

ILLINOIS POLLUTION CONTROL BOARD
July 18, 1974

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|-----------------------------------|---|------------|
| CLARK OIL & REFINING CORPORATION, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | PCB 73-278 |
| |) | |
| ENVIRONMENTAL PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

Mr. Joseph S. Wright, Jr., Attorney, on behalf of Petitioner;
Mr. Dennis R. Fields, Assistant Attorney General, on behalf of the Environmental Protection Agency.

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

On July 10, 1973, Clark Oil and Refining Company filed its Petition For Review Of Permit Denials. On November 7, 1973, Clark filed its Amended Petition For Review Of Permit Denials. Petitioner filed pursuant to Section 40 of the Environmental Protection Act seeking review of the decision of the Agency in refusing to grant certain permits pursuant to the requirements of Section 39 of the Act and the Rules and Regulations of this Board.

Petitioner alleges wrongful denial of the sixteen air operating permit applications listed hereunder:

| <u>COUNT #</u> | <u>APPLICATION #</u> | <u>IDENTIFICATION #</u> | <u>EQUIPMENT</u> |
|----------------|----------------------|-------------------------|------------------------|
| I | 02110521 | 031024AAA | Refinery Tank Farm |
| II | 02110523 | 031024AAA | Light Oil Loading Rack |
| III | 0 2 11 0537 | 031024AAA | #1 Saturates Gas Plant |
| IV | 0 2 11 0679 | 119050AAA | Light Oil Loading Rack |
| V | 03021723 | 143805AAD | Light Oil Loading Rack |
| VI | 02110532 | 031024AAA | #2 Saturates Gas Plant |
| VII | 02110528 | 031024AAA | Phenol Unit |
| VIII | 02110520 | 031824AAB | #3 Unifiner |
| IX | 02110534 | 031824AAB | #2 Unifiner |
| X | 02110519 | 031824AAB | #1 Unifiner |

| <u>COUNT #</u> | <u>APPLICATION #</u> | <u>IDENTIFICATION #</u> | <u>EQUIPMENT</u> |
|----------------|----------------------|-------------------------|--------------------|
| XI | 02110527 | 031024AAA | Cumene Unit |
| XII | 02110538 | 031824AAB | Alkylation Unit |
| XIII | 02110535 | 031824AAB | Isomax Unit |
| XIV | 02110533 | 031824AAB | #2 Platformer Unit |
| XV | 02110531 | 031824AAB | #3 Platformer Unit |
| XVI | 02110529 | 031824AAB | Crude Unit |

During the pendency of this action, the Agency granted five permits, rendering Counts II, III, IV, V and VI moot. Petitioner's motion to withdraw said Counts is granted. Also during the pendency of this action, Petitioner discovered a mathematical error in the application which is the subject of Count I. Petitioner's motion to withdraw Count I is granted.

The Agency's sole reason for denying the remaining ten Counts (VI through XVI) is that the discharge or emission of contaminants from the subject equipment would cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources.

However, as to each of these Counts, the Agency admits that each of the respective applications shows on its face that the subject equipment is in compliance with the applicable portions of Rules 201 through 208 of the Air Pollution Regulations. Further, as to each of these Counts, the Agency admits that it has no information to the effect that the subject equipment is in violation of any requirement or limitation imposed by Rules 201 through 208. (See the Agency's Answers to Request to Admit; and the Agency's Supplemental Answers to Request to Admit).

Petitioner submits that the Agency has exceeded its power, whether derived from regulatory or statutory sources, by arbitrarily and unilaterally concluding that the condition of air pollution is caused or contributed to by Petitioner's equipment while admitting that Petitioner had complied with all applicable regulations promulgated by this Board. The Board rejects this contention, as the determination that a facility or proposed facility causes or will cause air pollution is a proper Agency function. However, there is no evidence in the present record to support the Agency's determination that Petitioner's facility is causing air pollution.

A public hearing was held in this matter on June 19, 1974. That hearing consisted of the legal arguments of the parties and no evidence was admitted. The Record in this matter was closed by Board Order on

June 20, 1974.

In a Petition For Review of an Agency denial of permit, Rule 502(d) of the Board's Procedural Rules requires:

- (d) The Agency shall appear as respondent in the hearing and shall immediately, upon notice of the petition, file with the Board the entire Agency record of the permit application, including:
 - (1) the application;
 - (2) correspondence with the applicant;
 - (3) the denial.

For reasons not of Record, the Agency has failed to file the requisite documents. Based upon the lack of Agency evidence in this matter and the formal admissions by the Agency cited above, this Board must grant the relief requested. However, our decision shall not be interpreted as to preclude any enforcement action or proper Agency proceeding.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that the Illinois Environmental Protection Agency shall issue operating permits for the equipment enumerated in Counts VII through XVI (inclusive) of the Amended Petition for Permit Review.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 18th day of July, 1974 by a vote of 5-0.

Christan L. Moffett