board in PCB 79-66.

Homeshield proposes to come into compliance by discontinuing its discharge by connecting to the Town of Chatsworth's sewage collection system and treatment works when completed around October 30, 1980 (Amended Pet. 3). Homeshield has again ceased its discharge of process water. It has constructed a chromium removal and neutralization treatment process which will serve as pretreatment in the event the painting operation is resumed after connection (Amended Pet. 4). Homeshield has undertaken a program of pumping its septic tanks every two or three weeks (Amended Pet. 5; Response 2). Septic tanks now discharge only four to ten days per month.

Homeshield contends that immediate compliance with the regulations would require construction of treatment facilities for the septic tank flows at a cost of \$125,000 (Amended Pet. 5). The Agency notes that Homeshield has not analyzed less costly means of compliance, including wet hauling of sewage, in-house water conservation, more frequent cleaning of the septic tank and installation of sand filters (Amended Rec. 4). Homeshield states that reduction of water use in employee sanitary facilities is "a measure rejected by plant management" (Amended Pet. 5). The analysis of costs of interim measures is deficient under Procedural Rules 401(a)(6), (9) and (10).

Homeshield contends that the hardship involved in immediate compliance results from the Agency's change of interpretation of the receiving stream as a water of the state (Amended Pet. 3). As discussed above, Homeshield has withdrawn its earlier admission that it was advised of the permit requirement in 1975. Homeshield

resumed its discharge on June 19, 1978, many years after NPDES permits were first required by the Federal Water Pollution Control Act (FWPCA). Homeshield states that "it was not until August 16, 1978 that IEPA inspectors determined that the plant was required to have an NPDES discharge permit" (Amended Pet. 3). Even if this allegation is taken as true it does not amount to reinterpretation. In a variance the burden of proof is upon the petitioner. To establish hardship through reinterpretation it must demonstrate that the Agency actually misled it as to the permit requirement. The Board finds that the hardship of immediate compliance is largely self imposed.

The pleadings contain no explanation of why Homeshield cannot meet the Rule 408 limitation of FOG. This contaminant would not ordinarily be expected in the septic tank or non-contact cooling water discharges. The painting line is shut down and Homeshield does not indicate any intention to reopen it prior to connection with the new sewage system (Amended Pet. 2, 4). Since Homeshield has demonstrated no need for it, the variance for Rule 408 is denied.

In a pending regulatory proceeding the Agency has petitioned the Board to eliminate the fecal coliform effluent standard of Rule 405 for dischargers more than twenty miles upstream of a public water supply or bathing beach (R77-12, Docket D). Homeshield's plant manager states that he "knows of" no public bathing beaches or public water supplies within thirty-five miles downstream of the plant. The burden of proof is on the Petitioner.

Homeshield states that there is "no indication that the plant discharges are harmful to aquatic life" and that "the ditch is not known to be capable of independently supporting aquatic life" (Amended Pet. 3). Procedural Rule 401(a)(7) requires an assessment of environmental impact and data describing existing water quality. Even if these allegations are taken as true, they fall short of the showing that is required for grant of a variance. The variance petition is deficient for this and the other reasons stated above.

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

ORDER

1. The variance is denied.
2. The Agency's motion for leave to file a reply of March 18, 1980 is granted.

IT IS SO ORDERED.

Mr. Goodman concurred. Mr. Werner abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17th day of April, 1980 by a vote of 40.

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