

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1974

CELOTEX CORPORATION

v.

PCB 73-445

ENVIRONMENTAL PROTECTION AGENCY

MR. JOHN L. PARKER and MR. H. GERALD REYNOLDS, appeared on behalf of the Celotex Corporation
MR. JEFFREY R. DIVER AND MR. JOHN H. REIN, appeared on behalf of the Environmental Protection Agency

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle)

Celotex Corporation (Celotex) filed a Petition for Variance on October 22, 1973. The Environmental Protection Agency (Agency) filed an Objection to the Variance Petition and the a Motion Grant an Extension of Time to File a Recommendation on November 16, 1973. On November 19, 1973 Celotex filed a Motion to Strike the Agency's Objection and a Response to the Agency's Motion for an Extension of Time to File a Recommendation. On December 3, 1973 the Agency filed its Recommendation. On December 5, 1973 a hearing was held. On January 16, 1974 the Agency filed a Proposed Finding of Fact and Order. Celotex filed a waiver of the 90-day decision period until February 7, 1974 on January 16, 1974.

Celotex, a wholly owned subsidiary of the Jim Walter Corporation owns and operates a paperboard mill located in Adams County in Quincy, Illinois. This plant has been in operation since 1865. The plant currently produces facing and backing paper for Gypsum Board and paperstock for refrigerated biscuit cans. Approximately 120,000 tons per year of waste paper, or the equivalent of 1,000,000 pulp wood trees, are recycled at this plant. Effluent from the plant is discharged through two outlets directly to the Mississippi River.

Celotex acquired ownership of this facility on June 1, 1973 from Packaging Corporation of America (PCA). This plant has been subject of considerable litigation before the Pollution Control Board and the Adams County Circuit Court. On December 6, 1973 the Board granted PCA a variance from Sections 12(a) and (b) of the Environmental Protection Act (Act) between November 5, 1971 and November 4,

1972; the Board also assessed a \$10,000 penalty for violations of the Act from July 1, 1970 to November 5, 1971 (Order of the Board, Packaging Corporation of America v. EPA, PCB 71-352 and PCB 72-10). In August of 1972 the Illinois Attorney General, on behalf of the State of Illinois brought a suit against PCA in Adams County Circuit Court (72-CH-14) seeking an injunction prohibiting discharges from the Quincy Mill into the Mississippi River, as well as fines against PCA. After acquiring control of the facility, Celotex and the Attorney General entered into and filed with the Adams County Circuit Court, a stipulation on August 24, 1973. This stipulation required secondary treatment of discharges to the Mississippi River to be installed before May 1, 1975 (Appendix A of Celotex's Variance Petition). Pursuant to this stipulation, the court dismissed all proceedings against Celotex but retained jurisdiction of the proceedings as to PCA.

Celotex seeks a variance from Sections 12(a) and 12(b) of the Act; from Rules 203(a), 404(a)(i), 404(b)(i), 903, 914, 1002 and 1201, all of Chapter 3 of the Illinois Pollution Control Board's Rules and Regulations (Water Regulations); and from Rules 1.05(b), Rule 1.05-7, Rule 1.05-8, Rules 1.05-10(a) and (b), and Rule 3.01-10(b) all of Illinois Sanitary Water Board Rules and Regulations #13. (SWB-13).

Celotex's process consists of reducing waste paper into a slurry consisting of water and paper fibers. This slurry is then taken through a series of steps that remove ink and other contaminants, concentrate the slurry, and finally form a paper mat from it. Effluent from the plant consist of non-contact cooling water and process water. The process water contains dissolved solids and suspended solids from the pulping process. Prior to 1973 the waste received no treatment; however, solid separation facilities and a primary clarifier was installed in the fall of 1973. Celotex estimated that after this primary treatment was installed the 3.5 to 4 MGD of effluent would have an approximate waste characterization of 420 mg/l of suspended solids and 460 mg/l of BOD (Page 3, Celotex's Variance Petition). Clarifier effluent data for the October suspended solid and BOD average in mg/l are 102 and 139, respectively; the November averages are 186 and 112, respectively (Celotex exhibit 12). On November 15, 1973 the Agency tested a grab sample from the clarifier effluent and found the suspended solids concentration to be 100 mg/l and the BOD to be 591 mg/l (Agency exhibit 7). Celotex does not have data for BOD's on November 15, but the average suspended solids was 214 mg/l (Celotex exhibit 12). These values are excess of the allowable values of 20 mg/l BOD and 25 mg/l of suspended solids found in Rule 404(b)(i) of the Water Regulations.

