ILLINOIS POLLUTION CONTROL BOARD
September 6, 1979

ALLAERT RENDERING, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 77-334
	)	
ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

Mr. John L. Parker, John L. Parker & Associates, Ltd., appeared for the Petitioner;
Mr. Dennis Fields, Special Assistant Attorney General, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Young):

Allaert Rendering, Inc. (Allaert), Petitioner herein, seeks a variance from Sections 12(a), 12(b) and 12(d) of the Environmental Protection Act (Act), and Rules 601, 901(a), 902(a), 903(a), 951(a) 952(a), 953(a) and 1201 of Chapter 3: Water Pollution of the Board's Rules and Regulations.

The original Petition for Variance was filed December 14, 1977, and would allow the Petitioner to continue the discharge of waste water from Petitioner's facility into an unpermitted lagoon until the effluent is diverted to a municipal sewer system. Amendments to the petition were filed on November 6 and 16, 1978, revising the schedules for completion and implementation with final diversion and compliance by December 15, 1979. Petitioner has waived the right to decision within 90 days pursuant to Section 38 of the Act until October 4, 1979.

Motion was made on December 14, 1977, to consolidate the Petition for Variance with an enforcement proceeding, EPA v. Allaert Rendering, Inc., PCB 76-80, which had been filed March 19, 1976. The Environmental Protection Agency filed an objection to the proposed consolidation and moved to strike the variance proceeding on December 28, 1978. On January 5, 1978, the Board denied both motions. Pursuant to a Board Order of February 16, 1978, the Agency then filed a Recommendation on March 3, 1978, that the variance be denied.

Hearing on the variance petition was held on November 8, 1978, in Rock Island, Illinois. Hearings on the enforcement action (PCB 76-80) were held at the same location on November 8 and 9, 1978. The parties stipulated that the entire record

of the enforcement case, EPA v. Allaert Rendering, Inc., PCB 76-80, be incorporated into the variance proceeding.* The enforcement record includes a lengthy transcript of 496 pages and numerous exhibits submitted by both parties. The Board notes that the Order of January 5, 1978, which denied consolidation, did not produce a single, complete record in this variance hearing which had been intended by the Order. Petitioner's brief was filed May 29, 1979; Respondent's brief was filed June 5, 1979.

Allaert Rendering, Inc. is an Iowa corporation, incorporated in April 1974, is licensed in Illinois and is the continuation of a sole proprietorship dating back to 1940 owned by Wilbur Allaert located on the same 40-acre site near the Village of Carbon Cliff, Hampton Township, Rock Island County, Illinois and in the same facilities. Paul W. Allaert was manager of the plant from 1971 to 1974 and has been Vice-President and General Manager of the corporation since 1974 as well as a director and owner; he has served in various capacities at the plant since 1945. Petitioner operates a rendering plant which processes animals, meat scraps, bone and restaurant grease to recover tallow, grease, oil and hides. The plant processes approximately 30,000-40,000 pounds of material per day; the payroll was approximately $225,000 and about 20 persons are currently employed by Petitioner. (Pet. 3-4; Enf. R. 62-64, 456-460; C. Exh. #1).

The plant discharges an average of 29,750 gallons per day with concentrations of BOD_5 at 318 mg/l, suspended solids at 221 mg/l, and oil and grease at 193 mg/l (Pet. 5). In the permit application (C. Exh. #1), raw strength of the discharge is given as BOD_5 - 468 mg/l, suspended solids - 329 mg/l, and oil and grease - 193 mg/l. The Agency reports (Rec. 5) the following analysis of three grab samples taken July 7, September 8 and November 18, 1975, at the point of discharge to the lagoon:

BOD (mg/l)	TSS (mg/l)	Fecal Coliform (per 100 ml)
990	352	58,000,000 (est.)
490	180	200,000
430	280	1,500,000

Waste water from processing operations and from clean-up is discharged to three-one thousand gallon septic tanks which serve as grease traps and remove some suspended solids; grease is removed from the septic tanks daily. Discharge from the three tanks goes into a 1500 gallon septic tank and thence through a grease trap into a lagoon. (Pet. 4-5; Enf. R. 70-74, 80-84, 227-228).

