

ILLINOIS POLLUTION CONTROL BOARD  
August 22, 1991

WILLIAMSON ADHESIVES, INC.,            )  
  )  
                  Petitioner,            )  
  )  
                  v.                        )  
  )  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
                  Respondent.            )

PCB 91-112  
(UST Fund Reimbursement)

ORDER OF THE BOARD (M. Nardulli):

This matter comes before the Board on a July 23, 1991 Motion for Summary Judgment. The Agency filed this motion pursuant to 35 Ill. Adm. Code 101.244 and Ill. Rev. Stat. 1989 ch. 110, par. 2-1005. Attached to the Motion is an affidavit of Betty M. Carlisle, an employee of the Office of the State Fire Marshall. Williamson Adhesives has not filed a response to this motion.

Williamson initiated this proceeding by its petition for review dated June 28, 1991. The petition sought review pursuant to Ill. Rev. Stat. 1989 ch. 111½, par. 1022.18b(g) and 1040 of the Agency's May 24, 1991 denial of reimbursement for its costs of corrective action under Ill. Rev. Stat. 1989 ch. 111½, par. 1022.18b(a).

The Motion for Summary Judgment avers that various portions of the record indicate that the tanks for which Williamson seeks reimbursement of corrective action costs actually contained hexane and a toluene-hexane mixture. It also asserts that examination of the contaminated soils and groundwater at the site indicate the presence of numerous other chemical solvents. Based on this, the Agency argues that the tanks contained a "hazardous substance," and not "petroleum," so they are ineligible for registration and reimbursement.

The affidavit of Betty M. Carlisle states that Williamson Adhesive's March 19, 1986 registration form indicates that three tanks contained hexane, one tank contained toluene, and one tank contained an unknown substance. It also relates that the March 22, 1991 registration form submitted by Williamson Adhesives indicates that four tanks contained hexane and one tank contained toluene. The petition for review states that "four of the five tanks" contained hexane, "a petroleum product, and a petroleum distillate, and a petroleum fraction." The petition does not indicate the contents of the fifth tank.

Summary judgment is appropriate where there is no genuine issue of material fact based on the affidavits, admissions, pleadings, and other items in the record. Caruthers v. B.C.

Christopher & Co., 57 Ill. 2d 376, 380, 313 N.E.2d 457, 459 (1974); Ill. Rev. Stat. 1989 ch. 110, par. 1005(d). In this proceeding, the petition indicates that four of the five tanks contained hexane. The affidavit attached to the motion for summary judgment indicates that Williamson Adhesives disclosed to the State Agency charged with keeping such records, see Ill. Rev. Stat. 1990 Supp. ch. 127½, par. 156, that four of the tanks contained hexane and the fifth contained toluene. Therefore, this matter is ripe for summary judgment if Williamson Adhesives is somehow ineligible for reimbursement based on this information as to the contents of the five tanks.

Section 22.18b(a)(3) of the Environmental Protection Act (Act) allows reimbursement of the costs of corrective action for underground storage tanks incurred by the owner or operator "as a result of a release of petroleum, but not including any hazardous substance, from an underground storage tank." Ill. Rev. Stat. 1989 ch. 111½, par. 1022.18b(a)(3) (emphasis added). Section 22.18(e)(1)(A) of the Act defines "petroleum" as that term is defined by Subtitle I of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, codified as Section 9001(8) of the Resources Conservation and Recovery Act, 42 U.S.C. § 6991(8). This federal definition provides that "petroleum" means "petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure . . ."

Therefore, resolution of two preliminary issues is necessary to determining whether a material is or is not "petroleum" eligible for reimbursement pursuant to Section 22.18b(a). The first is whether the material is "crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure." The second is whether the material is a "hazardous substance" for which reimbursement cannot occur. The material must both constitute "crude oil or a fraction thereof" and not be a "hazardous substance" for reimbursement of corrective action costs.

