ILLINOIS POLLUTION CONTROL BOARD
September 6, 1979

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 76-80
	)	
ALLAERT RENDERING, INC.,	)	
	)	
Respondent.	)	

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

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

This matter comes before the Board on a six-count Complaint filed by the Environmental Protection Agency (Agency) on March 19, 1976, against the Respondent, Allaert Rendering, Inc. (Allaert), alleging violations of the water pollution provisions of the Environmental Protection Act and the Chapter 3 regulations. The Complaint charged Allaert with constructing and operating a waste treatment works without the necessary permits required by Board regulations, with depositing contaminants on land causing a water pollution hazard, with improperly constructing its treatment plant in violation of the spill and malfunction provisions of Rule 601 and with operating the treatment works without a certified operator. In particular, the Complainant raised the following issues in the six counts of the Complaint as follows:

1. Allaert caused or allowed the construction or modification of its treatment works without a construction permit from April 16, 1972, until March 19, 1976, in violation of Rule 901(a), renumbered 951(a) of Chapter 3: Water Pollution Regulations (Chapter 3) and Section 12(a) and 12(b) of the Environmental Protection Act (Act).

2. Allaert operated its treatment works from April 16, 1972, until March 19, 1976, without an operating permit in violation of Rule 902(a), renumbered 952(a) of Chapter 3 and Sections 12(a) and 12(b) of the Act.

3. Allaert operated its treatment works from December 31, 1972, until March 19, 1976, without the necessary permits, in violation of Rule 903(a), renumbered 953(a) of Chapter 3 and Sections 12(a) and 12(b) of the Act.

4. Allaert operated its treatment works from July 1, 1970, until March 19, 1976, by depositing contaminants on land in such a manner and in such a place to cause a water pollution hazard, in violation of Section 12(d) of the Act.

5. Allaert operated its treatment works from April 16, 1972, until March 19, 1976, in violation of the malfunction and spill provisions of Rule 601 of Chapter 3 and Section 12(a) of the Act.

6. Allaert operated its treatment works without a certified operator from June 27, 1973, until March 19, 1976, in violation of Rule 1201 of Chapter 3 and Section 12(a) of the Act.

Hearings were held for this enforcement action on November 8 and 9, 1978, in Rock Island, Illinois after which evidence was received in a variance proceeding, Allaert Rendering, Inc. v. EPA, PCB 77-334 (September 6, 1979) concerning the same parties. In PCB 77-334, a petition for variance was filed December 14, 1977, by Allaert for relief from those provisions of the Act and Board regulations which were the subject of this enforcement action. Specifically, Allaert sought a variance from Sections 12(a), 12(b) and 12(d) of the Act and those Board rules which required a construction permit for a new or modified facility [901(a), renumbered 951(a)], an operating permit for a new or modified facility [902(a), renumbered 952(a)], and an operating permit for an existing treatment works [903(a), renumbered 953(a)]. Furthermore, Allaert sought a variance from the statutory prohibition against depositing contaminants on land, to operate its treatment facility without a certified operator as required by Rule 1201 and to relieve its facility of the Rule 601 requirements regarding maintenance and prevention of spills. On September 6, 1979, the Board rejected Allaert's request from the aforementioned relief.

The record in this matter includes a transcript of 496 pages and numerous exhibits submitted by the Agency and the Respondent. On January 22, 1979, the Complainant filed its Brief with the Board which was followed by Respondent's Brief, dated March 30, 1979. On April 19, 1979, the Complainant filed a Reply Brief. During the hearing, the parties raised numerous objections, motions and requests for reconsideration which are considered in the following paragraphs.

Pursuant to an interlocutory appeal order, dated September 29, 1977, the Board allowed the Agency and the Respondent to submit briefs regarding the scope of discovery in this enforcement proceeding. The Complainant appealed an order of the Hearing Officer, dated June 16, 1977, which required the Agency to produce a permit file pertaining to the Fox Valley Grease Company, Inc. and ordered the deposition of William H. Busch, then Manager of the Permit Section and Darryl R. Bauer, then an Agency permit engineer who had reviewed a permit application submitted by Fox Valley Grease Blending, Inc. who is not a party in this action. After due consideration, the Board reversed the Hearing Officer's order on

October 13, 1977, on the basis that the inquiries were not material to the issues arising from the Complaint.

It is Respondent's contention that the denials of its permit applications submitted by Allaert on February 10, 1976, and on March 11, 1977, were arbitrary and unreasonable. During the hearings and in Respondent's Brief, Allaert has claimed that the permits were wrongfully denied because the Agency had established no criteria or guidelines to determine the parameters considered in design and evaluation of an infiltration-percolation system. According to the Respondent, the records and the deposition requested during discovery are necessary to review the propriety of the Agency's standards and guidelines in the permit review and in the permit denial process.

Since the October 13, 1977, Order on this matter, the Board has considered at length the problems in structuring discovery for the review of permit denials pursuant to Section 40 of the Act. In Oscar Mayer & Co. v. EPA, PCB 78-14, 30 PCB 397 (June 8, 1978), the Board denied that applicant's request for all material and depositions of all Agency personnel who participated in the determination which resulted in denial of applicant's permit. In reviewing the permit denial, the Board found that Agency procedures, criteria and activities pertaining to the permit decision-making process were not material to the Petitioner's burden of proof in such a proceeding which is limited to a showing of compliance with the substantive requirements of the Act based solely upon the permit application and supporting documentation as such may have been submitted by the applicant. A successful Petitioner in a Section 40 proceeding, after verifying the facts of its application, must persuade the Board that the activity in question will not cause a violation of the Act or Board regulations. In response, the Agency may contest the facts in the application or argue applicable law and regulations, or "it may choose to do either or it may choose to present nothing." The action of the Agency in the denial of the permit is not the issue; the issue is simply whether or not in the sole judgment of the Board, the applicant has submitted proof that if the permit is issued, no violation of the Act or regulations will result. Propriety of this Board procedure was reviewed and upheld by the Appellate Court, Third District in SCA Services, Inc. v. PCB and EPA, ____Ill.App.3d____, 389 N.E. 2d 953 (May 16, 1979).