*The transcript from the variance proceeding will be cited herein as the Variance Record (Var. R.) and the transcript of the enforcement action as Enforcement Record (Enf. R.) because the transcripts are not consecutively numbered.

Paul W. Allaert testified that the establishment has been in the same area doing basically the same thing since 1919. The plant "is approximately half a mile or one mile from the Village, which is situated with homes. There are several farms adjacent to the area." The eastern boundary of the property is the Rock River (Enf. R. 123-124). The process building is located 1000-2000 yards west of the Rock River during normal river flow; the three-one thousand gallon septic tanks are about 15 yards east of the process building; the 1500 gallon septic tank is approximately 45 to 40 yards east of the building; the lagoon lies east of the 1500 gallon septic tank; from the western part of the lagoon to the eastern part of the lagoon is an estimated 1000 yards (Enf. R. 68-69; C. Exh. #5). The record does not indicate the surface area of the lagoon nor the volume of waste water contained therein. The facility is located in a flood plain; previous to the construction of a dike in 1973 the Rock River occasionally flooded the site and on at least one occasion reached approximately one-eighth to one-quarter of a mile west of the processing facility (Enf. R. 99-100, 140); on May 9, 1978, the lagoon system was observed to be inundated by the river (Enf. R. 166-167).

The record indicates that no permits have been issued by the Agency for the construction or operation of the existing waste water treatment facilities (Enf. R. 81-84). Petitioner submitted a permit application on February 10, 1976, which was denied by the Agency on March 4, 1976. Grounds for Agency denial (C. Exh. #2) are as follows:

> "The information submitted is not adequate to show that the proposed infiltration lagoon will not cause pollution of the groundwater in the area. In view of the high strength of this waste and the high groundwater table in the area, we suggest that you contact the Illinois State Water Survey for advice regarding the suitability of the area for this type of system and an effective system of groundwater monitoring wells."

Over one year later, Allaert submitted additional information in support of the permit application including a copy of a letter from the Illinois State Water Survey; a report of a recently drilled well on the site; laboratory analysis done on water samples from three wells on the site; soil boring logs; laboratory test data and a location diagram for the proposed infiltration lagoon; and, a well location map (C. Exh. #3). On June 8, 1977, the Agency again denied the application; the denial letter (C. Exh. #4) is as follows:

"Allaert Rendering, Inc.
Carbon Cliff, Il. 61239

Gentlemen:

This Agency has reviewed your Application for Permit and the supporting documents for the subject project which were received on March 15, 1977. This Agency must deny the permit for this project for the following reasons:

Sections 12 and 39 of the Environmental Protection Act prohibit the Agency from issuing a permit for any facility which would threaten, cause or allow the discharge of contaminants which might cause or tend to cause water pollution in Illinois, Section 39 of the Act also requires an applicant to submit proof to the Agency that the proposed facility will not cause a violation of the Act or of the Regulations of the Illinois Pollution Control Board.

In addition to the above cited Sections of the Act, the permit application does not fulfill the requirements of Rule 962, Chapter 3, Water Pollution Regulations of the Illinois Pollution Control Board.

The following information, clarification or corrections must be provided for us to complete our technical review and are to be considered specific reasons why the Act and Chapter 3 Regulations will not be met:

1. The information submitted is not only not adequate to show that the proposed facilities will not cause pollution of groundwater but it seems to show that the potential for groundwater pollution from the proposed facilities is quite high. The Illinois State Water Survey's October 27, 1976 letter states that the available data indicates that the potential for polluting the groundwater is high. Your consulting engineer believes that the Survey's letter constitutes only a generalized report on the soil conditions in the area because the letter does not identify the "available data" referred to in the letter. The letter appears to be quite clear in stating that the available data indicates that the glacial materials in the area are less than 25 feet thick with an underlying creviced formation. Since the soil borings on the Allaert Rendering, Inc. property show that the glacial material is 4 to 8 feet thick with underlying creviced limestone, it would appear that the State Water Survey's assumptions are valid for the Allaert property and we agree with their opinion that the potential for groundwater pollution from the proposed facilities is high.

