

ILLINOIS POLLUTION CONTROL BOARD  
October 9, 1975

DE SOTO, INCORPORATED, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 75-277  
 )  
 ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Respondent. )

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

Petitioner, De Soto, Inc., (De Soto), seeks a Variance to permit mercury discharges which exceed the limitation set in Rule 702 of Chapter 3: Water Pollution, of the Pollution Control Board Rules and Regulations. PCB Regs., Ch.3, Rule 702. Rule 702 sets a sewer discharge criteria for mercury of 0.0005 mg/l; Petitioner estimates that its discharges will not exceed 0.005 mg/l of mercury at any time, (expressed in the Petition as 5 parts per billion,), and will not exceed a total of 2 lbs. per year. De Soto discharges its effluent to the Bloom Township Sanitary District.

De Soto's Petition for Variance was filed with the Board on July 18, 1975. A Recommendation was received from the Environmental Protection Agency, (Agency), on August 22, 1975. No hearing was held in this matter.

De Soto operates a paint manufacturing plant in Chicago Heights, Illinois. Prior to 1973, De Soto used phenyl mercurial preservatives in its latex paint to prevent the growth of bacteria and to prevent product spoilage. After beginning a research and development program aimed at substituting non-mercurial compounds as preservatives, De Soto was able to eliminate the use of mercury in its paints after January 1, 1973. In the past several months, however, De Soto has encountered problems of bulging paint cans, and was required by its customers to recall batches of paint which had been contaminated by bacteria. (It should be noted here that De Soto's Petition is not exact regarding the dates or extent of this problem.) As a result, De Soto recently resumed the use of phenyl mercurial preservatives, and subsequently reported this fact to the Agency on May 9, 1975.

De Soto's Petition indicates that De Soto incurred expenses in excess of \$250,000 in connection with its research and study of non-mercurial biocides. In addition, De Soto has incurred "substantial losses" due to the recall of spoiled paints. Based on these hardships and its estimate that the mercury discharges for which a Variance is asked would not pose any threat to public health or safety, De Soto seeks permission to continue its present mercury discharges for one year. De Soto claims that the problem of bacterial growth in latex paints is common to its industry, and that no completely reliable biocide other than phenyl mercurial compounds has been found to date. De Soto also claims that there is no known feasible method to effectively remove mercury from its effluent to meet the 1/2 ppb standard of Rule 702.

The Agency's Recommendation agrees that De Soto's discharges would have a minimal, and virtually undetectable, impact on the receiving stream. Agency inspections of the Bloom Township Sanitary District's effluent to the Thorn Creek found mercury concentrations of zero. But the Agency also points out the fact that De Soto's Variance Petition contains no reference to a viable compliance plan. The Agency therefore recommends that this Variance be denied.

The Board agrees that this principle - the requirement of a compliance plan - must be applied here, and that the Variance must be denied. The cases cited in the Agency Recommendation, as well as many others, indicate a firm commitment by the Board to require such a compliance plan as a condition for any Variance. Although, as the Agency points out, we have allowed further research and development programs as compliance with this requirement, even this form of compliance plan is lacking in De Soto's Petition. After citing past costs for research into non-mercurial biocides, De Soto states only that, "additional expenses for future studies for replacements of mercurial biocides will be incurred in presently undetermined sums." This is insufficient to meet the compliance plan requirement.

The necessity of a compliance plan is of particular importance when dealing with mercury discharges. The Board has previously found that mercury is a virulent poison which "neither degrades to harmless substances nor ceases to exist" once introduced into the environment. In the Matter of Mercury Standards, R70-5, 1 PCB 411,412(1971).

We shall dismiss this matter without prejudice and without ruling on the other matters raised in De Soto's Petition. De Soto is expressly invited, should it have or develop an adequate compliance plan, to file a new Variance Petition regarding this problem.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD THAT the Petition for Variance of De Soto, Inc. in this matter is dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9<sup>th</sup> day of September, 1975 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board