Although Allaert Rendering, Inc. did not formally petition for review of the Agency's permit denials pursuant to Section 40 of the Act, because of Allaert's claim that Agency permit denial was arbitrary and unreasonable, the Board has reviewed the sufficiency of the permit applications and the Agency's denials in this matter.

Section 39 of the Act provides that the Agency shall issue a permit on proof by the applicant that the permitted activity will not cause a violation of the Act or Board regulations. Applicant's burden may be facilitated by showing that its system meets specific Agency guidelines; however, the ultimate decision to grant or deny the permit must turn on whether the information submitted by the applicant proves compliance with the Act and Board regulations.

In this case, Allaert submitted its permit application on February 10, 1976, which was denied by the Agency on March 4, 1976. The initial application failed to disclose the type and permeability of the rock under the infiltration-percolation system, the strength of the wastewater moving through the ground, the actual soil and bedrock conditions under the system and the direction of the groundwater flow. The application did contain general soil information from the U.S. Department of Agriculture which indicated that during the spring season, the groundwater in the vicinity of the infiltration-percolation system was present from zero to three feet below the surface. (R. 234-51; C. Exh. Nos. 1, 2 and 4).

Approximately one year later, on March 11, 1977, Beling Engineering Consultants (Beling) submitted supplemental information on behalf of Allaert in response to the permit denial. In place of standards, Beling engineers claimed that Addendum No. 2 of the Ten States Standards, essentially a ground disposal wastewater system, was used to develop criteria for the infiltration-percolation system. The supplemental information in Respondent's second application included a letter from Mr. James Gibb, Associate Engineer, Illinois State Water Survey, dated October 27, 1976; soil borings and map logs; a well location map; and lab analyses data on wells in the vicinity of Respondent's treatment facility. (R. 264-67; C. Exh. No. 3).

Addendum No. 2 of the Ten States Standards has established certain other criteria for the design of ground disposal wastewater systems which is not included in the information provided by the Respondent. Allaert's permit applications fail to include such necessary geological information as the bedrock structure of the receiving lagoon, the character and thickness of surficial soil and glacial deposits and, especially for limestone, information about the solution openings and the sinkholes as recommended by Addendum No. 2. Hydrological data required by the Ten States Standards in addition to high water table data includes information on the direction of the groundwater movement, chemical analyses of the groundwater quality and at least one groundwater monitoring well must be located in the direction of the movement. The recommended standards also require soil maps and data on the soil thickness of the area to be subjected to treatment. Addendum No. 2 also indicated that disinfection before discharge was necessary and design controls are appropriate to prevent runoff from entering or leaving the site.

While the permit applications contained obvious deficiencies, their supplemental information does disclose a presence of dolomite bedrock under the glacial material in the vicinity of the receiving lagoon, a structure which is highly susceptible to fracture. Soil Boring Log Nos. 1 through 7 also disclosed that weathered and highly weathered limestone is evident at or near Respondent's property under a 3.5 to 6.5 foot layer of predominantly silty clay. The ISWS letter suggested that, "Available data indicates a potential for polluting both the unconsolidated and bedrock units is high." On June 8, 1977, the Agency denied the Respondent's second permit application. (C. Exh. Nos. 3 and 4).

Having reviewed the permit applications and the Agency denials, the Board finds that the Agency clearly stated in its letters that the information not only failed to show that Respondent's treatment system would not cause a violation of the Act, but also the material contained in the application indicated that the potential for water pollution is quite high. (C. Exh. Nos. 1 and 3).

The Board will affirm its October 13, 1977 Order regarding the scope of discovery. Furthermore, the Board finds nothing to indicate that the Agency's responses to the obvious deficiencies in the permit applications were arbitrary or unreasonable. Moreover, without reference to any consideration of the Agency's action in denying the permit applications, the Board finds that Allaert did not provide sufficient proof in the application and supporting information that the Act and regulations would not be violated if a permit was issued. The remaining questions regarding permits, whether Allaert obtained the necessary permits before constructing and operating its treatment facility, will be considered later in this Opinion.

On April 7, 1977, because of repeated failures of the Respondent to comply with discovery orders, the Hearing Officer imposed sanctions under the authority of the Board Procedural Rules, Part 7, and entered an order which prohibited the Respondent from introducing any evidence relating to the issue of economic reasonableness and any evidence relating to facts that would have been disclosed by Respondent's compliance with the Hearing Officer's order of February 2, 1977. At hearing, Respondent requested that the Hearing Officer reconsider the order of April 7, 1977; the request was denied.

