

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1985

NATIONAL MARINE SERVICE, INC.,        )  
  )  
                  Petitioner,            )  
  )  
                  v.                        )        PCB 85-94  
  )  
ILLINOIS ENVIRONMENTAL                )  
  PROTECTION AGENCY,                 )  
  )  
                  Respondent.            )

MARTIN, CRAIG, CHESTER AND SONNENSCHNEIN (MR. JOSEPH S. WRIGHT, JR., OF COUNSEL) APPEARED ON BEHALF OF THE PETITIONER.

MR. WILLIAM D. INGERSOLL, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the July 1, 1985 Petition for Permit Review filed by National Marine Service, Inc. (National Marine). The Petitioner has asked the Board to review the Illinois Environmental Protection Agency's (Agency) denial on May 28, 1985 of an air operating permit for Pond #1 which is located at the Petitioner's Shipyard Division in the City of Hartford, Illinois.

On September 26, 1985, a hearing was held at which testimony was heard and the Respondent's Exhibit A (i.e., the Agency Record) was admitted into evidence. (R. 7-8). No members of the public attended this hearing. (R. 4; R. 16).

On October 9, 1985, the Petitioner filed a Motion to Consolidate the Decisions in PCB 85-94 and PCB 85-108 which was denied by the Board on October 24, 1985.

The Petitioner is a corporation which is in the business of cleaning, repairing, and servicing barges, tugboats, and other river-going craft. National Marine cleans the interiors of barges and other vessels in order to facilitate a change of cargo or to expedite necessary repairs and maintenance. The cleaning operation is accomplished by spraying the insides of the barges with steam and/or hot water produced by Boiler #1. The washwater and materials rinsed from the barges are then pumped to Pond #1. The organic compounds and water separate in Pond #1. (See: Opinion and Order of November 7, 1985 in PCB 85-108, National Marine Service, Inc. v. IEPA).

National Marine initially installed and operated its Hartford Shipyard lagoon system pursuant to Permit #1969-EB-128 which was issued on March 3, 1969 by the Illinois Sanitary Water Board. This Sanitary Water Board permit granted the Petitioner permission to operate Pond #1, Pond #2, and Pond #3 in accordance with the conditions specified in Permit #1969-EB-128. Since 1969, National Marine has added an aeration system, levee additions, and Pond #4 as improvements to its facilities which treat washwater from its cleaning plant. In a letter and permit application to the Agency dated December 3, 1984, National Marine applied for a permit to operate its Pond #1. On March 1, 1985, the Agency denied this permit application. On March 22, 1985, the company reapplied to the Agency for the requisite permit and the Agency denied the reapplication on May 28, 1985. The Petitioner has requested that the Board determine whether or not the permit application for Pond #1 was properly denied by the Agency.

In the Agency's May 28, 1985 denial of the Petitioner's operating permit application, two basic reasons for the denial were given. The first reason was that: "The Pond #1 does not have the 85% emission reduction required by Section 215.141(a) when cleaning barges containing photochemically reactive material or highly odorous materials." 35 Ill. Adm. Code 215.141(a) reads as follows:

SUBPART C: ORGANIC EMISSIONS FROM  
MISCELLANEOUS EQUIPMENT

Section 215.141 Separation Operations

- a) No person shall use any single or multiple compartment effluent water separator which receives effluent water containing 757 l/day (200 gal/day) or more of organic material from any equipment processing, refining, treating, storing or handling organic material unless such effluent water separator is equipped with air pollution control equipment capable of reducing by 85 percent or more the uncontrolled organic material emitted to the atmosphere. Exception: If no odor nuisance exists the limitation of this subparagraph shall only apply to volatile organic material.

National Marine has attacked the rationale for the Agency's permit denial decision by emphasizing that Section 215.141(a) does not actually refer to "photochemically reactive material" but instead refers to "volatile organic material". Thus, the company has argued that no air pollution control equipment is required and that its permit was improperly denied.

However, a careful consideration of this matter indicates that the phrase "photochemically reactive material" was inadvertently included in the Agency's permit denial letter. It appears that the accidental citing of "photochemically reactive

material" instead of "volatile organic material" in the permit denial letter did not cause National Marine any prejudice, since the facts reveal that the Petitioner handles both classes of material at its facility and does indeed handle "volatile organic material".

