

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1980

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 79-240
)
CARGILL, INC.,)
)
Respondent.)

ALICE NUSBAUM, ASSISTANT ATTORNEY GENERAL, APPEARED FOR THE
COMPLAINANT; PERCY ANGELO, APPEARED FOR RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

On November 14, 1979, the Illinois Environmental Protection Agency (Agency) filed this enforcement action against Cargill, Inc. (Cargill), alleging violations of Section 12(a) of the Environmental Protection Act (Act) and Rules 403, 404(a), 401(c) and 601(b) of the Illinois Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution (Water Rules).

Hearings were held on May 19 and 20, 1980. Keith Long (as an adverse witness), Robert Taylor, Paul Murphy and John Raevuori testified for the Complainant. Keith Long testified for the Respondent. No members of the public attended.

At all times pertinent to the Complaint in this case, Cargill has owned and operated a plant located at Cottage Avenue and Lake Marion Road in Carpentersville, Kane County, Illinois, which manufactures synthetic alkyd and polyester resins (R.202,204-5). Furthermore, at all pertinent times Cargill has operated a stormwater and spill prevention containment system on its Carpentersville plant grounds. Although Cargill has no process waste discharges (R.206-7), its seven acres of grounds, five of which are either blacktopped or roofed, do result in run-off (R.208-13). This is collected and channelled to the underground rainwater detention system which involves three tanks of approximately 60,000 gallons total capacity.

The runoff is directed through an underflow-overflow arrangement. The first stage removes materials which are lighter than water and float to the surface where they are removed with an API skimmer. Materials heavier than water

collect at the bottom of the second stage and are removed at regular intervals. There is also some settling in the third and final stage. This part of the system discharges to a line leaving the Cargill grounds (R.218-20) and finally discharges to a 24-inch village storm sewer line and into the Fox River (R.35).

The stormwater system also has a fourth tank which is used solely as a holding tank. In the event of spills on the plant grounds, the spilled material can be diverted to the holding tank. The API skimmer also discharges to this tank. Materials collected in the tank are either reclaimed or hauled by a licensed hauler (R.210-12).

Complainant alleges first that Cargill has violated Water Rule 403 and Section 12(a) of the Act by discharging an effluent into the Fox River of obvious color, odor and turbidity. Complainant's witnesses Robert Taylor and John Raevuori, both Environmental Protection Specialists with the Agency, gave testimony supporting these violations. Mr. Taylor testified that on April 11, 1978, he observed a discharge from the 24-inch tile to the Fox River which was slightly turbid and had an odor (R.43-44). Mr. Raevuori testified that on April 13, April 26, and May 29, 1979, he observed a greyish-white discharge at the same location with some turbidity and a plastic-type odor (R.106-7, 122-3 and 147). He further testified that on April 26, 1979, he observed water flowing through the manhole following Cargill's stormwater system which had the same coloration and odor as that observed discharging into the Fox River (R.131). Finally, he testified that on April 26, May 3, and, May 29, 1979, he observed water flowing across the Cargill plant grounds into a stormwater catch basin which seemed to be of about the same volume as that which was being discharged into the Fox River (R.130). Mr. Keith Long, Cargill Plant Superintendent at the time told him that the flow was caused by a leak in Cargill's fire prevention system and was causing a flow through the stormwater system (R.136-7 and 225-6).

Respondent presented little to rebut this testimony. While it is true that there are other contributors to the 24-inch storm drain (R.219), their contribution to the discharge at pertinent times is only conjectural, while there is competent evidence to show that some, if not all, of the discharge was from Cargill. Further, even if others did contribute to the discharge, that would not eliminate the violations based upon samples taken on Cargill's plant grounds at the manhole following the stormwater system on April 26 and 29, 1979 (R.130-2 and 152-4). Given the admission that the discharge was caused by a leak which persisted from February to August of 1979 (R.245 and 360), it is reasonable to assume that the discharge was continuous.

