

ILLINOIS POLLUTION CONTROL BOARD
September 2, 1976

CATERPILLAR TRACTOR COMPANY,)
)
 Petitioner,)
)
 v.) PCB 76-169
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board on the variance petition filed on June 9, 1976 by Caterpillar Tractor Company seeking relief from Rules 404(b)(ii) and 408 of Chapter 3: Water Pollution Rules and Regulations for its foundry located in Mapleton, Illinois. An Agency Recommendation was filed on August 6, 1976 and Caterpillar filed its Objection to the Agency Recommendation on September 1, 1976; no hearing was held in this matter.

Approximately 3,200 persons are employed at the Mapleton foundry which processes, melts and casts ferrous metals. The foundry products are processed in other Caterpillar plants for ultimate use with Caterpillar's final products, which are earth-moving and construction equipment and diesel engines. The foundry produces an industrial wastewater resulting from various plant processes including metal removal, cleaning and coating operations, the processing and electric induction melting of raw materials, and from the foundry's sanitary waste treatment plant. These discharges, all of which are tributary to the Illinois River, occur through four outfalls, a clear water waste outfall, sanitary treatment plant outfall, foundry industrial waste outfall, and West Lake Dust Collection Lagoon outfall.

The current treatment for each outfall is as follows: The effluent at the industrial outfall is given sedimentation, aeration, chemical coagulation and flotation treatment and its sludge is transported for land disposal. The effluent from the sanitary sewer is treated in a package activated sludge treatment plant with chlorination. Dust collector wastewater is sent to the West Lake Lagoon for suspended solids removal. Caterpillar alleges that although it has been diligently attempting to comply with Rules 404 and 408, its attempts have proven unsuccessful.

Caterpillar is in the process of building an addition to the existing foundry which will double the overall size of the facility and a new wastewater treatment plant is also being constructed (at a cost of \$10.3 million) which will serve both the existing foundry and new addition.

Instead of improving its existing wastewater treatment plant, Caterpillar chose in 1972 to forego such improvements in favor of constructing an entirely new wastewater treatment plant facility in conjunction with the planned expansion to its foundry. Caterpillar contends that it would have been a useless act to attempt compliance on an interim basis in view of the fact that by the time adequate upgrading of the existing treatment plant could be completed, construction of the new waste treatment plant would already be underway. Caterpillar also considered and rejected the alternative of constructing a new waste water treatment facility with the capability of handling the new foundry addition, yet to be designed. This alternative was rejected because Caterpillar felt it would be impractical to attempt to design a new treatment plant in "the dark". The alternative selected by Caterpillar was to proceed with the design of the new foundry and waste treatment plant in an integrated manner without instituting interim control measures which Caterpillar alleges would have been wasteful and economically unjustifiable.

Before reaching a discussion of this petition on the merits, it should be pointed out that the petition did not satisfactorily explain, or even attempt for that matter, why this petition was not filed in 1972 when Caterpillar's plans were being formulated. After a delay of four years, and with only two years remaining before the new treatment plant is operational, this petition was finally submitted. By following this procedure, Caterpillar has certainly removed from the Board any flexibility which it could exercise in the grant of this variance. Conditions that may have been economically reasonable for the Board to impose in 1972 for the six years interim period may not be practicable for the two year period yet remaining.

Caterpillar alleges four reasons why the variance should be granted (Petition p. 12, 13).

- (1) Caterpillar has diligently been engaged in efforts to design and construct a new waste treatment plant which will serve the entire expanded foundry. Had Caterpillar embarked on a course of compliance in 1972 by upgrading its existing waste treatment plant, a substantial waste of effort and money would have resulted.
- (2) The request for a variance until August 31, 1978, is a reasonable term for design, installation and testing of the new waste treatment plant.
- (3) During the period for which the variance is sought, there will be no significant environmental harm.

- (4) Without a variance, Caterpillar may be subject to an enforcement case which could jeopardize its entire operations and affect the livelihood of its 3,200 employees.

The Board does not agree that Caterpillar's only reasonable course of action was to delay construction of the new treatment plant until after the new foundry addition was designed. Furthermore, the Board is unable to find that a substantial waste of effort and money would have resulted if Caterpillar had embarked on a course of compliance in 1972. Simply stated, there are no facts or data in this petition supporting the allegation of the high cost of attempting interim compliance. Absent such data in the petition, the Board is unable to find that interim compliance, from 1972 to 1978, would have imposed an arbitrary or unreasonable hardship on Caterpillar. For that matter, the Board is unable to find that requiring interim compliance for the remaining two years, until August 1978, would impose an arbitrary or unreasonable hardship on Caterpillar.

