

ILLINOIS POLLUTION CONTROL BOARD  
June 26, 1975

CHRYSLER CORPORATION, )  
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 ) Petitioner, )  
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 )  
 ) v. ) PCB 74-466  
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 ) ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 ) Respondent. )

MR. ELMER C. RUDY and MS. CONNIE GALE, appeared on behalf of Petitioner;

MR. JOHN T. BERNBOM, appeared on behalf of Respondent.

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

Chrysler Corporation (Petitioner), on December 12, 1974, filed a Permit Appeal seeking review of the refusal of the Environmental Protection Agency (Agency) to issue Petitioner a permit. The Agency filed a Motion to Dismiss on January 2, 1975. On January 16, 1975, Petitioner filed an Answer to the Motion to Dismiss. After review of issues raised in the Motion to Dismiss and the Answer to Motion to Dismiss, the Board decided to take the Motion with the case. A hearing was held on February 20, 1975 in Belvidere. Both Petitioner and the Agency submitted Briefs. Petitioner has filed a waiver of its right to a decision within 90 days, extending the date for final decision to June 26, 1975.

Petitioner operates an automobile manufacturing plant, known as the Belvidere Assembly Plant, which is located in the City of Belvidere in Boone County. Certain industrial wastes are provided treatment and subsequently discharged by Petitioner. This waste water discharge is the subject of this petition.

Petitioner seeks to appeal a refusal by the Agency to issue Petitioner a permit for its Belvidere Assembly Plant and to have its point of waste water discharge redefined as exiting to the Kishwaukee River rather than to the drainage ditch referred to by the Agency as an "unnamed tributary" of the Kishwaukee River (Petition, page 1).

The Agency answers that it has only drafted a National Pollutant Discharge Elimination System (NPDES) permit containing certain limitations pursuant to an agreement between the Agency and Region V of the U.S. Environmental Protection Agency (U.S. EPA) (Motion to Dismiss, page 1). The Agency further states that the Board has no authority to hear an appeal concerning an NPDES permit until the State of Illinois has been delegated the authority to administer the NPDES permit program by the Administrator of the U.S. EPA pursuant to Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA) (Motion to Dismiss, page 2). The Agency further alleges that the relief requested concerning a redefinition of the point of waste water discharge is not the proper subject of a permit appeal (Motion to Dismiss, page 2).

A review of the record shows that Petitioner was issued a permit to install and operate an industrial waste treatment facility with discharge to a present small intermittent water course tributary to the Kishwaukee River by the Sanitary Water Board on August 28, 1964 (emphasis added) (Petitioner Exhibit 2). On July 9, 1970, Mr. C.W. Klassen, then Director of the Agency, approved the 20 mg/l BOD and 25 mg/l suspended solids effluent quality for Petitioner's discharge into the minor tributary of the Kishwaukee River (emphasis added) (Petitioner Exhibit 3).

On June 30, 1971, Petitioner applied to the Army Corps of Engineers for a 1899 Refuse Act discharge permit (Petitioner Exhibit 6). Petitioner requested on May 25, 1971 that the Agency provide the required state certification that such discharges will not violate applicable water quality standards (Petitioner Exhibit 4). The pending Refuse Act permit application was deemed by operation of federal law to be an application for an NPDES permit on October 18, 1972 (Section 402(a) of the FWPCA). Pursuant to a working agreement between the Agency and the U.S. EPA, the Agency prepared draft NPDES permits for U.S. EPA issuance pursuant to the FWPCA. The Agency has prepared a series of draft permits for Petitioner's Belvidere Assembly Plant with the last draft dated December 31, 1974 (Agency Brief, page 2 of Argument)\*.

On November 6, 1973, the Agency notified Petitioner that Rule 404(f) of Chapter Three Water Pollution Regulations

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\*Found two pages following the caption of Argument.

adopted in March 1972 (Water Regulations) required that discharges into a stream with less than a 1 to 1 dilution conform to a standard of 4 mg/l BOD<sub>5</sub> and 5 mg/l suspended solids (Petitioner Exhibit 16). This letter states that "the new regulation require that standards be based on the dilution ratio in the stream to which the effluent is discharged". (Ibid). The Agency stated that "our records indicate that these facilities discharge into a tributary of the Kishwaukee River..." (Ibid) (emphasis added).

Petitioner has failed to allege and prove that it has applied for an Illinois permit to operate its waste treatment system pursuant to Rule 952 of the Water Regulations (formerly Rule 902). Therefore, the Agency has not been shown to have denied such a permit. Petitioner stated that the Agency has "issued no formal permit to Chrysler to discharge those [20 mg/l of BOD<sub>5</sub> and 25 mg/l of suspended solids] levels" (Answer to Motion to Dismiss, page 1). Petitioner bases its appeal upon the premise the issuance of a draft permit and the letter of November 6, 1973, which both require that Petitioner comply with Rule 404(f) of the Water Regulations, amounts to a denial of the Agency approval of other limitations (Answer to Motion to Dismiss).

While not holding that the Board lacks authority to hear any permit appeal resulting from Agency action in drafting and certifying NPDES permits, the Board finds that there was no permit in existence from which Petitioner could appeal. In the appropriate case, a Petitioner could file a variance from the regulation in conflict, such as Rule 404(f) in this case. The Board could make the initial determination if the rule in fact applied. If the rule was found to indeed apply, as interpreted by the Agency, the Board would then decide if a variance should be granted from that rule. Petitioner could then utilize the Board's decision in an attempt to amend the draft NPDES permit or in a request to modify a final NPDES permit. Other than the draft NPDES permit no evidence was introduced that Chrysler ever applied for an operating permit after Rule 902 (presently Rule 952) of the Water Regulations was adopted. This rule required all dischargers to have an operating permit in accordance with Section 12(d) of the Environmental Protection Act.

Although having found that Petitioner had no permit which would trigger the review requested by Petitioner, the Board must still decide whether the application for a Refuse Act permit (and by operation of law an NPDES permit) constitutes an operating permit application. The Board finds that until Illinois is granted authority to administer the NPDES permit system separate applications must be made for federal and state permits. When the Board enacted the NPDES regulations,

R 73-11 and 12, it suspended the operating permit requirement for all dischargers who must obtain an NPDES permit (Rule 952(b) of the Water Regulations). This suspension expires on June 30, 1975. Thus pursuant to Section 12(d) of the Act and Rule 952 of the Water Regulations, Petitioner will be required to possess a state operating permit after June 30, 1975. Petitioner was originally required to have an operating permit on April 16, 1972, until October 5, 1974, the date the requirement was suspended.

Petitioner has additionally requested that its point of discharge be reclassified from the "unnamed tributary" to the Kishwaukee River. Petitioner, however, stated that "the present petition does not refer to a request for a variance from the draft NPDES Permit" (Answer to Motion to Dismiss, page 2). 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.

The Board has determined to dismiss the permit appeal with prejudice after finding no permit in existence which the Board can review. However, the Board's decision has not reached the merits regarding any potential variance petition or regulatory proposal.

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

ORDER

The Motion to Dismiss filed on January 2, 1975 is hereby granted. Petitioner's permit appeal is dismissed with prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26<sup>th</sup> day of June, 1975 by a vote of 4-0.

Christan L. Moffett (g.m.)  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board