2. Although your consulting engineer states that he is aware of no specific information concerning the site which shows that Allaert's existing treatment system causes groundwater pollution, the submission contains no information regarding how much, if any, of Allaert's wastewater is presently reaching the groundwater. The submission states that no contamination has been found in the Allaert wells or the Carbon Cliff wells but absolutely no information is presented which would indicate that any groundwater contamination caused by the Allaert facilities would show up in any of the wells mentioned.

3. Your submission refers to Section 212 F of this Agency's Division of Public Water Supplies "Technical Policy Statements" dated January 13, 1975 and states that the "Technical Policy Statements" only require a distance of 150 feet from sources of pollution such as leaching sewage disposal pits to wells and therefore the proposed facilities at Allaert Rendering, Inc. should be accepted as submitted since there are no wells within 150 feet of the proposed facilities. Your submission conveniently fails to mention that the proposed infiltration-percolation system is designed to discharge wastewater into a creviced limestone formation and that Section 212 F of the "Technical Policy Statements" states that caution is urged regarding the location of structures in areas where creviced limestone may be disturbed because pollution may be expected to travel for great distances.

Based on the information we have available, we must conclude that the area where you propose to build your infiltration-percolation system is unsuitable for such a system because of the creviced limestone formation in the area and we suggest that you consider some other wastewater treatment alternatives.

The Agency will be pleased to re-evaluate your permit application on receipt of your written request and the necessary information and documentation to correct or clarify the deficiencies noted above. The revised application will be considered filed on the date that the Agency receives your written request.

If you have any questions about this denial of your application or need any additional information concerning Agency requirements, please contact Environmental Protection Engineer Charles W. Fellman, who may be reached at the telephone number and address shown above.

Very truly yours,

William H. Busch, Manager
Permit Section
Division of Water Pollution Control"

Petitioner's consulting engineer Meyer testified that no percolation tests were run and that no testing of the soil or rock was done because "we had no standard to relate that number to" (Enf. R. 444-445). Petitioner's consulting engineer Karlovitz testified that there was nothing in the first permit application to indicate how much soil was under the lagoon; the type of rock under the lagoon; the permeability of any rock under the soil; what the bedrock was composed of; the presence or absence of fissures, cracks or crevices in the rock; the amount or strength of waste water moving through the ground; the direction of groundwater flow; and whether or not waste water from the facility reaches the river or pollutes the groundwater (Enf. R. 233-241). In relation to the second permit application, Mr. Karlovitz testified that the application indicates that dolomite rock (sic) was located under the facilities; that soil borings indicated limestone, weathered limestone and highly weathered limestone at from 4 to 7.8 feet; that the depth of the limestone was not given or the type of material underlying the limestone; that there was nothing to indicate whether or not the limestone under the facility or in the vicinity was creviced, cracked or fissured; and, that there was nothing to indicate the direction of groundwater flow (Enf. R. 242-251).

The petition presented a tentative schedule for compliance which was modified by later amendment; final diversion of waste water to the Village of Carbon Cliff is scheduled for December 15, 1979. Petitioner's Vice-President and General Manager testified concerning the schedule; the plant site was annexed to the Village of Carbon Cliff January 31, 1978; the property was zoned heavy industrial; arrangements have been made with the Village to receive waste water from Petitioner; a schedule for accomplishing the diversion to the Village has been prepared and adopted as a firm and positive company commitment; and, that the cost of annexation is $7,000 (Var. R. 16-21). Mr. Karlovitz gave testimony regarding the

process changes and equipment necessary to the connection to the Carbon Cliff sewer; basically the waste water is to flow to a new mechanical catch basin where grease and solids are removed; then to a flow-measuring station; through a lift station consisting of a concrete structure and two pumps; and thence through approximately 3,300 feet of force main to the Carbon Cliff sewer (R. 24-25). The estimated cost of construction is approximately $120,000 broken down as follows: Lift station, $30,000; flow monitoring station, $10,000; mechanical catch basin, $30,000; force main, $30,000; and, contingency $10,000 (Var. R. 27). Petitioner's Vice-President and General Manager testified that after connection is made to the Village sewer, the present pond system "is going to be bulldozed over, and we are going to plant crops" (Enf. R. 130). When questioned regarding disposition of the waste water in the lagoon after connection to the Carbon Cliff sewer, he replied, "I know it can be pumped; and if we have to pump it into our new system, it will be going into the municipal system (Enf. R. 138).

