ILLINOIS POLLUTION CONTROL BOARD
March 20, 1980

ARMAK COMPANY, Petitioner,	)	
v.	)	PCB 79-153
ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

MR. RICHARD J. KISSEL, MARTIN, CRAIG, CHESTER & SONNENSCHEIN, APPEARED ON BEHALF OF THE PETITIONER.

MR. JOHN VANVRANKEN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon an NPDES permit appeal filed August 1, 1979 by Armak Company (Armak). The petition seeks review of certain conditions of NPDES permit #IL 0026069 issued by the Environmental Protection Agency (Agency) on July 6, 1979. The permit authorizes discharges from Armak's bulk fatty amines plant which is located near Morris, Grundy County (R. 23). Pursuant to Order of the Hearing Officer a hearing was held in Chicago, Cook County, on January 14, 1980. A stipulation of facts as well as testimony was presented. Members of the public attended but did not comment.

Armak's plant utilizes tallow, soybean oil and coconut oil as raw materials. The oils are hydrolyzed to form fatty acids and glycerin. The fatty acids are further reacted with ammonia and hydrogen to form various amines and diamines containing chains of eight to eighteen carbon atoms. These are sold to other manufacturers either for direct use or for use as chemical intermediates (R. 24).

The plant has two discharges. Boiler blowdown, water softener regenerate and uncontaminated storm water discharge at outfall 002 (R. 18). This is not directly involved in this permit appeal. Treated process and sanitary wastewater are discharged via 001. Process waste receives two stages of gravity separation to remove free floating fat and two stage biological treatment with aerated lagoons. Sanitary waste receives separate treatment before it is

mixed with treated process waste and sprayed on a sixty-five acre (26 hectare) field planted in reed canarygrass (Stip. 5; Stip. Ex. E, F). Excess water is collected in field tiles which are collected along the western edge of the spray field and discharged at the southwest corner via 001. Pollutants in the discharge include suspended solids, oxygen demanding waste and ammonia.

Armak's original treatment facilities were constructed in 1973 (R. 10). At that time it employed less treatment and a sixteen acre (6.5 hectare) spray field which has now been converted to a winter storage pond to contain the waste while the sixty-five acre spray field is non-functional (R. 11). The sixteen acre field discharged to a drainage ditch (Ditch 1) which discharges to Aux Sable Creek. Discharge 002 presently discharges to that ditch. However, the sixty-five acre field drainage is to another ditch (Ditch 2) which is also tributary to Aux Sable Creek (R. 17). Ditch 1 has for some time been classified by the Agency as an outfall sewer and not a water of the state. Therefore Armak need not maintain water quality in Ditch 1 at the levels required by Part II of Chapter 3: Water Pollution. The Agency has refused to grant Ditch 2 a similar status. The principal issue in this case is whether Ditch 2 is a water of the state or should be classified as either an outfall sewer or an industrial effluent ditch.

In other cases industries have sought to have similar ditches classified as secondary contact rather than general use water under Rule 302 of Chapter 3. The Appellate Courts have held that such reclassification must proceed by way of regulatory change. (Modine Manufacturing v. PCB & EPA, 2d Dist., July 20, 1976; Olin Corp. v. EPA & PCB, 5th Dist., October 18, 1977; Marathon Oil Co. v. EPA & PCB, 5th Dist., August 13, 1979.) In this case Armak seeks not a reclassification but a finding that the ditch is not and never has been a water of the state.

The Armak plant is an irregular tract of about 263 acres located near the point where Aux Sable Creek, flowing east, turns south to cross the Illinois and Michigan Canal, about one mile north of the confluence of Aux Sable Creek with the Illinois River (R. 23, Petitioner's Ex. 1, 3). The tract is bounded on the south by Aux Sable Creek and the canal. Ditch 2 is shown on the map as arising on Armak's western boundary at the southwest corner of the spray field. It meanders east across the southern part of Armak's tract to join Aux Sable Creek, upstream of Ditch 1 and the canal.

Ditch 2 is approximately 3000 feet in length (R. 36). From its meandering character the Board concludes that it is a natural drainage way even though it is necessary to periodically maintain it by digging and removing vegetation (R. 36, 40). Armak controls access to the ditch and the water is used for no purpose prior to its confluence with Aux Sable Creek (R. 26). It carries only the spray field discharge and surface runoff (R. 27). It drains not only Armak's property, but also an unspecified area of farmland to the west (R. 52). It appears that this area is less than 160 acres (Petitioner's Ex. 1). Armak contends that the ditch does not exist as a recognizable channel west of its property line. However, photographs show a depression in the ground containing water (Petitioner's Ex. 10). An Agency witness testified that the channel continued about 150 yards upstream (R. 81). He was able to identify it as a water course because of the relative depression in the land and the nature of the vegetation and ground cover in the area (R. 96, 99).

The industrial effluent ditch exception originated in Allied Chemical Corp. v. EPA, PCB 73-382, 11 PCB 379, February 28, 1973. That case involved a 2500 foot channel which was entirely on Allied's property from its origin to its point of discharge in the Ohio River. It carried only Allied's effluent and natural drainage from forty-five acres. From the plant to the river there was a drop of eighty feet in 3000. Allied's biologist, a lifelong resident of the area, testified that he had never known the ditch to accumulate water and that it had never supported aquatic life before Allied's discharge commenced. The Board found that Allied should not be required to meet water quality standards which would protect aquatic life which would not be present if the discharge were discontinued.

Armak's tract appears to be very flat, showing no changes in elevation on a ten foot contour, except immediately adjacent to water courses. The change in elevation between the plant and Aux Sable Creek is less than thirty feet (Petitioner's Ex. 1). In the spring or following rainfall, water accumulates in pools in the ditch (R. 69, 72; Petitioner's Ex. 10, 12). No evidence was offered as to whether aquatic life utilizes the area during flooding or exists in these pools.

Armak's ditch resembles Allied's in many respects. However, Allied's was located entirely on its property and was a steep channel which had no pooling and did not naturally support aquatic life. Armak's ditch by contrast is flat and subject to periodic

natural flooding with pooling of water. Armak has offered no evidence as to whether aquatic life exists in the ditch. The burden of proof is on Armak under Procedural Rule 502(b)(8). The Board therefore presumes that aquatic life worthy of protection naturally exists in the ditch.

Armak also contends that the difference in classification between the two ditches is inconsistent and discriminatory. However, there is inadequate evidence in the record on which to base a finding as to the correctness of the classification of Ditch 1.

The parties have ignored the effect of Rule 401(a) of Chapter 3. This Opinion should not be construed as a finding that the dilution and designation of point of discharge provisions of Rule 401(a) are not applicable to this case.

The petition contains an additional objection to the permit concerning the discharge of contaminants not specifically named in the permit. Based on the record before it the Board finds that the Agency did not abuse its discretion by not including the requested permit term.

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

ORDER

The permit is affirmed with conditions as written.

IT IS SO ORDERED.

Mr. Goodman Dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20th day of March, 1980 by a vote of 3-1.

Christan L. Moffett per
Christan L. Moffett, Clerk
Illinois Pollution Control Board