

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 1982

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 80-111  
 )  
 CATERPILLAR TRACTOR COMPANY, )  
 )  
 Respondent. )

JOHN VAN VRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF  
OF COMPLAINANT;

RICHARD J. KISSEL AND JOANNA C. NEW, MARTIN, CRAIG, CHESTER &  
SONNENSCHNEIN, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

This matter comes before the Board on a May 30, 1980 complaint filed by the Illinois Environmental Protection Agency (Agency). The complaint alleges that Caterpillar Tractor Company (Caterpillar) violated the Environmental Protection Act (Act) and the Pollution Control Board regulations contained at 35 Ill. Adm. Code. Subtitle C: Water Pollution in the operation of its wastewater treatment plant located at its Mossville, Peoria County, manufacturing facility. Hearing was held in this matter on March 25, 1982. No citizen testified at hearing and the Board has received no public comment in this matter.

The Agency's complaint contains five counts. Within all five counts, violations of Sections 12(a), (b) and (f) of the Act are alleged, in conjunction with specific Board rule violations. Count I alleges violations of 35 Ill. Adm. Code 309.102 in that Caterpillar caused or allowed the discharge of effluent from its Mossville plant with BOD levels greater than the 20 mg/l permitted by its NPDES permit, which was initially issued October 19, 1977 and modified December 5, 1978. Count II alleges violations of 35 Ill. Adm. Code 304.141 and 309.102 in that Caterpillar caused or allowed the discharge of effluent with total suspended solids greater than 25 mg/l permitted by its NPDES permits. It further alleges that the effluent discharged had levels exceeding the 30 mg/l for suspended solids allowed pursuant to a Board-issued variance granted November 29, 1979 through May 1, 1980 (Caterpillar v. IEPA, PCB 79-99). Count III alleges violations of 35 Ill. Adm. Code 304.120(a) and 309.102 in that Caterpillar caused or allowed effluent discharges containing fats, oils, and

grease in excess of the 15 mg/l allowed by the original NPDES permit; in excess of the 30 mg/l allowed by the aforementioned variance; and in excess of the 30mg/l allowed by the modified NPDES permit. Count IV cites violation of 35 Ill. Adm. Code 304.141 alleging a one-time exceedance of the 1.3 mg/l effluent limitation for chromium allowed by the modified NPDES permit. Count V alleges violations of 35 Ill. Adm. Code 305.102 and 309.102 in that Caterpillar failed to report to the Agency mass quantities of BOD, total suspended solids, oil and grease, iron, zinc, and chromium discharged, thus also failing to comply with the terms of the original and modified NPDES permits.

In support of its Complaint, the Agency submitted the two NPDES permits issued by the United States Environmental Protection Agency (USEPA) to Caterpillar, and the Discharge Monitoring Reports (DMRs) and noncompliance letters sent by Caterpillar to the Agency during the period of alleged violations. (Complainant's Ex. 1.)

Caterpillar did not dispute the facts set out therein. Instead Caterpillar acknowledged the exceedances, submitting two charts which listed the excess amount of BOD, total suspended solids, and oils and grease discharged, the violations of monthly averages, the dates of violations, and the probable causes of the violations. (Respondent's Ex. 14 and 15.) Caterpillar also provided testimony and exhibits further explaining the causes of violations and the efforts since to correct the problems. Caterpillar did, however, deny the allegations contained in Count V pertaining to mass discharge reporting.

Based on Complainant's Exhibit 1 and Caterpillar's admissions the Board finds Caterpillar in violation as alleged in Counts I through IV. In determining the remedy appropriate for these violations, the Board will consider the factors contained in Section 33(c) of the Act.

Since the NPDES permit was initially issued in October, 1977, twenty-three exceedances of the BOD limitations have been recorded along with eight monthly averages in excess of that allowed by permit. According to Caterpillar, these violations were due primarily to unauthorized disposals and equipment malfunctions. Over the course of the same two and one-half years (October, 1977 until June, 1980), discharges exceeded the total suspended solids limitation ten times, and the monthly average seven times. These violations were also attributed primarily to unauthorized disposals and equipment malfunctions. It should be noted that three of these violations occurred during the five months the variance was in effect. Between November, 1979 and June, 1980, the oil and grease limitation was exceeded eleven times. These too were attributed to the same two causes along with unanticipated flow surges. The one excessive discharge of chromium, on or about May 16, 1979 was attributed to equipment malfunction.

In addition to explaining the individual and concurrent causes, Caterpillar argued that many of the violations occurred during a period of construction. Caterpillar further offered that it has taken steps to correct operational defects which caused many of the violations. A program was instituted instructing plant personnel to avoid unauthorized disposals into the facility's sewer system, and the subsequent need to forewarn the waste water treatment operators when such disposals happen. An advance warning system was also installed. (R. 43-44). Also, since such disposals often precipitated BOD excursions, Caterpillar installed experimental respirometers, which will, hopefully, directly alert the operators to possible BOD overloadings. Since this instrument will also monitor chemical oxygen demands, Caterpillar acknowledges that time is needed to determine if it will provide adequate warning. To prevent biomass growth, also a probable cause of BOD exceedances, chlorine shocking to gravity filters now takes place at least weekly. (R. 46-47). A switch to a non-glycol based hydraulic oil is expected to also prevent BOD overloadings in the event contaminated quench pit discharges are misdirected to the treatment plant. (R. 105). To correct the high flow surges, Caterpillar installed equalization tanks in late 1978. (R. 102). As for the equipment malfunctions, Caterpillar explained the time and amount of repair each entailed. Surge tanks have been installed to allow for water retention during future malfunctions. (R. 125).

As for the excessive chromium discharged, Caterpillar claimed that environmental harm was probably less than numerical recording would indicate, because the treatment operators treated the contaminated water a second time after noticing the contamination. (R. 120).

Given Caterpillar's efforts to correct the problems and prevent future ones, the Board finds that any fine imposed would not serve to further the enforcement of the Act.

The issue of mass discharge reporting is analogous to that posed in Illinois Environmental Protection Agency v. Caterpillar Tractor Co., PCB 80-22, 80-193 Consolidated, August 20, 1981. Therein the Board found that Caterpillar had not violated its NPDES permit by not reporting mass discharges in question, because the USEPA had stayed the inclusion of mass discharge limitations. The Board found that although the reporting requirements had not been stayed per se, these requirements had been contingent on the stayed requirement for mass limitations. The same is true in this case. In an effort to distinguish this case, the Agency did elicit on cross-examination that the mass discharge amount could not be calculated from the other figures submitted by Caterpillar. This, however, is immaterial since the Board has already found that Caterpillar is not bound by mass limitation discharges in PCB 80-22 and PCB 80-193, and therefore not required to report the same. The Board so finds in this case.

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

ORDER

1. Caterpillar Tractor Company is found to have violated Sections 12(a), (b) and (f) of the Environmental Protection Act and 35 Ill. Adm. Code 304.120(a), 304.141, and 309.102 as alleged in Counts I through IV.
2. Caterpillar Tractor Company is found not to have violated Sections 12(a), (b) or (f) of the Environmental Protection Act and 35 Ill. Adm. Code 305.102 and 309.102 as alleged in Count V.

IT IS SO ORDERED.

Board Member J. Anderson concurred and D. Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 2<sup>nd</sup> day of December, 1982 by a vote of 4-1.

  
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 Christan L. Moffett, Clerk  
 Illinois Pollution Control Board