Petitioner's consulting engineer Karlovitz testified that there were several technically feasible alternatives to compliance including connection to the Carbon Cliff sewer system, a non-aerated lagoon followed by chlorination, an aerated lagoon followed by chlorination, a biodisc system, an activated sludge treatment plant, a trickling filter treatment plant, a physical chemical treatment plant and an infiltration-percolation system (Enf. R. 252-254). The costs of the alternative treatment systems as estimated by the consulting engineer (Enf. R. 273-278) in 1975 are as follows:

Compliance Alternative	Capital Costs	O & M*
Non-aerated Lagoon	258,000	35,000
Aerated Lagoon	92,000	23,000
Biodisc	76,000+	22,000
Activated Sludge System	76,000+	30,000+
Trickling Filter System	76,000+	30,000+
Physical Chemical Treatment System	76,000+	30,000+
Infiltration-Percolation System	65,000	11,000
Connection to Carbon Cliff**	120,000	11,000

*Annual operation and maintenance cost.
**1977 cost estimate

The witness testified that the estimated costs had increased in excess of 30 percent since 1975 (Enf. R. 277).

Petitioner refused to answer certain interrogatories relative to the financial records of the Petitioner; the Hearing Officer ruled that evidence regarding economic reasonableness be excluded (Var. R. 26). Petitioner offered to disclose "if we could do it under proper protective order sanctions" (Var. R. 11). Petitioner had filed April 25, 1978, an application for non-disclosure in PCB 76-80 which was denied by the Board on May 12, 1977, with a finding that a blanket grant of non-disclosure for all financial records was not justified. During the enforcement hearing, the Petitioner made an offer of proof (Enf. R. 131) regarding the introduction of evidence on economic reasonableness; the offer is rejected by the Board and the order of the Hearing Officer is affirmed. Even if the evidence were admitted, figures reporting "net income", with nothing more, are of very questionable value in establishing the economic condition of a corporation or individual.

In a variance proceeding, Olin Corporation v. Environmental Protection Agency, PCB 72-253, 5 PCB 131 at 132; the Board (by Mr. Parker) said:

> " We note that information on market shares and fiscal projections and payout is exactly what we on the Board (and the public) have to weigh in these proceedings for variances. If the costs are confidential then the public is really excluded and we have repealed the Act's intent."

In a later Order in the same case, the Board (by Mr. Lawton) said at 5 PCB 384:

> "The overall thrust of the Environmental Protection Act is to stimulate and welcome public participation and give assurance to the maximum possible extent that the basis for all Board decisions is not only set forth in the opinions but available for public scrutiny and consideration. Variances, by their very nature, are premised on arbitrary or unreasonable hardship resulting to the applicant as a result of the enforcement of the Board's rules. This, in virtually every case, is a matter of economics to which such matters as profit and loss, cash flow, product cost, manufacturing overhead, sales data and related subjects are relevant. To deprive public observation of these subjects could deprive the public of comprehending the basis on which our decisions are rendered. Accordingly, we are reluctant to enter non-disclosure orders except in instances where the subject matter is clearly within the protected categories and the likelihood of harm

> is both severe and reasonably certain. The arguments made by Olin for non-disclosure would be available to every petitioner in a variance case where the manufacturing process and competitive sales position were involved."

The regulations of the Pollution Control Board requiring permits for the construction and operation of waste water treatment facilities were adopted March 7, 1972, and became effective April 16, 1972. A permit application was first submitted on February 10, 1976. The record indicates that the Petitioner was informed of the permit requirements at least as early as January 20, 1975 (C. Exh. #6) when he was sent a copy of Chapter 3 of the Pollution Control Board Rules and Regulations.