The Board finds that Celotex is causing water pollution by discharging an effluent which results in floating scum and discoloration in the Mississippi River in violation of Rule 203(a) of the Water Regulations.

The Board denies Celotex a blanket variance from Section 12(a) of the Act because Celotex has not alleged nor proven that "neither the BOD load nor the suspended solid load from the primary system effluent is harmful to human, animal or plant life, or significantly deleterious to the Mississippi River" (page 11 of Celotex's Variance Petition). Therefore, the Board grants Celotex only a variance from that portion of Section 12(a) of the Act which is applicable to discharges of BOD and suspended solids levels. Mr. John Parker, attorney for Celotex, stated that "the variance from Section 12(a) of the Act should be limited to BOD and suspended solids" (R. 316).

The Board agrees with the Agency's position that a variance from Rule 203(a) of the Water Regulations should be limited solely to those portions of the rule which deal with "unnatural sludge or bottom deposits, floating debris, visible oil, odor, unnatural plant or algae growth, unnatural color or turbidity". Mr. E. Robert Kiehl, Celotex's witness, testified that he did not believe the continued discharge would be toxic or harmful to human, animal, plant or aquatic life of other than natural origin (R. 221).

The Board finds that Celotex is entitled to a variance from Rules 404(a)(i) and 404(b)(i) of the Water Regulations because it has committed itself to meet the 20 mg/l BOD and 25 mg/l suspended solids standards of Rule 404(b)(i) of the Water Regulations by May 1, 1975. The Board finds this to be a good solution to the environmental problem that has persisted for an extended period of time. Compliance by May 1, 1975 means that Celotex will have designed and constructed a secondary treatment system within two years from the date it acquired the plant from PCA. The Board has decided to condition Celotex's Variance Request to require Celotex to meet a 300 mg/l BOD and suspended solids limit. Mr. Kiehl testified that this was a feasible monthly average requirement (R. 218). The Board further conditions the grant of the variance by the requirement that Celotex terminate all untreated process discharges from outfalls #4 and #6 by March 1, 1974. Celotex has agreed to this requirement (R. 251).

Celotex's request for a Variance from SWB-13 became moot after December 31, 1973 when Rule 404 of the Water Regulations became effective for the Mississippi River, however, the Board grants Celotex a variance from those portions of SWB-13 from the date of filing the Amended Variance Petition until December 31, 1973 which pertain to discharges of BOD, suspended solids, turbidity, color, and floating and settleable solids.

The Board finds that Celotex has not complied with Section 12(b) of the Act and Rule 903 of the Water Regulations which would require Celotex to obtain an operating permit for its existing primary treatment system. While Celotex has stated on the record that it intends to apply for and obtain construction and operating permits for its proposed secondary treatment system (R. 235, 314), it has maintained that it should not be required to obtain an operating permit for its primary plant. The Board finds that Celotex has failed to show that it would be arbitrary and unreasonable to require it to comply with the permit requirements. Therefore, the Board does not grant Celotex a variance from Section 12(b) of the Act and Rule 902 of the Water Regulations. However, the Board grants Celotex a limited variance from Rules 921(a) and Rule 914 of the Water Regulations to allow the Agency to issue Celotex an operating permit for Celotex's existing primary system. Celotex is granted this limited variance because of the confusion that arose out of the conferences between Celotex and representatives of the Agency as to the exact need of obtaining an operating permit (R. 27, 28, 213, 252, 256, and 257).

