

ILLINOIS POLLUTION CONTROL BOARD
July 12, 1973

CITIZENS FOR A BETTER ENVIRONMENT)
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 v.) PCB 72-463
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 PROCTER & GAMBLE MANUFACTURING COMPANY)
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OPINION AND ORDER OF THE BOARD (by Mr. Dumelle)

On December 1, 1972 Citizens for a Better Environment ("Citizens") filed an enforcement action against Procter & Gamble ("P&G") alleging water pollution from the P&G plant on the North Branch of the Chicago River along North Avenue in Chicago. Also alleged were violations of Section 404(b) - discharge of deoxygenating wastes; Section 702(a) - discharge of mercury; Section 501(a) - failure to submit operating reports and Section 1002(b)(i) - failure to file a Project Completion Schedule on lead discharges.

Hearing was held on January 15, 1973 in Chicago. Citizens struck from the complaint the alleged Section 702(a) violation (mercury). Citizens presented an application made to the Corps of Engineers for a discharge permit on June 20, 1971 by P&G (Compl. Ex. 1). In testimony the increase between intake and outfall in suspended solids from 9 mg/l to 42 mg/l and in lead from 0.48 mg/l at the intake to 0.6 mg/l at the outfall (No. 1) are given as the basis for "violations" (R.16-17).

The discharge level of lead of 0.6 mg/l is alleged to require a Project Completion Schedule since the Board's effluent standards effective December 31, 1973 hold lead at a level of 0.1 mg/l (R. 54-55).

Procter and Gamble's witness, Mr. Carl Bals, the plant engineer, brought out that the outfalls in question use only non-contact river water and that the water does not contact any product process (R.67). He further stated that no lead or suspended solids are in any way added by the cooling water process (R.79). The P&G suction (intake) lines are now at the river bottom level because of failure to dredge. Consequently, according to Mr. Bals, slugs of material are drawn into the cooling system piping which would make its chemical characteristics vary from moment to moment (R. 67).

The main issue in this case is P&G's responsibility for the discharge of suspended solids and lead in excess of standards. The requirement for a Project Completion Schedule follows from this presumed responsibility.

The operative section of the Water Pollution Regulations for this case is Section 401(b). It states

However, it is not the intent of these regulations to require users to clean up contamination caused essentially by upstream sources...

Since no showing has been made that P&G adds or has the capability of adding suspended solids or lead in its use of the river for cooling we find no violation. A detailed examination of the data table attached to the December 8, 1971 letter to the Agency from P&G shows reasonably parallel tracking of many of the pollution parameters between intake and outlet (see pH, total solids, phosphorus, arsenic, copper, etc.) and bears out that the problem is that of "upstream" contamination (Compl.Ex. 3).

The use by Citizens of P&G data submitted to another pollution control agency (the Corps of Engineers) as evidence against P&G is valid. However, Citizens does not succeed in hoisting P&G on its own petard because of the reasons given above.

The remaining charge, that of failing to submit operating reports, is also dismissed after examination of Section 501(a). This section requires operating reports of "every person discharging effluents to the waters of Illinois." The Agency, in its letter of January 10, 1973 to Citizens states

Our records indicate that the Procter and Gamble Chicago Plant has two outlets of noncontact cooling water. Inasmuch as these do not constitute treatment plant effluents, no operation reports have been required (Compl. Ex. 7).

While an argument can be made that thermal discharges ought to make some sort of regular report the fact is that no such requirement has been imposed upon P&G by the Agency. We cannot find them guilty of failure to report when they have no reporting requirement and have relied upon Agency permits which do not require reporting (Resp. Ex. 4).

It is the order of the Board that the charges in the complaint have been found to have no basis for the reasons stated above and the proceeding is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 1st day of July, 1973 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board