

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1993

AMEROCK CORPORATION, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 92-120  
 ) (Variance)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter is before the Board on Amerock Corporation's (Amerock) August 21, 1992 petition for variance extension. On October 19, 1992, in response to a Board order, Amerock filed an amended petition. Amerock seeks extension of its variance from the effluent limitations for hexavalent chromium, total chromium, copper, cyanide, zinc, and total suspended solids (TSS). (35 Ill.Adm.Code 304.124.) The Board previously granted Amerock a variance for those pollutants on January 9, 1992, as modified on February 6, 1992. (PCB 87-133.) That variance expired on December 21, 1992.

Although the Illinois Environmental Protection Agency (Agency) is required by the Environmental Protection Act (Act) and the Board's procedural rules (415 ILCS 5/37(a) (1992); 35 Ill.Adm.Code 104.180) to file a recommendation in all variance proceedings, the Board has not received any communication whatsoever from the Agency.

Background

Amerock owns and operates a facility in Rockford, Illinois which manufactures high-quality decorative hardware products. The facility includes a wide variety of manufacturing operations necessary to convert alloys of steel, zinc, and copper, as well as plastics, into finished products for the home. Manufacturing operations at the plant include sheet metal fabrication, zinc diecasting, plastic molding, burnishing, buffing, cleaning, electroplating, coloring, painting and lacquering, assembling, packaging, and shipping. Amerock employs approximately 1200 people at its Rockford facility. (Pet. at 1.)

Most work areas in which dust or metal-containing particles are generated are vented to the outside air. Amerock states that this venting is done to comply with the requirements of the federal Occupational Safety and Health Act, and to otherwise ensure employee health and safety. (Pet. at 2.) Amerock states

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that all of its air emission sources are in compliance with the Board's air pollution regulations. However, some of the material exhausted to the atmosphere (primarily metal-containing particulate) settles on the roof of the facility and is washed into the roof drainage system by rain and snow melt. The roof drainage system is routed to eight separate outfalls (numbered 000-007 in Amerock's NPDES permit) which discharge into North Kent Creek. (Pet. at 3.)

In 1983 Amerock discovered that effluent discharges from the eight outfalls exceed, from time to time, effluent limitations for chromium (both hexavalent and total), copper, cyanide, zinc, and TSS. Amerock petitioned this Board for a variance for those parameters, and the Board granted variance on September 20, 1985, in PCB 84-62. As modified on November 21, 1985, the variance expired on September 1, 1987. Amerock then filed a petition for extension of that variance. The Board granted that petition on January 9, 1992, in PCB 87-131. As modified on February 6, 1992, the variance extended from December 21, 1987, to December 21, 1992. It is that variance granted in PCB 87-131 which Amerock seeks to extend.

#### Compliance Plan

As a condition of its first variance, Amerock was required to investigate possible means of compliance with the effluent standards. (PCB 84-62, September 20, 1985, p. 5.) Amerock hired Lancy International, Inc. to study the problem and recommend control options. Lancy's report gave five alternative control options: collection and treatment, abatement at the source, sanitary sewer discharge, combination with cooling water discharge, and retention after collection for slow release into the cooling water discharge. Amerock evaluated the options, and determined that only two would be further investigated: collection and treatment of the roof run-off at Amerock's on-site treatment facility, and source abatement. Amerock contends that the cost of these control options range from approximately \$2.5 million for collection and treatment to \$7 million for source abatement. (Amended pet. at 2.) In addition to these options, Amerock prepared and filed a petition for site-specific rulemaking which would raise the applicable effluent limitations and change the limitations from concentration-based to mass-loading in pounds discharged per month. (Pet. at 2-3.) That site-specific petition, docketed as R87-33, is currently pending before the Board.

Amerock seeks a variance from December 22, 1992 until December 22, 1995, or until the Board takes final action granting the site-specific rule, whichever occurs first. In the event that the Board denies the site-specific rulemaking request, Amerock will conduct a more detailed analytical evaluation of the two control options. (Amended pet. at 2.) Amerock states that

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it has included time in its variance request to enable such analyses to be conducted. (Amended pet. at 2.)

#### Environmental Impact

Amerock contends that there is minimal, if any, adverse environmental impact from its storm water discharge into North Kent Creek. (Amended pet. at 2.) In support of this contention, Amerock has incorporated information from the record in R87-33, including the results of biological surveys, effluent and water quality data, and the Agency's water quality report (1988-1989).

#### Consistency With Federal Law

There is no direct information in this record on whether the requested variance would be consistent with federal law. However, the Board notes that in PCB 87-131, the Agency stated that the Board could grant that variance consistent with federal regulations.

#### Hardship

Amerock states that the cost of immediate compliance with the applicable effluent limits far outweighs the minimal, if any, adverse environmental impact of the storm water discharge. Additionally, Amerock points out that if the Board grants its requested site-specific rule, additional control expenditures will be unnecessary. (Amended pet. at 2.)