On April 25, 1977, Allaert filed an Application of Non-disclosure with the Board pursuant to Section 7 of the Act and Procedural Rule 107 to limit disclosure of all financial records from 1970 to 1976 to only Board members. On May 12, 1977, the Board found Respondent's application to exempt all financial

records from public disclosure unjustified and denied the application without prejudice. At the conclusion of the November 9, 1979, enforcement hearing, Allaert submitted under an offer of proof, the "Application for Nondisclosure" for identification as Respondent's Exhibit No. 7 with the stated intention to "comply with Section 7 of the Act." Hearing Officer refused to admit this exhibit into evidence. The Respondent also submitted under an offer of proof, testimony by Paul Allaert concerning what he believed were reasonable alternative control technologies in light of the financial condition of Allaert Rendering, Inc. (R. 39-45, 475, 479-81).

In reexamining Respondent's Application for Nondisclosure, the Board will consider the procedures prescribed for evaluating nondisclosure applications in Procedural Rule 107 and the Opinion in Olin Corporation v. EPA, PCB 72-253, 5 PCB 131, 132 (August 10, 1972).

In adopting Procedural Rule 107, the Board was mindful of the statutory mandate of Section 7 of the Act requiring public hearings and providing that all documents (files, records and data) be open to the public. Since limiting the review of material "not subject to disclosure" seriously affects the public nature of any Board proceeding, the Board is obliged to limit and narrowly define the scope of exceptions of the public information rule and subject applications for nondisclosure to close scrutiny.

To qualify any material for nondisclosure status, the material must not only meet specific criteria for an exception, but also the application for nondisclosure must contain the following:

1. Identification of precise material, or parts of material for which nondisclosure is sought;

2. Indication of the particular nondisclosure category into which the material falls;

3. A concise, verified application stating the reasons for requesting nondisclosure.

In this respect, Allaert's application has failed to satisfy the requirements of Procedural Rule 107 and thereby the mandate of Section 7 of the Act in the following manner:

First, Respondent has failed to identify the precise material or parts thereof to be withheld from the public. The Board finds that Respondent's blanket request for exemption for all financial records, including income tax returns, income statements and balance sheets for the years 1970 through 1976 is overly broad; such material cannot be withheld from public scrutiny on the bare contention that they are highly confidential.

Second, the Respondent has denominated "all financial records" as falling within the "confidential data" and "trade secret" exception on the naked, generalized statement that the "information is considered highly confidential by Respondent." Furthermore, the Respondent fails to distinguish what material the law would recognize as a "trade secret" and which material is believed to be "confidential data."

Third, the Agency advances compelling arguments that if the Board were to allow the nondisclosure of all Respondent's financial records to any except the Board, the Complainant would be precluded from the effective cross-examination of the records and from assessment of Respondent's financial status through the independent audit of an accountant. (R. 133-34).

After reviewing these findings, the Board will affirm its May 12, 1977, order denying nondisclosure. Furthermore, the Board will affirm the Hearing Officer's April 7, 1977, order and uphold his decision to exclude the Application for Nondisclosure, Exhibit No. 7 from the record. Respondent's persistent failure to comply with the Hearing Officer's discovery orders and the Agency's request for disclosure of financial records will, in accordance with Procedural Rule 701(c), disqualify all Respondent's evidence in this record concerning economic reasonableness.

In other preliminary motions, Respondent moved to vacate Complainant's interrogatories filed with the Board on September 22, 1978, dealing with updating matters in the enforcement action, clarifying specific contentions in the variance case and serving as a final submission of Complainant's request for Respondent's financial records. An order from the Hearing Officer, dated September 22, 1978, followed the interrogatories which required Respondent to answer the interrogatories and produce the documents on or before October 9, 1978. It is the Respondent's contention that the issuance of the Hearing Officer's order on the same day as the filing of the interrogatories violated the service requirements for interrogatories of Procedural Rules 305(c), 308(c) and 313(c). In Respondent's estimation, the Hearing Officer is precluded from submitting an order setting the response date until after the eleven days allowed under the Procedural Rules for service and response. Anything less, according to the Respondent, will effectively preempt Respondent's right to oppose the interrogatories. After reviewing this matter at hearing, the Hearing Officer granted Respondent's motion. While the Board need not consider further the consequences of Respondent's failure to submit financial records during the discovery proceeding, the Board will not question Hearing Officer's decision to vacate the order so long as the Complainant was not prejudiced by this decision. (R. 45-56).

Exhibits received into evidence for the Complainant and the Respondent included Complainant's Exhibit Nos. 1 through 7, 8A through 8H, 9A through 9C, 10, 11, 13 and 14(1-13) and Respondent's Exhibit Nos. 4 and 5. The offer of the Application for Nondisclosure, Respondent's Exhibit No. 7, was denied by the Hearing Officer. (R. 475).

During the hearings, Respondent objected to Complainant's Exhibit Nos. 2, 4, 6, 7, 8A through 8H, 9A through 9C, 11, 13 and 14(1-13). Complainant contested the admissibility of Respondent's Exhibit Nos. 4 and 5. After reviewing the objections to the admission of the exhibits, the Board will sustain the decisions of the Hearing Officer regarding the exhibits of the Complainant and the Respondent, with the exception that the photographs identified and admitted as Exhibit Nos. 8B and 8C will be excluded from evidence on the basis that the record fails to show whether the photographs were a true and accurate portrayal of the subject matter. (R. 154-55).

On Complainant's motion to exclude witnesses, the Board finds that it is within the discretion of the Hearing Officer to determine whether or not to exclude the witnesses in the interest of fairness, provided that the ruling precedes any testimony of witnesses. (R. 59). Respondent's motion to quash subpoenas served upon Henry Mayer, William Karlovitz and Earl Beling (deceased) is moot since both Mr. Mayer and Mr. Karlovitz were present at the hearings. (R. 31-37).

