

ILLINOIS POLLUTION CONTROL BOARD  
October 9, 1975

CHRYSLER CORPORATION, )  
 )  
 ) Petitioner, )  
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 )  
 ) v. ) PCB 75-341  
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 ) ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

ORDER OF THE BOARD (by Mr. Dumelle):

The Motion to Appear As Counsel filed by Petitioner is granted.

Petitioner is seeking to appeal a denial of an operating permit by Respondent and a redefinition of its point of discharge as "exiting to the Kishwaukee River rather than to the drainage ditch which has been designated as an 'unnamed tributary' of the Kishwaukee River".

Petitioner has twice been before the Board in regard to its effluent and the appropriate standards to be applied to its discharge. Because of this the Board feels that some guidance is needed to focus the parties on the correct issues which the Board can decide. In Chrysler Corporation v. EPA, PCB 74-366 (October 17, 1974), the Board dismissed a petition for a variance from the National Pollutant Discharge Elimination System (NPDES) permit requirements because of a lack of jurisdiction until the State of Illinois had been delegated the authority to administer the NPDES permit program by the Administer of the U.S. Environmental Protection Agency (U.S. EPA).

Subsequently, Petitioner filed a permit appeal and a request to redefine its points of discharge on December 12, 1974. A hearing was held. Three issues were presented in this case. First, whether Petitioner had filed for an Illinois permit pursuant to Rule 952 of the Water Pollution Regulations (formerly Rule 902) We determined that Petitioner had not filed for a state permit (Chrysler Corporation v. EPA, PCB 74-466 (June 6, 1975)). In so holding, we rejected a claim that an application to the Army Corps of Engineers for a 1899 Refuse Act discharge permit, which by operation of Section 402(a) of the Federal Water Pollution Control Act (FWPCA) is deemed to be application for an NPDES permit, did

not constitute an application for a state operating permit (supra at page 3).

The second issue was whether the action of Respondent in drafting an NPDES permit for the U.S. EPA and a letter from Respondent to Petitioner dated November 6, 1973, amounted to a denial by Respondent of a prior approval of other limitations in a previous permit which would give cause for a permit appeal to the Board? We held that no permit was in existence that could have been the basis for a permit appeal (supra).

The third issue was the request for a redefinition of Petitioner's point of discharge. We held that:

The Board agrees with the Agency that a permit appeal, even if a proper appeal, is not the type of case to seek such a change. For example, Petitioner has the regulatory amendment process to seek such a permanent change. Much of the testimony at the hearing dealt with the lack of necessity of meeting the 4-5 standard when the present quality of effluent adequately protects the tributary in Petitioner's opinion. If Petitioner could demonstrate the required circumstances in a variance request, Petitioner could be granted a variance while it came into compliance with the requirements (supra at 4).

Pursuant to our previous holding in PCB 74-466 we dismiss the request for a redefinition. In so holding, we find that a request for redefinition of stream would be a regulatory matter, inasmuch as the very term implies that the present classification is correct. This does not mean that Petitioner cannot challenge the denial of a permit application by the Respondent with respect to what standards are applicable to Petitioner's discharge.

Therefore remaining is the allegation that Respondent has improperly denied Petitioner's application for an operating permit pursuant to Rule 952 of the Water Pollution Regulations.

The Motion to Dismiss filed by Respondent is denied.  
Mr. Henss dissents.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 9<sup>th</sup> day of October, 1975 by a vote of 3-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board