The Board finds that Celotex should submit a time schedule showing compliance by May 31, 1975 as contained in Celotex exhibit 20 by March 15, 1974. Therefore, the Board grants Celotex a variance from Rule 1002(a) and Rule 1002(b)(ii) of the Water Regulations in order to allow Celotex to file this project completion schedule.

The Board finds that Celotex has not established that it should not be required to comply with Rule 1201 of the Water Regulations which requires a certified operator of its treatment plant. However, Celotex is proceeding to obtain the necessary forms to obtain certification for its operator (R. 310-4). Therefore, the Board grants Celotex a variance from Rule 1201 until March 15, 1974, on the condition that Celotex applies for operator certification within 30 days after receipt of the forms.

The Board in granting Celotex's variance request notes with satisfaction that the program Celotex has committed itself to should result in the elimination of a substantial pollution load to the Mississippi River. As noted earlier in this opinion, this papermill has been in operation since 1865 with some 108 years of untreated waste discharge to the Mississippi River. While Celotex is to be applauded for its commitment to clean this source of water pollution within two years after obtaining control of the mill, the Board and possibly the citizens of Illinois cannot help but wonder why it took 108 years.

This Opinion constitutes the Board's findings of facts and conclusions of law.

ORDER OF THE BOARD

1. The Board hereby grants to Celotex Corporation a variance from October 22, 1973 until October 21, 1974 from that part of Sections 12(a) of the Environmental Protection Act which prohibits "the discharge of any contaminants so as to violate regulations or standards adopted by the Pollution Control Board", from the part of Rule 203(a) of the Water Regulations which require that waters of the State be free from "unnatural sludge or bottom deposits, floating debris, visible oil, odor, unnatural plant or algal growth, unnatural color or turbidity", and from Rules 404(a)(i) and 404(b)(i) of the Water Regulations subject to the following conditions:

a. That petitioner post a performance bond with the Environmental Protection Agency in the amount of \$150,000 to ensure installation of the secondary treatment system;

b. That petitioner inform the Agency and the Board at the earliest possible date as to the exact secondary treatment facility it will construct and the amount of wastewater which will be recycled;

c. That petitioner submit monthly progress reports to the Agency describing the status of construction and installation of the proposed secondary facilities;

d. That petitioner submit monthly operating reports to the Agency listing daily average effluent concentrations of BOD, suspended solids, fecal coliform, and other parameters and data as required;

e. That discharges from petitioner's Quincy mill not exceed 300 mg/l BOD and 300 mg/l suspended solids as monthly average values pursuant to the provisions of Rule 404(h) of the Water Regulations;

f. That the discharges of untreated process water from the No. 4 and No. 6 lines directly to the Mississippi River are terminated by March 1, 1974;

g. That the limited variance from Section 12(a) of the Act apply only to BOD and suspended solids.

2. That petitioner be denied a variance from Rule 1.05-5 of SWB-13 (potentially detrimental substances).

3. That petitioner be granted a variance from October 22, 1973 until December 31, 1973, from Rule 1.05-7 (turbidity), Rule 1.05-8 (color), Rule 1.05-10(a) and (b) (solids), and Rule 3.01-10(b) (treatment facilities requirements) of SWB-13.

4. That petitioner be denied a variance from Section 12(b) of the Act and Rule 903 of Chapter 3.

5. That petitioner be granted a variance from Rule 914 of Chapter 3 and from that part of Rule 1002(a) requiring a time schedule showing compliance by applicable deadline dates and Rule 1002(b)(ii) of Chapter 3 subject to the following conditions:

a. That petitioner obtain all necessary operating permits for its facilities; and

b. That petitioner file a Project Completion Schedule showing the schedule found on pages 9 and 10 of its petition by March 15, 1974.

6. That petitioner be granted a limited variance from Rule 921(a) of Chapter 3 so as to allow the Agency to issue operating permits for Petitioner's existing primary treatment facilities.

7. That petitioner be granted a variance from Rule 1201 of Chapter 3 until March 15, 1974, subject to the condition that Petitioner apply for operator certification 30 days after receipt of the necessary forms.

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 7th day of February, 1974 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board