

ILLINOIS POLLUTION CONTROL BOARD  
May 1, 1980

CATERPILLAR TRACTOR CO.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 80-3
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by Mr. Goodman):

Petitioner's March 24, 1980 Supplemental Motion to Stay Permit Conditions, filed pursuant to the Board's Order of February 7, 1980, enables decision on its January 23, 1980 motion for stay of certain permit conditions pending appeal of those conditions.

Petitioner argues that the Board must grant stay of certain contested NPDES permit conditions to avoid depriving it of procedural due process of law. It states that the USEPA is presently required to grant stays when an NPDES permit is contested. However, the State of Illinois has at least as much interest in waters of this state as does the federal government; potential harm to waters of this state must be considered before granting stays of contested provisions of any permit.

Petitioner further states that there would be no environmental harm occasioned by granting these stays because the Agency had never imposed these exact conditions on any other permittee. However, this argument is not controlling on the issue of actual environmental harm, for conditions are presumed imposed by the Agency under the circumstances relating specifically to a permittee's situation and as they are deemed necessary under the Illinois Environmental Protection Act.

The Agency's February 4, 1980 Objection to Petitioner's motion for stay does not precisely address the facts relevant to its decision to impose the contested provisions. The Board, therefore, will stay only those provisions which are both newly imposed on the permittee and imposed by the exercise of the Agency's discretion.

Attachment B (Mass Effluent Limitations). Petitioner argues that these conditions are new because, although contained in an October, 1977 USEPA NPDES permit, Petitioner's appeal to USEPA for a hearing regarding them negates considering them to be included in that permit at this time. Even if such argument were acceptable, it is true that Petitioner has been on notice since 1977 that it may be required to meet pollutant limitations expressed in terms of concentrations or other types of levels than mass levels. Nevertheless, all the mass limitations imposed are new ones, with the exception of the 30-day oils, fats and greases averages of 225 lbs./day, because the numerical limitations are not the same ones found in the prior permit. Stay of the 30-day oils, fats and greases averages is denied. (Petitioner's argument that the other averages were calculated without reference to hydraulic capacity of 2.62 MGD or to concentration limits specified in Chapter 3 does not indicate by itself that the resulting numerical limitations were new ones).

Petitioner pleads that imposition of the remaining limitations was discretionary with the Agency. For purposes of motions to stay NPDES permit conditions pending appeal, the term, "discretionary" means the allowance of pollution in excess of the regulations if, in the Agency's view, such allowance is required to accomplish the purposes of the Act. (See Act, §39(b)). The limitations on chromium (tri) and iron (total) are exactly those found in Rule 408; therefore, no discretion appears to have been exercised by the Agency (no matter what hydraulic capacity figure it may have referred to). For this reason, no compelling reason exists to allow stay of these two limitations. Stay, therefore, is denied.

The chromium (hex), BOD<sub>5</sub>, and TSS limitations, however, are not set out in Rule 404 and can therefore be deemed discretionary. Stay of these three limitations is granted pending appeal of the permit.

Attachment B, Paragraph 6. This paragraph concerns procedural requirements on reapplication for the permit presently on appeal. Stay of these requirements is denied as unripe.

Noninclusion of Portions of Part II.A.1. of Prior Permit. This condition would have made new, different and increased discharges due to daily or seasonal variations in production or scheduling a violation of the permit if unauthorized. Noninclusion is arguably new. The noninclusion was an exercise of the Agency's discretion inasmuch as no regulation requires the noninclusion. The objected-to provision of Paragraph 1 of Attachment H is therefore stayed pending appeal of the permit.

Attachment H, Paragraph 13. This paragraph imposes requirements of Petitioner not provided for under the prior permit. In addition to being new permit conditions, they are discretionary

conditions inasmuch as no regulation requires them. The conditions imposed in this paragraph are, therefore, stayed pending appeal of the permit.

Noninclusion of Part III.C.2. of Prior Permit. These conditions would have allowed discharge of pollutants not specified in the permit at issue in concentrations of up to those specified in Board regulations and up to those specified in USEPA-promulgated 33 U.S.C. §1251, et seq. (Clean Water Act, §307) toxics regulations. Noninclusion is arguably new. However, Paragraph 11 of Attachment H to the permit covers §307 discharges. As to discharges of unspecified pollutants in concentrations not to exceed Board regulations, a question of the interpretation of §12(f) of the Act by the Agency is involved. A stay will be issued allowing permittee, pending appeal, to discharge unspecified pollutants now unregulated under §307 in concentrations up to those in applicable Board regulations.

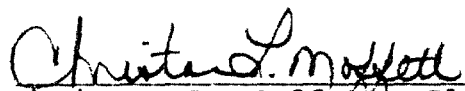
ORDER

The following provisions of Petitioner's NPDES Permit No. IL 0001732 are stayed pending this permit appeal:

1. Chromium (hex), BOD<sub>5</sub>, and TSS limitations of Attachment B;
2. The provisions of Paragraph 1 of Attachment H which exclude portions of Part II.A.1. of Petitioner's prior permit;
3. The provisions of Paragraph 13 of Attachment H which were not included in Petitioner's prior permit; and
4. Limitations regarding pollutants now unregulated under §307 of the Clean Water Act, 33 U.S.C. §1251, et seq., and not regulated pursuant to Paragraph 11 of Attachment H.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1<sup>st</sup> day of May, 1980 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board