



the lagoon with inner tubes to reduce winter heat loss, and the installation of a plastic barrier across the lagoon to promote maximum bacterial utilization and to act as a retainer for the inner tubes. In June 1983 Quaker began to recycle part of its wastewater which resulted in compliance from July through November 1983.

Before recycling was initiated, the Agency sent Quaker a pre-enforcement conference letter on April 12, 1983 giving notice of five-day biochemical oxygen demand (BOD<sub>5</sub>) and total suspended solids (TSS) violations, color and turbidity effluent violations, and failure to submit complete notices of non-compliance (NON's) (Agency Rec. at 12). A pre-enforcement conference was held on May 16, 1983. On July 6, 1983 the Agency sent an enforcement notice letter to Quaker. Quaker filed this petition for variance on August 5, 1983.

In the past Quaker has been unable to comply during the winter and early spring months (1st Amended Petition, Exhibit A). In 1981 Quaker asked permission of the City of Pekin to connect to the City's sewage treatment plant (STP). Permission was denied (1st Amended Petition). However, Quaker has now entered into a written agreement with the City of Pekin for the City's STP to treat the flow from Quaker's WWTP during periods of non-compliance. The agreement is for an initial 5 year period with a renewal option. The City may terminate the agreement for cause by 10 days advance written notice (Waste Water Discharge Agreement at 7). The full agreement is attached to the Agency's Amended Recommendation. Quaker has represented that it will be in compliance by May 1984 (1st Amended Pet. at 13).

The cost of Quaker's attempts to comply with the state regulations has been approximately \$1,250,000 from 1970 through the end of 1983, of which \$452,000 was the cost of the initial WWTP in 1970 (1st Amended Pet. at 8). The total cost figure includes engineering fees. The agreement with the City of Pekin requires that Quaker pay the City a minimum user fee of \$25,000 per year, \$1,000 permit fee per year, and no more than \$5,000 for sewer modifications.

As in any variance proceeding, the burden is on the petitioner to show that compliance with the Board rules and regulations would impose an arbitrary or unreasonable hardship on petitioner. Quaker argues that compliance with the applicable regulations would impose an arbitrary or unreasonable hardship on it because of "the technological difficulty of achieving cold weather compliance" and because of the "Agency's sudden and unjustified change in position regarding the acceptability of Quaker's previous compliance efforts" (Pet. Brief at 1). Quaker states that the Agency wanted it to abandon its deep bed sand filter and to consider an activated sludge treatment system (Pet. Brief at 7; Exhibit U). Quaker wanted to refine and improve

the existing system (Pet. Brief at 7). Quaker asserts that for 13 years it worked together with the Agency and that now the Agency wants to throw those efforts away.

The Agency asserts that enforcement decisions have nothing to do with a finding of whether an arbitrary or unreasonable hardship exists and that the Agency has not changed its position towards Quaker (Agency Brief at 1, 2). The Agency states that it made recommendations and is now moving toward enforcement because of Quaker's minimal efforts to achieve compliance with the regulations (Agency Brief at 2). The Agency cites two similar paper board manufacturing companies in Illinois that meet the state effluent standards of 30 mg/l BOD<sub>5</sub> and 30 mg/l TSS (Agency Rec. at 2, 3). Quaker is asking the Board for interim effluent standards of 81 mg/l BOD<sub>5</sub> and 134 mg/l TSS (1st Am. Pet. at 1) while its performance history would dictate much lower concentrations (Agency Am. Rec. at 3, 4).

The Agency further asserts that Quaker has been dragging its feet in implementing Agency recommendations. Physical/chemical treatment (polymer) and a nutrient control system were recommended in 1979 and finally implemented in 1982 or 1983 (Exhibit S; Agency Rec. at 11). Prior to 1979 NON's were not sent by Quaker to the Agency and afterward only incomplete NON's were sent (Exhibit S; Agency Rec. at 10, 12). The BOD and TSS excursions as well as the color and turbidity violations of 1979 were still present in early 1983 (Id.).

The Board agrees with the Agency that Quaker did not timely implement the recommendations of the Agency or similar corrective measures. The Board notes that Quaker did install the deep bed sand filter in 1977 but further timely efforts were not forthcoming. Although Quaker states that it filed a variance petition to escape the Agency's change in position, it appears that it was to avoid an enforcement proceeding. Enforcement efforts and decisions have nothing to do with the question of arbitrary or unreasonable hardship. Quaker has failed to sustain its burden in showing that compliance with the applicable regulations would impose an arbitrary or unreasonable hardship on itself. To the extent that there is any hardship, it was self-imposed by Quaker's lethargic attempts at compliance.

Quaker is asking for a retroactive variance, which is normally denied by the Board except under exceptional circumstances. Quaker enumerates its compliance efforts and cites Shell Oil Company v. PCB, 24 Ill. App. 3d 549, 321 N.E.2d 170 (1974) for the proposition that Quaker should be entitled to a retroactive variance. The appellate court in Shell cited the prior Board case Union Oil Company v. IEPA, 10 PCB 217 (PCB 72-447, December 6, 1973), wherein a prospective variance was granted to Union Oil. Neither citation supports Quaker's proposition.

While Quaker has requested variance from Section 12(a) of the Act, it has not provided the Board with sufficient evidence to warrant the grant of variance from this statutory section.

The requested variance is denied.

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


ORDER

Quaker Oats Company petition for variance from Ill. Rev. Stat. 1983, ch. 111½, par. 1012(a), 35 Ill. Adm. Code 304.120 (a) and 304.141 is hereby denied.

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 19<sup>th</sup> day of July, 1984 by a vote of 6-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board