

ILLINOIS POLLUTION CONTROL BOARD
October 22, 1981

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	PCB 80-22
v.)	PCB 80-193
)	<u>Consolidated</u>
CATERPILLAR TRACTOR COMPANY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by I. Goodman):

On September 24, 1981 the Illinois Environmental Protection Agency (Agency) filed a Motion for Modification and Clarification of the Opinion and Order entered herein on August 20, 1981. The Agency objects to the Board's consolidation of its final decision pursuant to its own motion and requests that the Board enter separate Opinions and Orders in each case. In addition, the Agency requests clarification concerning the finding of "arbitrary and unreasonable hardship", the grounds for not imposing a penalty, and clarification of why there was no violation in Count III of the Complaint.

With respect to consolidation, the Board notes that after having been denied consolidation by the Board early in the proceedings, the parties sidestepped the Board's denial by simply adopting the record in the enforcement case as the record to be considered by the Board in the variance case. Having accomplished in fact what the Board had refused to allow legally, the Agency cannot now be heard to object to the Board finishing what the parties had begun. In addition it is clear that Rule 309 of the Board's Procedural Rules allow such consolidation and indeed consolidation and severance for the purpose of administrative expediency is routinely done by the Board.

The Board presumes that the findings of violation by the Board with respect to the phenol discharge and pH level are clear to the Agency. Furthermore, the record supports that a cease and desist order with respect to the phenol excursions "would impose an arbitrary and unreasonable hardship." The subsequent compliance program contained in the Board Order, an often used method to provide corrective action, is intended to correct Respondent's violations of the phenol limitation. Since this is sought by both the enforcement action and the variance petition, and the record in both proceedings is nearly identical, the Board need not distinguish such a plan as a compliance order or variance condition, but rather determine that the elements of proof for each proceeding is satisfied by the record. This it has done.

The Board Opinion recites the problems encountered by Caterpillar with respect to the startup of a new facility and found that little or no "environmental harm has occurred" and that "Caterpillar proceeded in a reasonable manner considering the facts in this case." The Board considers such information when it decides whether or not to impose a penalty. Here the Board exercised its discretion and determined that the imposition of a fine would not further the purposes of the Environmental Protection Act.

With respect to Count III, after determining that there was no obvious answer to the question of reporting mass discharges while the limitations themselves were stayed under appeal, the Board weighed the evidence before it and determined that the reporting requirement in this case was contingent on a determination with respect to the mass limitation requirement.

Pursuant to the foregoing, Motion for Clarification is granted and Motion for Modification is denied.

IT IS SO ORDERED.

Mrs. Anderson dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 22nd day of october, 1981 by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board