

ILLINOIS POLLUTION CONTROL BOARD  
May 5, 1983

MINNESOTA MINING AND MANUFACTURING CO., )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 79-71  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

RICHARD J. KISSEL (MARTIN, CRAIG, CHESTER & SONNENSCHNEIN)  
AND BRIAN H. DAVIS (OFFICE OF GENERAL COUNSEL/3M) APPEARED  
ON BEHALF OF PETITIONER; AND

WILLIAM J. BARZANO, ASSISTANT ATTORNEY GENERAL, APPEARED ON  
BEHALF OF RESPONDENT.

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

This matter comes before the Board on the March 30, 1979 appeal of certain conditions of NPDES permit IL0003140 issued February 28, 1979 by the Illinois Environmental Protection Agency (Agency) to the Minnesota Mining and Manufacturing Co. (3M). The permit governs discharges from 3M's Cordova, Rock Island County, chemical manufacturing plant. The Cordova plant manufactures adhesives and resin products, iron oxides, fluorochemicals and industrial specialty chemicals. Plant effluent is discharged to the Mississippi River.

3M challenged 4 conditions, and omission of a fifth. First, it objected to the duration of the permit, arguing that a 3 year permit was more appropriate than the 2 year permit issued.

Second, 3M questioned the Agency's establishment of two separate effluent limitations for what it called in the permit "non-contact cooling water" (Attach. B-1) and process wastewater [Attach. B-1(a)], when prior permits had recognized that there is physically only one discharge to the Mississippi. The constituents of this single discharge are non-contact process water, wastewater from the plant's organic waste treatment phase, and wastewater from the inorganic waste treatment phase.

3M asserted that prior to the design of the facility, that the Agency had approved mixing of these three waste streams, pursuant to its authority to make determinations concerning the "best degree of treatment of wastewater" as outlined in 35 Ill. Adm. Code 304.102 [formerly Rule 401(a) Dilution of Chapter 3: Water Pollution]. 3M claimed that Agency reversal of this earlier determination would be arbitrary and capricious, and that the Agency should be estopped from so doing.

The balance of the conditions relate to monitoring and authority to discharge pollutants other than those specified. The third challenged condition (Attach. B-1(a), ¶6) related to twice-yearly monitoring for 19 designated parameters. 3M objected on the grounds that monitoring and reporting for 5 of these was required in other permit sections at different frequencies, and that the other 14 parameters were not present in the discharge in significant concentrations. The fourth condition, Attachment G, required submission of a "facility process evaluation" "with regard to known or potential toxic pollutants", to be submitted 180 days prior to the permit's expiration. 3M objected to this condition because of lack of prior public notice, and the condition's general vagueness and unreasonableness. Finally, 3M requested inclusion of a condition allowing for discharge of pollutants other than those specified, provided that concentration limits did not exceed applicable federal or state limitations.

All of the challenged conditions save the "facility process evaluation" were stayed by the Board's Order of May 10, 1979. On July 26, 1979, at 3M's request the Board ordered that certain files be marked "not subject to disclosure". Hearing was held in this matter on August 10, 1982, at which the parties presented suggested resolutions of this matter. No further arguments or comments have been received before or since the November 9, 1982 filing of the hearing transcript.

In the parties' "stipulation" at hearing, the Agency has agreed to issue a 3 year permit, to make all of the changes listed on p. 6, paragraph 10 of 3M's petition, to add an authorization to discharge parameters not otherwise listed, and to modify the facility process evaluation requirements (R. 6-13). "In consideration for that" (R. 6), 3M would agree to make modifications in its treatment facility as contained in Joint Ex. 1, pursuant to a schedule to conclude 10 months after the date of the reissued permit.

Based on 3M's pleadings, and the lack of Agency response in support of the conditions included by the Agency in this permit, the Agency's permitting decision is reversed. As no evidence or argument in support of the replacement conditions has been given the Board, the Board declines to "place its imprimatur" on them, and to order their inclusion in a reissued permit (See Texaco Inc. v. IEPA, PCB 81-96, May 5, 1983). The Agency will therefore be ordered only to reissue the permit, subject to lawful conditions.

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

ORDER

The Agency's inclusion in NPDES permit IL0003140 of the conditions challenged in this appeal is reversed. The permit shall be reissued subject to lawful conditions.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 27<sup>th</sup> day of July, 1983 by a vote of 4-0.

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