Finally, the Board will deny Motion for Summary Judgment submitted by the Respondent because the Agency failed to produce a Mr. Gerald M. Kehoe for these hearings. Since the record discloses that Mr. Kehoe is no longer an employee of the Agency, the Agency was under no burden to produce the witness. According to Procedural Rule 315(a), the Respondent should have submitted a motion to the Hearing Officer or to the Board to issue a subpoena for attendance of a particular witness at these hearings. (R. 487-90).

The subject of this enforcement action concerns Allaert Rendering, Inc., an Iowa corporation incorporated in April, 1974, which is the continuation of a sole proprietorship owned by Wilbur Allaert dating back to 1940. Since April, 1974, Allaert Rendering, Inc. has operated the rendering plant on a portion of a one hundred acre parcel known as Allaert Acres and owned by Wilbur Allaert near the Village of Carbon Cliff, in Rock Island County, Illinois. Paul W. Allaert has been Vice President and General Manager since 1974 and has served in various capacities at the plant since 1945. (R. 62-64, 456-60; C. Exh. No. 1).

In view of the evidence in the record disclosing that Allaert Rendering, Inc. "has been a corporation since April of 1974," the Board will interpret this testimony to mean that Allaert Rendering, Inc. did not exist as a corporate entity until April 30, 1974. For purposes of this enforcement action, the Board will limit the scope of the complaint period from April 30, 1974, until March 19, 1976, the date of the filing of the Complaint. Evidence occurring outside this time frame will be excluded unless it proves germane to matters of aggravation or mitigation, in considering Section 33(c) factors, or as evidence of the continuous nature of the violation. (R. 62).

The rendering plant in question processes approximately 50,000 - 60,000 pounds a day of fallen animals, restaurant grease, scraps and bones in cookers and presses designed to separate grease and oil from the animal solids. Well water used to trap oil and grease vapors from the cooking process is collected with the clean-up waters containing such residues as dead animal cuttings, hair and bone before the wastewater is discharged to Allaert's treatment system. The rendering plant effluent averages 29,750 gallons per day with concentrations of BOD_5 at 468 mg/l, suspended solids at 392 mg/l and oil and grease at 193 mg/l. The Allaert process wastewater and associated clean-up waters are discharged to three-1,000 gallon septic tanks arranged in parallel before emptying into one-1,500 gallon septic tank. This primary treatment system, installed between 1973 and 1975, is designed to separate and remove the grease and oil from the wastewaters and to reduce odors, suspended solids and BOD. Effluent from the 1,500 gallon septic tank is passed through a final grease trap before it is discharged to the receiving lagoon. Constructed in the fall of 1973, the receiving lagoon is located within the flood plain of the Rock River. (R. 68-72, 82-83, 99, 184, 326, 482; C. Exh. No. 1).

Allaert Rendering, Inc. installed the existing treatment system over a period beginning in the fall, 1973 through 1975 without construction permits and discharged to the system without an operating permit. In 1973-74, the three-1,000 gallon septic tanks were installed followed by the 1,500 gallon septic tank in 1974-75. The receiving lagoon, denominated an infiltration-percolation system, was also constructed in the fall, 1973, without the benefit of percolation test or other studies to determine the effectiveness of Respondent's infiltration-percolation system to filter and absorb contaminants before reaching and mixing with the groundwaters. According to the record, the Respondent, in excavating the receiving lagoon, removed six feet of top layer exposing the limestone bedrock. (R. 75-76, 83-84, 88-89, 110-11, 223, 364, 382; C. Exh. No. 3).

The record also indicates that the Agency first became aware of the Allaert treatment system through an Agency sewage treatment survey conducted at Respondent's rendering works on November 14, 1974. Subsequently, the Agency sent Allaert a letter, dated January 20, 1975, which provided the Respondent with a copy of the Water Pollution Regulations of Chapter 3 and informed the same of the need for a construction and operating permit. A follow-up investigation on May 14, 1975, disclosing no efforts toward compliance, prompted the Agency to write a letter, dated July 18, 1975, warning the Respondent of the need for permits for a second time. (R. 200-12, 328-35, 342; C. Exh. Nos. 6 and 7).

In response to the Agency inquiries, Allaert contacted Beling Engineering Consultants on or before July, 1975, to conduct a study on Allaert's existing facility and to prepare a report recommending necessary facility improvements. On February 10, 1976, the Respondent submitted a permit application prepared by Beling requesting approval of Allaert's infiltration-percolation system which claimed no discharge to surface waters. The application proposed to modify the existing facility by constructing berms to the 25-year flood elevation and fencing in the treatment system.

As indicated above, the Agency denied the permit application on March 4, 1976. Additional materials were submitted in Respondent's second permit application, dated March 11, 1977. However, the Agency also rejected Respondent's supplementary permit application on June 8, 1977, because of the inadequacy of the information and the potential for water pollution from Respondent's treatment facility. (R. 247, 426-27; C. Exh. Nos. 1, 2, 3 and 4).

Based on this evidence and other testimony and exhibits pertinent to the alleged violations, the Board will review the charges alleged in the Complaint.

WATER POLLUTION

Counts I, II, III, V and VI allege that the Allaert treatment works are in violation of Section 12(a) of the Act which reads:

> No person shall cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

During the time frame pertinent to this Complaint period, the record shows that Larry Marques, a former Agency inspector currently with the Illinois Department of Public Health, visited Allaert Rendering, Inc. and inspected its treatment works on three different occasions, November 19, 1974, May 15, 1975, and November 19, 1975. On the last date, Mr. Marques took photographs depicting the conditions of the Allaert treatment works which, with a sketch of the surroundings, were admitted into evidence as Exhibit No. 11, the sketch and Exhibits Nos. 13 and 14, photograph location map and photographs 1-13, respectively.