While the Board finds that the second allegation is important in determining the length or duration of a variance, this allegation alone does not assist in the threshold determination whether Caterpillar is entitled to a variance. Only after the Board determines that Caterpillar is entitled to a variance does the Board concern itself with determining the duration of the grant.

As support for the third allegation Caterpillar supplies data indicating the present water quality of the river prior to the Mapleton discharge is virtually identical to that after the discharge (Petition, Exhibit C). Downstream concentration values for the various parameters were arrived at through the use of theoretical calculations, no actual testing data was supplied. While the Board certainly has no rule against the use of such calculations, the Board places a great deal of weight to the manner or method used to arrive at these theoretical values. In this instance, Caterpillar did not provide its method except to state that the concentration of the parameters in its discharge was based on the 1975 average. Without the inclusion of its theoretical model, the Board is unable to determine whether Caterpillar's theoretical values are proper or acceptable. Additionally, the Water Quality Standards must be met at the edge of the mixing zone and no information relative thereto was presented in the petition. Without this knowledge, the Board is unable to decide what effect the discharge may have on the Illinois River, and the Board certainly is not able to find that the discharge will not cause any significant environmental harm. Additionally, no data concerning the volume of daily effluent discharges were provided making any meaningful analysis impossible.

Regarding Caterpillar's fourth alleged hardship, the Board agrees with Caterpillar that if this variance is denied, Caterpillar could be subject to an enforcement action. By definition,

a variance is a shield from prosecution. The Board does not wish to engage in speculation, however, as to whether such action could jeopardize the entire plant operation. Whatever the case may be, it appears to the Board that Caterpillar assumed the risk in 1972 when it deliberately decided to follow its present course of action, and for that reason, whatever hardship that may exist is self-imposed.

In consideration of the foregoing, the Board finds that this petition must be dismissed. Caterpillar simply has not met the burden imposed on those requesting a variance from the regulations. While the Board has given considerable attention to the fact that Caterpillar has instituted what appears to be a satisfactory program to finally achieve compliance, that fact alone is not enough to entitle Caterpillar to this variance. This variance request is basically concerned with interim standards, standards that would apply until the new treatment plant is operational. The institution of a program to achieve compliance in the long run does not excuse one from utilizing reasonable methods of control on an interim basis. Although Caterpillar alleges that it would have to bear an arbitrary and unreasonable hardship if forced to presently comply with the regulations, absolutely no facts or data were presented supporting this contention. While Caterpillar alleged that its discharge would cause no significant environmental harm, no data other than unsupported theoretical values and no information regarding the concentrations at the edge of the mixing zone were presented supporting such a conclusion. Without the benefits of Caterpillar's modeling and method, including the theoretical calculations, the Board is unable to reach any decision as to possible environmental effects. Lastly, on the basis of the record presently before us, the Board finds that whatever hardship Caterpillar presently faces appears to be self-imposed. This situation is the direct result of a management decision made in 1972.

If Caterpillar can remedy these inadequacies and submits a new variance petition, they should include in that petition reasons for choosing the particular interim discharge limitations requested. After study of the discharge data supplied (Exhibit B1-B5), the Board is unable to understand why such high interim limitations (p. 4) are needed. As with other parts of this petition, facts supporting their conclusions are necessary.

Although Caterpillar requested a hearing in its Objection to the Agency Recommendation filed September 1, 1976, this request must be denied for two different and unrelated reasons. First, the Board finds the petition to be inadequate and concludes that no meaningful hearing could occur with the present petition as its basis. Caterpillar states in the Objection that the 1975 effluent data (and the data to which a hearing on the present petition would be limited) is no longer current or reliable. No useful purpose could be served by having a hearing on data which Caterpillar admits is no longer relevant. While it may be useful to have a hearing concerning 1976 data, in order to allow for proper

preparation for such hearing by the Agency and the Board, the 1976 data must be submitted in advance of such hearing as part of a variance petition itself. Second, even if the Board concluded that a hearing would be useful, in absence of a waiver of the 90-day decision period, the request for hearing would be denied because the request came at such a late date (84th day) that it would be impossible for the Board to schedule a hearing within the statutory decision period.

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

ORDER

The Petitioner's, Caterpillar Tractor Company, petition for variance from Rules 404(b)(ii) and 408 of Chapter 3 is hereby dismissed without prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 2nd day of September, 1976 by a vote of 5-0.

Christan L. Moffett c/s
Christan L. Moffett, Clerk
Illinois Pollution Control Board