#### Determination Whether Petroleum--Crude Oil or a Fraction Thereof

As to the first issue, whether the material is "petroleum," G. Hawley, The Condensed Chemical Dictionary 530 (10th ed. 1981), states that *n*-hexane derives from the fractional distillation of petroleum. Fractional distillation is the purification of fractions of crude oil without chemical change. See Id. at 479 (definition of "fractional distillation"). On the other hand, the Dictionary states that toluene is derived from the fractional distillation of coal-tar or the catalytic reforming of petroleum. Id. at 1030 & 1100-01. Catalytic reformation is the decomposition of low-octane hydrocarbon gasses or petroleum by heat and pressure in the presence of some catalyst. See Id. at 886-87 (definition of "reforming").

Both hexane (melting point ranging from -153°C to -95°C and boiling point ranging from 49°C to 69°C, depending on form, see N. Lange, Handbook of Chemistry at 592-93 (10th ed. 1967)) and toluene (melting point of -95°C and boiling point of 111°C, see Handbook of Chemistry at 714-15 (10th ed. 1967)) are liquids under standard conditions. Thus, they both fulfill that portion of the definition of "petroleum." Since hexane is a component of petroleum simply purified out of that material, hexane is a fraction of crude oil. However, since a chemical change occurs to produce toluene from petroleum, this material is not a naturally-occurring fraction of crude oil. Therefore, for the purposes of whether the first issue, hexane is "petroleum" because it is "crude oil or a fraction thereof," but toluene is not "petroleum" because it does not similarly occur naturally in crude oil. Toluene derives from a process of chemical modification of crude oil.

#### Determination Whether a Hazardous Substance

The second line of inquiry arises under Section 22.18b, which does not allow reimbursement for any "hazardous substance." Section 3.14 of the Act defines a "hazardous substance" as any hazardous waste or any substance designated pursuant to any of several federal statutes. It specifically excludes "petroleum, including crude oil or any fraction thereof" which is not otherwise specifically listed or designated as a hazardous waste or a hazardous substance pursuant to one of the federal statutes. See Ill. Rev. Stat. 1989 ch. 111½, par. 1003.14. Thus, if either hexane or toluene is a hazardous waste or designated as a hazardous substance pursuant to the cited federal statutes, it is not "petroleum" for which reimbursement is possible under Section 22.18b(a).

The Section 3.14 definition of "hazardous substance" includes "any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act" (Clean Water Act), P.L. 92-500, 42 U.S.C. § 1321(b)(2)(A); "any . . . substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (CERCLA), P.L. 96-510, 42 U.S.C. § 9602; "any toxic pollutant listed under Section 307(a) of the Clean Water Act," 42 U.S.C. § 1317(a); "any hazardous air pollutant listed under Section 112 of the Clean Air Act," P.L. 95-95, 42 U.S.C. § 7412; and "any imminently hazardous chemical substance or mixture with respect to which [USEPA] has taken action pursuant to Section 7 of the Toxic Substances Control Act" (TSCA), P.L. 94-469, 15 U.S.C. § 2606. Ill. Rev. Stat. 1989 ch. 111½, par. 1003.14(A), (B) & (D)-(F). Also included is "any hazardous waste." Ill. Rev. Stat. 1989 ch. 111½, par. 1003.14(C). The Board has examined each federal statute and the USEPA regulations and actions undertaken under their authority. The Board has also examined the Illinois hazardous waste regulations. Both hexane

and toluene are hazardous substances under one or more of these designations.

40 CFR 116.4 lists the hazardous substances designated by USEPA under this Section 311(b)(2)(A) of the Clean Water Act. USEPA has included toluene in this list. Hexane is not on this list. Thus, this category of hazardous substance includes toluene. Therefore toluene is a hazardous substance, as such is defined by Section 3.14 of the Act.

40 CFR 302.4 lists the hazardous substances designated by USEPA under Section 102 of CERCLA. As with the Clean Water Act Section 311(b) hazardous substances, toluene appears on the list, and hexane does not. Again, this category of hazardous substance includes toluene.

The list of toxic water pollutants designated by USEPA under Section 307(a) of the Clean Water Act is at 40 CFR 401.15. Toluene appears on that list, but hexane does not. This category of hazardous substance includes toluene.