On Mr. Marques' first and second visits to the Allaert treatment works, in addition to inspecting the receiving lagoon, Mr. Marques discovered a trench originating at or near the lagoon which extended "as far as I could see" in the direction of the Rock River. Since the stated purpose of these visits was to inform Respondent of the need for a permit, the witness did not follow the trench to its termination point, nor did the witness observe an actual discharge to the Rock River on either occasion. (R. 324, 329, 332, 336).

In other evidence derived from conversations with Mr. Paul Allaert on November 19, 1975, Mr. Marques learned that the trench was originally excavated from the pond to the river to drain the area so that the pond could be enlarged. However, at the time that Mr. Marques observed the termination point of the trench on November 19, 1975, 400 to 600 feet (sic) of the lower portion near the river and the upper segment of the trench near the receiving lagoon had been filled in. According to conversations during the November, 1975, inspection, the ditch had been filled in approximately four months before the inspection or by July, 1975. (R. 315, 324; C. Exh. No. 13).

Since this occurrence witness stated that he had no personal knowledge nor evidence of samples of any wastewater discharged from the Allaert treatment works to the Rock River, the Board finds the evidence patently insufficient to support a finding that Respondent caused or allowed a discharge to the surface waters of the Rock River in violation of Section 12(a) of the Act. (R. 325, 326, 329).

Turning our attention to other evidence in Complainant's case-in-chief, alleging water pollution violations to surface and groundwaters, the Board has discovered that the record, taken as a whole, will not support a finding of a causal connection between Allaert's discharge and any actual environmental harm. The record supplies no information concerning the concentration of contaminants in the receiving lagoon, provides limited data on conditions under the lagoon in question and merely suggests the direction of the groundwater flow from the lagoon toward the Rock River. The Board finds no evidence in the record to support the allegations that the Respondent caused or allowed water pollution.

Section 12(a) of the Act further authorizes the Board to protect the waters of Illinois from serious threats to the environment from water pollution. It is clear that inclusion of the word "threaten" is intended to allow the Board to act before water pollution seriously affects the environment. The Act permits the Board in considering "threaten" violations of Section 12(a) to entertain evidence of actual violation, testimony pertaining to persistent or continuing violations and also evidence of potential violations with a reasonable likelihood of occurrence. Without this authority, "the Board could only lock the stable after the horses have been spirited away." Springfield Sanitary District v. EPA, PCB 70-32, 1 PCB 181 (January 27, 1971); EPA v. Ayshire Coal Company, PCB 71-323, 1 PCB 415 (April 25, 1972); EPA v. James McHugh Construction et al., PCB 71-291, 4 PCB 511 (May 17, 1972).

In considering the threat to surface waters, the evidence indicates that the lagoon was constructed in 1973 without berms or other flood control measures on the flood plain within 1,000 - 2,000 yards of the Rock River. Since the record does disclose that the receiving lagoon is the repository of highly contaminated wastewater, this evidence alone supports a finding of a Section 12(a) violation which threatens surface waters in the vicinity. (R. 68, 482; C. Exh. No. 1).

The Allaert rendering facility discharged approximately 30,000 gallons per day to the unprotected ground in the Rock River flood plain where the receiving lagoon is currently located. On cross-examination, Paul Allaert conceded that the entire processing facility had been flooded in 1973, before the construction of the receiving lagoon. The record also discloses that in May, 1978, the receiving lagoon was inundated by Rock River flood waters. The May, 1978 inspections also revealed evidence of discharge solids on the land between the receiving lagoon and the Rock River. Based upon this evidence in the record, the Board finds the operation of the Allaert treatment system has threatened and will continue to pose a serious threat to the surface waters within the vicinity of the Rock River. (R. 99, 151, 165, 187-88, 482; C. Exh. Nos. 8B, 8D, 8E and 9C).

In considering evidence pertaining to the threat of groundwater contamination, the Board finds that the receiving lagoon, denominated an infiltration-percolation system, was constructed and operated without permits in the fall of 1973 and also without the benefit of percolation tests or other studies to determine the effectiveness of the system. While the Respondent claims that there is no known discharge from its treatment facility, Allaert ignored evidence, as disclosed by the record, which indicated the following:

1. The excavation of the receiving lagoon caused the removal of six feet of top layer of silty loam exposing the bedrock;

2. Groundwaters in the vicinity of the receiving lagoon rise during the spring months of the year from zero to three feet below the ground;

3. The bedrock in the vicinity of the receiving lagoon consists of weathered or highly weathered limestone from 3.5 to 6.5 feet below the soil layer. (C. Exh. Nos. 1 and 3).

Accordingly, the Board finds that the highly contaminated wastewater collected in the Respondent's receiving lagoon threatens the groundwater directly under the site and in the vicinity of the receiving lagoon with water pollution in violation of Section 12(a) of the Act.

CONSTRUCTION AND OPERATING PERMITS

Counts I, II and III allege that Allaert has caused or allowed the construction and operation of a new, modified or existing treatment works without the necessary permits in violation of Rules 901(a), 902(a) and 903(a), renumbered 951(a), 952(a) and 953(a), respectively, of Chapter 3 and in violation of Sections 12(a) and 12(b) of the Act.