Testimony at the hearing by the Agency's permit reviewer, Mr. James D. Cobb, P.E., clearly indicated that National Marine's facility handled volatile organic material such as gasoline, aviation gas, and other substances that are cleaned from the barges and sent to Pond #1. (R. 8-10). Other materials handled by the Petitioner's facility, such as xylene, toluene, and styrene, are photochemically reactive. (R. 10). The facts indicate that about 35 to 40 different substances are cleaned from the barges and many of these materials are volatile organics. (See: the attachments to Exhibits 4 and 11 of the Agency Record). While the Petitioner brought out on cross-examination that it was possible that a mixture of some of these substances would be neither reactive nor volatile, the fact remains that the opposite possibility is just as likely, if not more likely, given the variety of different materials handled at various times by the Petitioner. (R. 12).

In support of its position, National Marine has heavily relied on a September 4, 1984 test report from Industrial Testing Laboratories, Inc. (ITL) pertaining to its analysis of two oil samples from Pond #1 submitted to it by the Petitioner. The cover letter to the report, dated September 5, 1984, states that "the physical properties of the sample submitted were not conducive to the performance of a vapor pressure, the results of which would have been less than 1.0 had the material been tested".

35 Ill. Adm. Code 211.122 defines "volatile organic material" as "any organic material which has a vapor pressure of 17.24 (2.5 psia) or greater at 294.3 K (70 F). National Marine contends that since the material tested in 1984 had a vapor pressure of less than 2.5 pounds per square inch absolute (psia), all the contents and materials in Pond #1 are not volatile as that term is defined in Section 211.122. (See: Agency Record, Exhibits 3 and 9).

Upon analysis of the facts in this case, the Board believes that National Marine is incorrectly asserting that, because a 1984 report by ITL claims that the vapor pressure of the pond material is less than 1.0 psia, then no volatile organic materials are actually handled. The Board notes that National Marine has presented no proof or evidence showing that the two oil samples taken in 1984 were actually representative samples. It is clear that National Marine handles a large variety of miscellaneous substances which are not fuel oil and are volatile. Different materials are cleaned from the barges at different times, and each substance or combination of substances would have a different vapor pressure and different ultimate

analysis. When National Marine took its samples, there apparently were no Agency personnel or representatives present to monitor the sampling; no evidence was presented as to an unbroken chain of custody from the time the samples were taken by the Petitioner to the time they were delivered to ITL; there were no "control" samples taken; and the samples were taken from the surface of a 1.4 acre pond which is completely exposed and open to the atmosphere.

Even if the test results were accurate and that specific sample had a vapor pressure of less than 1.0 psia, there is no guarantee that a more representative sample, or a sample taken at a time that other substances were being handled at the company's facility, would show similar results. Moreover, Section 215.141(a) should not be misinterpreted to imply that the volatility of a material is to be determined at some unspecified time long after some particular substance or miscellaneous material has been handled. Any truly volatile materials would have long since evaporated and thus would not necessarily show up in testing at a future date. Section 215.141(a) refers to effluent from any "equipment processing, refining, treating, storing or handling organic material" (emphasis supplied), and it is clear that National Marine's equipment falls within the purview of that rule.

The Board notes that nowhere in the record does National Marine dispute that it handles many substances which are clearly volatile organic materials. The fact that the effluent water containing that volatile organic material is pumped to Pond #1 for separation is also undisputed. The company is also not disputing that Pond #1 is not equipped with any air pollution control equipment. Accordingly, it is clear that Section 215.141 requires air pollution control equipment for such separation operations as conducted by National Marine, and the Agency properly denied the Petitioner its air operating permit because such equipment was lacking.

In its legal arguments, National Marine has also stressed that, according to the exception delineated in Section 215.141(a), the rule calls for control of only volatile organic materials "if no odor nuisance exists". The Petitioner claims that there was only one incident of an odor nuisance from its facilities which was an isolated incident which occurred in 1976. (See: Agency Record, Exhibit 1). Thus, National Marine argues that there is no odor nuisance involved in this case. Even if the Board were to conclude that the Petitioner's contentions pertaining to the lack of an odor nuisance are well-founded, the fact that there are no odor problems does not change the well-established fact that there are volatile organic materials handled by National Marine's facility which warrant the installation of the necessary air pollution control equipment pursuant to Section 215.141(a).

National Marine has also attacked the rationale behind item #2 of the Agency's permit denial letter which states "this application does not include all the air emission sources requiring an operating permit. Based on inspections by Agency personnel, an operating permit is needed for the barge cleaning operation, and fuel or waste storage tanks..." In support of its position, the Petitioner cites 35 Ill. Adm. Code 201.144 which reads as follows:

Section 201.144 Operating Permits for Existing Sources

No person shall cause or allow the operation of any existing emission source or any existing air pollution control equipment without first obtaining an operating permit from the Agency, except as provided in Section 201.146. Dates on which permits were required are shown in Appendix C.