Section 39 of the Act provides that it shall be the duty of the Agency to issue a permit upon proof by the applicant that the facility shall not cause a violation of the Act or the regulations of the Board. Rule 962 of Chapter 3 provides that the Agency shall not grant any permit unless the applicant submits adequate proof that the facility will be constructed, modified or operated so that it will not cause a violation of the Act or the regulations or has been granted a variance. Rule 962 further provides that the permit not be issued unless the facility either conforms to the design criteria promulgated by the Agency under Rule 967 or is based on such other criteria which the applicant proves will produce consistently satisfactory results.

The Board finds that the supporting information submitted with the Petitioner's permit applications of February 10, 1976 and March 11, 1977 was not sufficient to prove that a violation of the Act or the regulations would not occur if the permit was issued. There simply is no information in the record to adequately inform the Board of the geological formation under the lagoon. Thorough knowledge of the geologic conditions is essential to the understanding of the natural plumbing system within it. Nothing is known of the primary porosity of the underlying formation and even formations having low primary porosity may afford appreciable secondary porosity because of fractures such as joints, faults and other openings. Solution of carbonate rocks such as limestone and dolomite by water may greatly increase the secondary porosity. No information was submitted on any monitoring information from a downslope well, between the lagoon and the Rock River; instead, information was submitted from wells located west of the lagoon, away from the river. The Board finds nothing to indicate that denial of the Petitioner's permit applications was arbitrary or unreasonable.

Additionally, the Board is most reluctant to grant variances from permit requirements and has stated:

> "The permit requirements are an absolutely essential part of the State's pollution control program; viewing them as loose or avoidable technicalities can lead to a breakdown in the entire program and it is therefore our opinion that dates for the submission of permit applications and for the possession of approved permits should not be extended or relaxed except in the most unusual or extraordinary circumstances." Armak Company v. Environmental Protection Agency, PCB 72-414/PCB72-415 (consolidated), 6 PCB 661 at 663.

The Board does not find such circumstances in the record before it in this case.

The record indicates a number of technical alternatives to compliance were available to the Petitioner in 1975. Reviewing the cost estimates submitted to the record by Petitioner's consulting engineer, the Board finds the costs substantially similar to the costs of the compliance alternative selected by the Petitioner.

No evidence was submitted in support of the request for variance from Rules 601 and 1201 of Chapter 3 of the Board's rules and regulations. Further, the Board is without authority to grant a variance from the provisions of the Act (Ill. Rev. Stat., ch. 111 1/2, § 1035). (See Currie, Illinois Pollution Law Enforcement, (1975) (70 Northwestern L. Rev. 389; 408-409, 468, Note 95). Accordingly, the petition for variance from Rules 601 and 1201 and Sections 12(a), 12(b) and 12(d) of the Act will be dismissed.

The petition for variance from Rules 901(a), 902(a), 903(a), 951(a), 952(a) and 953(a) of Chapter 3 of the Board's rules and regulations will be denied.

After consideration of the applicable Section 33(c) criteria of the Act as discussed in the foregoing, the Board finds Petitioner has not sustained his burden of proof, no basis on which to allow a grant of the variance requested and further finds that any hardship visited upon the Petitioner is largely self imposed.

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

ORDER

1. The Petition for Variance of Allaert Rendering, Inc. from Rules 901(a), 902(a), 903(a), 951(a), 952(a) and 953(a) of Chapter 3: Water Pollution, of the Pollution Control Board Rules and Regulations, is hereby denied.

2. The Petition for Variance of Allaert Rendering, Inc. from Rules 601 and 1201 of Chapter 3: Water Pollution, of the Pollution Control Board Rules and Regulations, is hereby dismissed.

3. The Petition for Variance of Allaert Rendering, Inc. from Sections 12(a), 12(b) and 12(d) of the Environmental Protection Act is hereby dismissed.

IT IS SO ORDERED.

Mr. Werner dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of September 1979, by a vote of 4-1.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board