Rule 104 of Chapter 3 defines "treatment works" as "those constructions or devices . . . used for collecting, pumping, treating or disposing of wastewater . . . ." Since Respondent's facility described as an infiltration-percolation system was intended to treat the wastewater discharged by the Allaert rendering facility, the system clearly falls within the scope of "treatment works," and therefore, becomes subject to the aforementioned Part IX requirements regarding construction and operating permits.

The Board regulations requiring permits for the construction and operation of wastewater treatment facilities were adopted on March 7, 1972, and became effective on April 16, 1972. Respondent was formally informed of the permit requirement on January 20, 1975, by an Agency letter which was accompanied by a copy of Chapter 3: Water Pollution Regulations which includes the permit regulations. However, the Respondent did not submit its initial permit application until February 10, 1976.

In this case, the Agency has proved that permits were never applied for and never issued by the Agency prior to construction of the receiving lagoon in 1973, or before the installation of

the three-1,000 gallon and the 1,500 gallon septic tanks or the grease trap over a period from 1973 through 1975. Nor were the necessary permits obtained before the operation of the system. Furthermore, Respondent's submission of permit applications on February 10, 1976, and also on March 11, 1976, were properly denied by the Agency on the basis that the permits failed to show that the installations combined with the proposed improvements, a 25-year flood berm and fencing, would not cause violations of the Act or Board regulations. (R. 75-76, 84, 222-23, 364-65; C. Exh. Nos. 3, 4 and 6).

The Board hereby finds that since the Respondent was never issued a construction or operating permit during the time frame of this Complaint, violations of the aforementioned Part IX Rules of Chapter 3 and of Section 12(b) of the Act have been established.

WATER POLLUTION HAZARD

Count IV alleged that the Respondent's operation created a water pollution hazard in violation of Section 12(d) of the Act from July 1, 1970, until March 19, 1976.

In accordance with a finding of violation of Section 12(a) which "threatens" water pollution, proof of a Section 12(d) violation need not include evidence of actual water pollution, since both provisions of the Act are intended to correct potential water pollution threats and hazards before actual harm has occurred. EPA v. Ayshire Coal Company, PCB 71-323, 4 PCB 415 (April 25, 1972); EPA v. James McHugh Construction Company, PCB 71-291, 4 PCB 511 (May 17, 1972). In each case, however, proof must be sufficient to show that the material in question either threatens water pollution or creates a water pollution hazard.

In this matter, to the extent that the Respondent has deposited approximately 30,000 gallons per day of wastewater containing high concentrations of contaminants during periods of this Complaint, and to the extent that the receiving lagoon was constructed in 1973 within the flood plain of the Rock River without effective flood control measures, the Board finds that this evidence, in and of itself, establishes that Respondent's discharge to its receiving lagoon creates a water pollution hazard within the meaning of Section 12(d) of the Act. (R. 97-99, 165; C. Exh. No. 1).

Since the scope of this complaint period extends from April 30, 1974, until March 19, 1976, the evidence of flooding from the Paul Guse inspections on May 9 and 15, 1978, is limited to proof of the continuing nature of the violation. The record

also indicates that Larry Marques took photographs and made visual observations of the conditions of the Allaert treatment works on November 19, 1975. However, after reviewing this evidence, the Board finds that the Marques' observations and photographs, absent samples and laboratory analyses of the suspected materials, falls far short of proving that a water pollution hazard existed on the day in question. (R. 151, 152, 311-13; C. Exh. Nos. 8A, 8D and 8E, 9A, 9B and 9C, 14(1, 2, 3, 5, 6, 7 and 8).

MALFUNCTION AND SPILL REQUIREMENTS

Count V charged Allaert with violations of the Rule 601 malfunction and spill requirements which provide as follows:

(a) Malfunctions. All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

(b) Spills. All reasonable measures, including where appropriate the provision of catchment areas, relief vessels, or entrapment dikes, shall be taken to prevent spillage of contaminants from causing water pollution.

Provisions in this part are intended to impose upon the operator of the treatment works a duty to reduce, if not eliminate, the threat of malfunctions or spills which cause or contribute to water pollution. In adopting Rule 601 in January 6, 1972, the Board stated that reasonable measures should be taken to ensure that systems do not unreasonably threaten water pollution. In the Matter of: Effluent Criteria, et al., PCB R70-4, 3 PCB 401, 420 (January 6, 1972).

Having reviewed the record, the Board finds that the construction and the operation of Respondent's treatment works within the flood plain of the Rock River without protective berms or other flood control measures and the excavation of the receiving lagoon to bedrock, indicates a conscious disregard on the part of Allaert for reasonable control measures to prevent malfunctions and spills. (R. 88-89, 97-99, 110, 165).

During the period of this Complaint, the record shows that Respondent completed construction of its treatment works without concern for the permit requirements. In its permit application,

dated February 10, 1976, its proposed improvements, a 25-year flood berm and fencing cannot be considered reasonable remedial measures for a receiving lagoon constructed in the fall of 1973. For purposes of this alleged violation, it also indicates that Respondent has failed to consider reasonable measures to prevent malfunctions due to flooding or adverse weather or to guard against spills.

Since it is unnecessary to show proof of actual pollution within the complaint period for a Rule 601 violation, the Board finds sufficient evidence in the record to hold the Respondent in violation of Rule 601 of Chapter 3 and in violation of the provisions of Section 12(a) of the Act which, "threaten . . . the discharge of any contaminants into the environment . . . so as to violate regulations or standards adopted by the Pollution Control Board under this Act."