Therefore, the Board finds that Cargill violated Water Rule 403 and Section 12(a) of the Act by discharging water into the Fox River with obvious levels of color, odor and turbidity on the dates alleged.

Complainant alleges secondly that Cargill has violated Water Rules 404(a) and 401(c) and Section 12(a) of the Act by discharging an effluent of greater than five times the 30 mg/l standard of BOD₅.

Mr. Raevuori testified that he took samples of the discharge from the 24-inch tile to the Fox River on April 13, April 26, and May 29, 1979. Laboratory analysis of these samples showed a BOD₅ level in excess of 150 mg/l (Comp. Exs. 1, 2 and 5). He further testified that on April 26 and April 29, 1979, he took samples of the effluent entering the manhole on Cargill property which follows the stormwater system. Analysis of these also showed BOD₅ levels in excess of 150 mg/l (Comp. Exs. 3 and 6).

Respondent relies on the same rebuttal testimony as above, and the Board again rejects it, for the same reasons. Therefore, the Board finds that Cargill violated Water Rules 404(a) and 401(c) and Section 12(a) of the Act.

Finally, Complainant alleges that Cargill has violated Water Rule 601(b) and Section 12(a) of the Act by not taking all reasonable measures to prevent any spillage of contaminants from causing water pollution.

There is some evidence to support these violations. Mr. Raevuori testified that on April 26, 1979, he noticed about 20 gallons of solidified material on the ground in the drum storage area (R.127-9). On May 29, 1979, he noticed a dark, oily stain near the process building which appeared to be left by spilled material (R.150). However, as the Respondent points out, there was no evidence that any spilled material had ever reached the stormwater system (R.174). Further, on cross-examination Mr. Raevuori testified that the stain could have been left by material that was cleaned up (R.173).

Cargill rebutted this with considerable testimony concerning its spill prevention and control program. This includes diked storage and catchment areas, detailed operational procedures, training programs and spill clean-up and prevention procedures (R.311-17).

Without more evidence as to the spills causing water pollution, the Board cannot find that Cargill violated Water Rule 601(b) or Section 12(a) of the Act with respect to spills. It is, therefore, unnecessary for the Board to consider Respondent's claims of res judicata or double jeopardy.

Finally, Complainant argues that a penalty of at least \$10,000 should be imposed against Cargill to insure that Cargill is not permitted to gain economically by its violations of Board Rules and the Act, and, therefore, to aid in the enforcement of those rules and the Act.

Under Section 33(c) of the Act, the Board must look at specified factors bearing upon the reasonableness of the discharges in imposing any penalty. While the discharge appears to have been continuous during the period of the leak in the fire prevention system, the volume was slight (between 4 and 20 GPM by various witness). There is no testimony as to any adverse impact on the Fox River.

Further, while it is clearly not an unreasonable hardship on Cargill to upgrade their system, Cargill apparently believed there was no reason to do so until this action was brought. Throughout the record the Agency agrees that Cargill representatives were co-operative and responsive to the Agency. They are presently making plans to implement improvements to their system (R.274-5). Also, they have already rehabilitated their fire protection system at a cost of \$55,000 (R.263).

Finally, the plant, which certainly has social value, is in a basically industrial area of Carpentersville and is surrounded by other industrial property (R.202-4).

Therefore, the Board finds that no penalty would be appropriate in this case. Because of this, the Board will not set aside the hearing officer's rulings on motions to compel answers to interrogatories which go to the penalty, for there has been no prejudice.

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


ORDER

1. Respondent Cargill, Inc. is in violation of Rules 401(c), 403 and 404(a) of the Illinois Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution, and Section 12(a) of the Illinois Environmental Protection Agency Act.
2. Respondent Cargill, Inc. shall cease and desist further violations of those Rules and that part of the Act of which they have been found in violation in (1), above.
3. Respondent Cargill, Inc. shall, within 90 days of the date of this Order, submit an acceptable

plan to the Agency to bring its stormwater system into compliance, and shall include a schedule for the completion of various stages of said plan.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of August, 1980 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board