Congress expressly included toluene and hexane in the initial listing of hazardous air pollutants under Section 112 of the Clean Air Act. 42 U.S.C. § 7412(a). Congress further required USEPA to periodically review the list and revise it by rule. 40 CFR 61.01(a) is the list of hazardous air pollutants designated by USEPA. This list includes neither hexane nor toluene, but 40 CFR 61.01, which is the list of "other substances" for which USEPA gave public consideration of toxic effects, includes toluene. Since Section 3.14(E) expressly includes "any hazardous air pollutant listed under Section 112 . . .," the Congressional listing of hexane and toluene at Section 112(a) of the Clean Air Act includes these materials as "hazardous substances" under the Section 3.14 definition.

Section 7 of TSCA allows seizure of any material or for relief against any person handling any material that USEPA has designated an "imminently hazardous substance or mixture." 15 U.S.C. § 2606. The Board could find no reference to any such TSCA Section 7 action by USEPA. Such actions are not listed in the Code of Federal Regulations. See 40 CFR 700-99 (1990). Therefore, nothing in the record or the federal regulations would indicate that either hexane or toluene is a "hazardous substance" pursuant to Section 3.14(F).

The final inclusion in the definition of "hazardous substance" is "any hazardous waste," under Section 3.14(C). Section 3.15 defines "hazardous waste" as those wastes "identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, [42 U.S.C. § 6921,] or pursuant to Board regulations." Ill. Rev. Stat. 1989 ch. 111½, par. 1003.15. The

Board regulations identify hazardous wastes of both categories, at 35 Ill. Adm. Code 721. See 35 Ill. Adm. Code 721.101(a); Ill. Rev. Stat. 1989 ch. 111½, par. 1022.4 (Board authority to adopt regulations identical in substance to the federal regulations). Nothing in the record indicates that either toluene or hexane are hazardous wastes.

The determination of whether any material is a "hazardous waste" under Part 721 is a multi-layered determination. The threshold determination in determining whether any material is a "hazardous waste" is the determination that it is a "solid waste." See 35 Ill. Adm. Code 721.103(a). After determining that a material is a "solid waste," the inquiry proceeds to a determination whether it is a "hazardous waste." If not a "solid waste," a material is not a "hazardous waste."

A "solid waste" is "any discarded material" not excluded from regulation. 35 Ill. Adm. Code 721.102(a)(1). A "discarded material" is any material that is abandoned, recycled or "considered waste-like." 35 Ill. Adm. Code 721.102(a)(2). Nothing in the record indicates that the hexane or toluene contained in the tanks was abandoned, recycled or "considered waste-like" while contained in Williamson Adhesives' tanks. Therefore, neither substance is established by the record before the Board as a Part 721 or Section 3.15 "hazardous waste." Therefore, neither is a Section 3.14(C) "hazardous substance."

In summary, both hexane and toluene are "hazardous substances" under Section 3.14 of the Act. Congress listed hexane as a "hazardous air pollutant" in Section 112(a) of the Clean Air Act. Congress similarly listed toluene in that provision. Further, USEPA has designated toluene as a "hazardous substance" at 40 CFR 116.4, pursuant to Section 311(b)(2)(A) of the Clean Water Act, and at 40 CFR 302.4, pursuant to Section 102 of CERCLA, and as a "toxic water pollutant" at 40 CFR 401.15, pursuant to Section 307(a) of the Clean Water Act.

#### Conclusion

The record before the Board indicates the following from the face of the petition for review and from the public records submitted to the Office of the State Fire Marshall by Williamson Adhesives, as indicated by the affidavit of the person charged with maintaining those records:

1. Hexane is "petroleum," as that term is defined at Section 22.18 of the Act; however, hexane is also a "hazardous substance," as defined at Section 3.14;
2. Toluene is not "petroleum;" however, it is a "hazardous substance," under those provisions.

Therefore, pursuant to Section 22.18b(a)(3), Ill. Rev. Stat. 1989 ch. 111½, par. 1022.18b(a)(3), Williamson Adhesives is not eligible for reimbursement for costs of corrective action. A release of toluene is not a "release of petroleum" that would entitle Williamson Adhesives to such reimbursement. A release of hexane is a release of "hazardous substance" for which reimbursement is not allowed.

The Board hereby grants summary judgment in favor of the Agency. The Board hereby affirms the Agency decision of May 24, 1991 that disallowed reimbursement from the Underground Storage Tank Reimbursement Fund. This docket is closed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989 ch. 111½, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 22<sup>nd</sup> day of August, 1991, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board