CERTIFIED OPERATOR REQUIREMENTS

Count VI alleged that Respondent operated its treatment works without a certified operator in violation of Rule 1201 of Chapter 3 and Section 12(a) of the Act.

Evidence advanced in support of this allegation is limited to the testimony of Mr. Charles Fellman, Manager of the Permit Section in the Agency. Mr. Fellman testified that at some time prior to the hearings he telephoned Mr. Bob Voss, Operator Certification Specialist in the Agency, to inquire whether the Respondent Allaert Rendering, Inc. had a certified operator running its treatment works. Mr. Fellman was told that Allaert had no certified operator under its employment. (R. 378-82).

While this evidence is admissible under Procedural Rule 320(A), the Board will not afford such evidence the same weight as the testimony of an operator certification specialist during the hearing or his affidavit. The Board hereby finds that this singular statement challenged by the Respondent cannot support a finding of violation of Rule 1201 against the Allaert Rendering, Inc.

ALLAERT'S EFFORTS TOWARD FACILITY IMPROVEMENTS

The record indicates that, in response to Agency inquiries, Allaert contacted Beling in July, 1975, to conduct a study on Allaert's existing facility and to prepare a report recommending the necessary facility improvements. According to the limited evidence in the record, the Beling report recommended that:

1. Allaert connect to a municipal sewer system and reclaim the land currently supporting the infiltration-percolation system; or

2. Allaert should expand or complete its infiltration-percolation system. (R. 426-27, 432).

Although the record is silent concerning the Respondent's legitimate efforts to "expand or complete" its treatment system beyond the proposed installation of fencing and a 25-year flood berm of its permit applications, Paul Allaert conducted negotiations with the City of Silvis "some years back" concerning the availability of a sewer extension from Allaert to the City of Silvis. At the time negotiations were conducted, the City was in the process of purchasing land for a new sewage treatment plant. However, the Respondent claimed that the City of Silvis recommended that it would be better if Allaert connected with the City of East Moline. (R. 127-28).

It was not until October, 1978, that Allaert could begin serious negotiations to direct its wastewater to the East Moline regional sewage treatment plant via a newly-completed sewer extension constructed by the Village of Carbon Cliff. By January, 1979, Allaert had entered into an agreement with the Village of Carbon Cliff to annex the rendering works into the Village as a prerequisite for acceptance of the rendering plant wastewater. (R. 127-28).

Mr. Allaert also retained Beling to construct the sewer extension to the Carbon Cliff sewer system. According to current plans, Beling intends to install a sewer extension to the Carbon Cliff sewer system that will transport wastewater from the Allaert septic tank system to the Carbon Cliff sewer system after grease and solids have been removed from the wastewater. Once completed and operational, the Respondent has stated that receiving lagoon will be bulldozed over and the land will be used to plant crops. The cost of this sewer extension is estimated at $120,000 and the anticipated date of completion is December 15, 1979. (R. 128-30, 276).

After reviewing the evidence in this part with other evidence in the record, the Board finds that it cannot distinguish a sustained program for compliance with the Act and Board regulations until the recent flurry of activity after connection with the Carbon Cliff sewer system became available. Furthermore, the Board concludes that the Respondent's tardy and incomplete permit applications and its belated proposal to install fences and a 25-year flood berm do not qualify as serious efforts towards compliance.

SECTION 33(c) FACTORS AND REMEDIES

Section 33(c) of the Act requires the Board to consider all facts and circumstances bearing upon the reasonableness of the discharges or the deposits before the Board may impose the remedial provisions of the Act for violations alleged and proven in the proceeding. In this case, alternative treatment systems are presumed to be economically reasonable since the Respondent has refused to submit financial records during discovery at the Agency's request and pursuant to Hearing Officer order. However, apart from the issue of economic reasonableness, the Board will review the four criteria of Section 33(c) of the Act in determining the reasonableness of Respondent's conduct.

The character and degree of the violation in this matter must be considered in light of the findings in this Opinion. The Respondent has claimed that there have been no ill effects as a result of the discharge of its wastewater and to his knowledge its treatment system has caused no water pollution. Respondent's consulting engineers claim no pollution to groundwater in the vicinity of the receiving lagoon solely on the basis that laboratory reports from nearby wells indicate no pollution. (R. 120-21, 247).

In considering Respondent's claims in light of the findings of a water pollution threat and a water pollution hazard and the violations of the permit, malfunction and spill requirements of Chapter 3, the Board believes that the Allaert treatment works in its current condition poses a real threat to the surface and groundwaters in the vicinity of the rendering works.

Of equal importance are the permit violations found in Counts I, II and III which seriously affect the efficient operations of the water pollution permit programs (NPDES permits and construction, modification and operation permits) that are designed to protect the public from injury or interference with health and property. It is well established that the permit systems adopted by the Board are essential to the proper management of the water as well as the air and the solid waste control programs of this State. Whenever necessary, the Board must use its penalty provisions and appropriate injunctive relief to ensure compliance. EPA v. Joliet, PCB 78-130, ___ PCB ___ (July 12, 1979); EPA v. Time Chemical, Inc., PCB 75-291, 19 PCB 386, 387 (December 4, 1975); EPA v. Chenoa Stone Co., PCB 75-152, 19 PCB 659, 660 (January 14, 1976).

The Respondent has submitted evidence concerning the rendering works and its social and economic value to the community; however, this will not excuse the Respondent's rendering plant from the continuous and persistent violations of the State's water pollution and permit regulations which are also designed to protect individuals in the vicinity of the rendering facility and water uses downstream from the site.