#### Conclusions

After a review of the record, the Board finds that immediate compliance with the effluent standards for hexavalent chromium, total chromium, copper, cyanide, zinc, and total suspended solids, found at 35 Ill. Adm. Code 304.124, would impose an arbitrary or unreasonable hardship. Although there is not a great deal of sampling information in the record of this proceeding, the Board believes that the information which does exist indicates that any impact of Amerock's current discharges on water quality and biota is minimal. The Board finds that Amerock has demonstrated satisfactory progress towards compliance, although compliance has not yet been obtained. The minimal environmental impact, together with Amerock's satisfactory progress towards compliance and the fact that compliance expenditures may not be necessary if a site-specific rule is granted, lead the Board to conclude that immediate compliance with the applicable effluent standards would result in an arbitrary or unreasonable hardship.

The Board notes that it has historically been very reluctant to grant variance where, as here, the petitioner has not actually committed to a specific method of attaining compliance. The Board recognizes, however, that Amerock has specifically

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committed to implementing either the collection and treatment option or the source abatement option if the requested site-specific rule is denied. Because of the peculiar circumstances of this case, and based upon the specific commitment to achieve compliance by the end of this variance, the Board will grant the requested variance.

The Board also points out that the conclusions it reaches based upon the record of this variance proceeding do not necessarily reflect on the merits of Amerock's site-specific rulemaking proposal, currently pending before the Board in R87-33. The burdens of proof and the standards of review in a rulemaking (a quasi-legislative action) and a variance proceeding (a quasi-judicial action) are distinctly different. (Cf. Titles VII and IX of the Act; see also Willowbrook Development v. Pollution Control Board (2d Dist. 1981), 92 Ill.App.3d 1074, 416 N.E.2d 385.) The Board cannot lawfully prejudge the outcome of a pending regulatory proposal in considering a petition for variance. (City of Casey v. IEPA, 41 PCB 427, 428 (PCB 81-16, May 14, 1981).)

This opinion constitutes the Board's findings of fact and conclusions of law.

#### 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. This variance applies to Amerock's facility located at 4000 Auburn Street, Rockford, Illinois, and is subject to the following conditions:

1. This variance begins on December 22, 1992, and expires on the earlier of: December 22, 1995, or the date of final action on any grant of Amerock's requested site-specific rule, currently pending before the Board in R87-33.
2. During the period of the variance, Amerock's discharges shall not exceed the following limits:

<u>Constituent</u>	<u>Limitation (lbs/month)</u>
chromium (hexavalent)	1.0
chromium (total)	4.0
copper	20.0
cyanide (total)	3.0
zinc	60.0
total suspended solids	300.0

3. In addition to the sampling required by Amerock's NPDES

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permit, Amerock shall inspect each discharge location during and shortly after periods of rainfall. Amerock shall obtain one sample from each outfall per month. The samples shall be analyzed for the parameters required by the NPDES permit. The results of these analyses shall be attached to Amerock's DMRs and submitted to the Agency. If no discharges occurred during the month, Amerock shall so indicate in its DMRs.

4. Amerock shall sample the water and sediment of North Kent Creek once each month at sites: (1) upstream of Outfall 000; (2) between Outfalls 001 and 003; (3) between Outfalls 004 and 007; and (4) downstream of Outfall 007. This sampling shall occur at a time when discharges are present. However, even if no discharges occur in a given month, Amerock shall take the monthly samples at the locations listed above. These samples shall undergo chemical analysis for the parameters listed in Condition 2, except that sediment samples need not be analyzed for total suspended solids. The results of the analyses shall be attached to Amerock's DMRs and submitted to the Agency.
5. Amerock shall continue to conduct a biological survey of North Kent Creek to monitor any impact of its discharges on the biological organisms in the stream. These surveys shall be conducted twice a year at similar sampling locations to those for chemical analysis listed in Condition 4. The results of these surveys shall be submitted to the Agency's Compliance Assurance Section, Water Pollution Control Division, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276.
6. Within forty-five days of the date of this order, Amerock shall execute and forward to:

Lisa Moreno  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19276  
2200 Churchill Road  
Springfield, Illinois 62794-9276

a certificate of acceptance and agreement to be bound to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45-days renders this variance void. The form of certificate is as follows.

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Certificate of Acceptance

I (We), \_\_\_\_\_,  
 hereby accept and agree to be bound by all terms and conditions  
 of the order of the Pollution Control Board in PCB 92-120,  
 February 4, 1993.

\_\_\_\_\_  
 Petitioner

\_\_\_\_\_  
 Authorized Agent

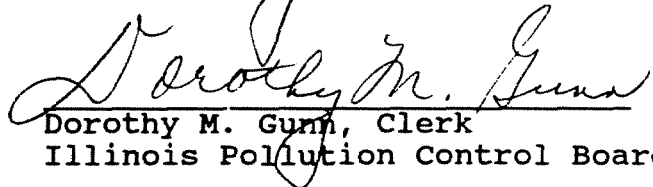
\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 4<sup>th</sup> day of February, 1993, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board

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