Since Section 201.144 requires operating permits for any existing "emission source", the Petitioner refers back to the definition of "emission source" in 35 Ill. Adm. Code 201.120 which reads:

"Emission Source": Any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

From this definition of "emission source", the Petitioner argues that the Board's Air Pollution Regulations contemplate a permit application for a single item of "equipment" such as a pond without the necessity of including each item within the facility because the conjunction "or" connects the phrase "any equipment or facility".

In analyzing the Petitioner's contention pertaining to the aforementioned definition, the Board finds that National Marine has misinterpreted both the intention and the language contained therein. The presence of the conjunction "or" between the words "equipment" and "facility" in the emission source definition of Section 201.102 does not mandate that, in a specific case, the Agency must treat a particular facility or various equipment as a unified whole and, in actual practice over a period of 15 years, the Agency has often required separate operating permits for individual pieces of equipment or for various portions of a specific facility. The idea behind the regulations is to insure that every potential source of pollution has the necessary air pollution control equipment to control environmentally detrimental emissions; and the necessity for obtaining a specific operating permit from the Agency is to provide the Agency with a readily accessible means for the monitoring and regulation of all possible sources which may have an adverse impact on the environment.

In the Agency's permit denial letter, item #2 refers to the necessity of permits for the barge cleaning operation, and fuel

or waste storage tanks. The record clearly shows that the Petitioner's operation of Pond #1 is directly linked and intricately interrelated to the operation of the other sources mentioned by the Agency. Washwater effluent is brought to Pond #1 for separation as a direct result of National Marine's barge cleaning operations. (See: Opinion and Order of November 7, 1985 in PCB 85-108, National Marine Service, Inc. v. IEPA). The floating hydrocarbons and various other materials and substances are then removed to storage. Were it not for the operation of these other sources, Pond #1 would not be utilized as a separator. Accordingly, since the Petitioner's various operations are so interrelated and directly intertwined, it was appropriate for the Agency to mention other sources in its letter.

And, although the Petitioner has even asserted that the letter should not have mentioned "inspections by Agency personnel", such inspections are a vital part of the permit and monitoring process and can legitimately be referred to by the Agency. Moreover, the Agency is not authorized to issue an operating permit unless the applicant has demonstrated that the operation of the source in question will not cause a violation of the Illinois Environmental Protection Act (Act) or Board regulations thereunder.

Since the Petitioner's operation of Pond #1 was in conjunction with, and contemporaneous to, the operation of the other sources, the Agency correctly determined that the use of Pond #1 indicated the unpermitted use of the other sources, thereby indicating a possible or actual violation of the Act and applicable regulations.

Additionally, the Petitioner has challenged the Agency's reference to Section 9 of the Act in its permit denial letter. However, it is obvious that the Agency's reference to Section 9 is included to relate the Board's Air Pollution Regulations to the applicable portion of the Act, since this entire matter involves air pollution regulations and permits. Furthermore, the Petitioner has all but ignored the importance of other items mentioned in the permit denial letter, such as the Agency's Division of Land Pollution Control's concerns pertaining to National Marine's failure to develop and implement a groundwater monitoring program for surface impoundments used to manage hazardous waste; violation of interim status standards; and possible burning of RCRA hazardous wastes.

The Board hereby finds that the Agency's permit denial reason #1, citing Section 215.141(a), was proper based upon the record before the Agency. Moreover, the Board finds that the Agency's permit denial reason #2, citing other emission sources, was proper because of the relationship of the sources to one another. The Board believes that the Agency's denial of the Petitioner's operating permit application for Pond #1 was proper because National Marine obviously handles many substances and

materials which are volatile and these materials go to Pond #1 for separation. It is clear that National Marine's operation falls with the control requirements delineated in 35 Ill. Adm. Code 215.141(a). Since National Marine has admittedly not installed any air pollution control equipment, the operation of Pond #1 violates Section 215.141(a).

Accordingly, the Agency's May 28, 1985 denial of an air operating permit for Pond #1 at the Petitioner's Hartford, Illinois facility is hereby affirmed.

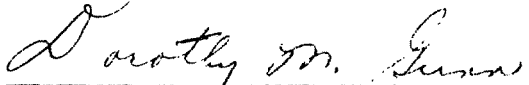
This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Agency's May 28, 1985 denial of an air operating permit for Pond #1 at National Marine Service, Inc.'s Hartford, Illinois facility is hereby affirmed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20<sup>th</sup> day of December, 1985 by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board