The Board has reviewed the suitability of the Allaert treatment system to the area in which it is located in prior parts of this Opinion and also in the Opinion dealing with the variance proceeding, PCB 77-334, and agrees with the Agency that the construction of the treatment works to bedrock and its location within the flood plain poses a serious, continuing threat to the surface and groundwaters which diminishes the social and economic value of Allaert Rendering, Inc.

Despite the refusal by Allaert to produce financial records pursuant to discovery orders, the Respondent made numerous offers of proof during the hearings in an attempt to induce the Board to consider testimony concerning the financial condition of Allaert Rendering, Inc., the net income figures of Paul Allaert from 1970 until 1976 and testimony of Paul Allaert regarding economically reasonable treatment alternatives. The Board is, however, not persuaded by these offerings. The record clearly shows the Respondent had ample opportunity to comply with the Hearing Officer's orders both before the Board Order denying Respondent's Application for Nondisclosure and afterward. (R. 131, 133, 136, 141, 469, 477-79).

The cost of alternative compliance measures as estimated by Beling engineers were accepted into evidence and tabulated in the PCB 77-334 Opinion on the basis of treating 30,000 to 40,000 gallons of wastewater per day. The figures are as follows:

Cost Data	Compliance Alternative	Capital Costs	O & M*
1975	Non-aerated Lagoon	258,000	35,000
1975	Aerated Lagoon	92,000	23,000
1975	Biodisc	76,000	22,000
1975	Activated Sludge System	76,000+	30,000+
1975	Trickling Filter System	76,000+	30,000+
1975	Physical Chemical Treatment System	76,000+	30,000+
1975	Infiltration-Percolation System	65,000	11,000
1977	Connection to Carbon Cliff	120,000	11,000

*Annual operation and maintenance cost.
(R. 267-77).

In assessing the estimates by the Respondent's consulting engineers in comparison with the current costs of diverting Respondent's wastewater to the Carbon Cliff sewer system, the Board concludes that certain technological alternatives available to Allaert in 1975 are substantially similar in construction, operation and maintenance costs as the current Allaert compliance program which contemplates completion by December 15, 1979. Accordingly, the Board finds no evidence in the record to dispute the holding that compliance with the water pollution

requirements of the Act and Board regulations was not technically practical and economically reasonable for the Respondent as early as the Beling report in 1975.

Since the Respondent has taken nearly five years to devise and implement a competent compliance plan, the Board must assess a penalty of $3,000 as the minimum necessary to ensure future compliance with the Act and Board regulations; $750 for the violation of 12(a) of the Act, $750 for violation of Rule 601 and $1500 for violation of the construction and operation permit regulations. Furthermore, the Board will require that the Respondent post a bond of $127,000 pursuant to Section 33(b) of the Act as assurance that the Respondent shall do the following:

1. Allaert shall complete the proposed plan to divert its wastewater from its existing treatment facility to the Carbon Cliff sewer system as contemplated in the plan on or before December 15, 1979; and

2. Allaert shall remove the standing water in its receiving lagoon on or before December 31, 1979.

The Respondent, Allaert Rendering, Inc., shall cease and desist from further violations of the Act and Board regulations on or before December 15, 1979.

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

ORDER

1. Respondent, Allaert Rendering, Inc., is found to have violated Section 12(a) of the Environmental Protection Act by discharging wastewater into a receiving lagoon which threatens the surface and groundwaters of the State with water pollution.

2. Respondent, Allaert Rendering, Inc., is found to have caused or allowed the construction and operation of its treatment works without the necessary permits from April 30, 1974, until March 19, 1976, in violation of Rule 901(a), renumbered 951(a), 902(a), renumbered 952(a), and 903(a), renumbered 953(a) of Chapter 3: Water Pollution Regulations and Section 12(b) of the Environmental Protection Act.

3. Respondent, Allaert Rendering, Inc., is found to have violated Section 12(d) of the Environmental Protection Act by discharging wastewater into a receiving lagoon creating a water pollution hazard to the surface and groundwaters of this State.

4. Respondent, Allaert Rendering, Inc., is found in violation of the malfunction and spill requirements of Rule 601 of Chapter 3: Water Pollution Regulations and Section 12(a) of the Environmental Protection Act.

5. Count VI alleging that the Respondent operated its treatment works without a certified operator in violation of Rule 1201 of Chapter 3: Water Pollution Regulations and Section 12(a) of the Environmental Protection Act is hereby dismissed.

6. Respondent, Allaert Rendering, Inc., shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of $3,000.00 within 35 days of the Order which shall be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

7. Respondent, Allaert Rendering, Inc., shall cease and desist from violations of the Act and Board regulations herein found on or before December 15, 1979.

8. Respondent, Allaert Rendering, Inc., shall, in accordance with Section 33(b) of the Environmental Protection Act, post a performance bond in a form satisfactory to the Agency in the amount of $127,000 as assurance that the Respondent shall complete the following:

A. Allaert shall complete the proposed plan to divert its wastewater from its existing treatment facility to the Carbon Cliff sewer system on or before December 15, 1979, the date contemplated in the plan; and

B. Allaert shall remove the standing water in the existing receiving lagoon by pumping to the Carbon Cliff sewer system on or before December 31, 1979, or as soon as practicable thereafter in accordance with a schedule to receive the wastewater negotiated with the Village of Carbon Cliff and approved by the Illinois Environmental Protection Agency.

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