

ILLINOIS POLLUTION CONTROL BOARD
May 27, 1982

CARGILL, INC.,)
)
) Petitioner,)
)
) v.) PCB 81-37
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

MS. PERCY L. ANGELO AND MS. PRISCILLA P. WEAVER; MAYER, BROWN
AND PLATT, APPEARED ON BEHALF OF CARGILL, INC.

MR. PHILLIP R. VAN NESS, STAFF ATTORNEY, APPEARED ON BEHALF OF
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

This matter comes before the Board upon a March 5, 1981 petition for review filed by Cargill, Inc. concerning certain conditions of its NPDES Permit No. IL 0051977 issued by the Illinois Environmental Protection Agency (Agency) on February 6, 1981, for Cargill's Carpentersville plant in Kane County. Hearing was held in Carpentersville on June 11, 1981. Cargill filed its brief with the Board on July 23, 1981, and the Agency filed its brief on August 26, 1981. The Board adopted an Interim Order on October 8, 1981 requesting briefs on certain issues relating to the characterization of the Cargill storm water collection and spill control system (system) and whether an NPDES permit is required for that system. The Agency filed its brief on November 18, 1981 and Cargill filed its brief on November 23, 1981.

On May 20, 1982 Cargill filed a response to Board discussion of May 13, 1982 and on May 26, 1982 the Agency filed a response to that filing. While these submissions are not generally provided for under the Board's procedural rules, they were considered.

The Cargill plant and system are fully described in the Board's Opinion and Order in PCB 79-240 (39 PCB 358; August 21, 1980). These facts have, apparently, remained unchanged and will not be repeated, except as necessary for decision.

The threshold question in this appeal is whether an NPDES permit is required for this system's discharge to the Fox River. The Agency contends that the record in this matter "clearly

discloses the presence in Cargill's discharge of untreated and treated flows containing waste substances for which standards have been established by the Board in Chapter 3" (Ag. Br. p.2). Since that is true, the Agency argues, the influent to the Cargill system is wastewater and the system must, therefore, be considered a treatment works requiring an NPDES permit.

Cargill, on the other hand, argues that the system is not a treatment works "because it does not treat 'wastewater'" (Carg. Br. p.2). Therefore, no NPDES permit should be required.

Under Rule 901 of Chapter 3, an NPDES permit is required for "the discharge of any contaminant or pollutant into the waters of the State from a point source." There is no dispute in this case that the discharge is to waters of the State from a point source. The question then becomes whether "contaminants" or "pollutants" are discharged.

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 requirements for NPDES permits are presented in 40 C.F.R. 122.51 and require a permit for the discharge of any pollutants from a point source into waters of the United States [See also 33 U.S.C.A. §1342(a)(1)]. Since the Board's definition of "Pollutant" in Rule 104 of Chapter 3 tracks the federal definition of "Pollutant" under the Clean Water Act (33 U.S.C.A. §1362(b) and 40 C.F.R. 122.3), the question is reduced to whether pollutants are discharged.

As defined in Rule 104, "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." Therefore, under the facts of this case an NPDES permit can only be required if material discarded from the plant operations is discharged along with stormwater runoff. That question is not, as the Agency suggests, answered by simply showing that the discharges have violated Board standards. It is answered, rather, through a determination of the origin of the various components of the discharge.

It is undisputed that the Cargill discharge contains no process wastes. While the Board found such wastes were previously discharged by Cargill in PCB 76-125, Cargill instituted a program to seal overflows from holding tanks which contained such waste, and have apparently ended such discharges.

The record indicates that the discharge in this case includes iron (at an unspecified low level), phenols (at a maximum observed or expected level of 0.04 mg/l), BOD₅ (at a maximum observed or expected level of 75-100 mg/l), COD (at a maximum observed or expected level of 200 mg/l) and Suspended Solids (at a maximum

observed or expected level of 70-80 mg/l) (Pet. Ex. 9 pp.II-6 and 7).

The record contains little evidence as to the origin of contaminants in the system's discharge. Keith Long, Cargill's environmental coordinator, did testify that some of Cargill's raw materials contain trace phenols as contaminants which "come off of the petroleum extraction stage" (R. 85), but there is no showing that those same phenols are discharged through the system. He also testified that rainwater, especially in a highly industrial area, as is the case around the Cargill plant, will have "some sort of COD level" (R. 93).

Based on this record, the Board cannot find that material discarded from the plant operations was discharged along with stormwater runoff. The contaminants may well simply 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. Under these facts the necessity of an NPDES permit has not been established and the appeal of its conditions is thereby mooted.

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

ORDER

Proceedings in PCB 81-37 are hereby dismissed.

IT IS SO ORDERED.

I. Goodman dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 27th day of May, 1982, by a vote of 4-1.

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