

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1976

HYON WASTE MANAGEMENT SERVICES, INC.,)
)
 Petitioner,)
)
 v.) PCB 75-457
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

Mr. George Bullwinkel, Attorney, appeared for the Petitioner;
Mr. John Bernbom, Attorney, appeared for the Respondent.

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

This matter is before the Board on a Permit Appeal filed by Petitioner Hyon Waste Management Services, Inc. (Hyon) on December 1, 1975. The Agency's Response and Permit Record were filed on January 6, 1976. Hearings were held in the matter on January 26 and 27, 1976, in Chicago.

An Interim Order of the Board entered December 11, 1976, specifically denied Hyon's Motion to Consolidate this matter with PCB 75-413, another case concerning denial of permit applications for Hyon facilities by the Environmental Protection Agency (Agency). PCB 75-413, decided separately today, concerns the denial of permits by the Agency concerning air emissions from Hyon's Chicago facility; this case concerns the denial of permits under Ch. 3: Water Pollution. Nonetheless, the hearings held on January 26 and 27 considered both cases jointly. This case, like PCB 75-413, is decided on that combined Record.

Hyon characterizes its Chicago facility as an "integrated treatment facility for industrial wastes," (R.6). In addition to the incinerator described in PCB 75-413, which is used primarily to burn liquid wastes, the facility contains several other processes for the treatment of liquid wastes. These include biobeds, which serve to biodegrade some materials, an activated sludge system with an attendant clarifier, oxidation ponds, settling ponds, acid treating beds and other treatment equipment. Attendant facilities include a receiving station, a tank farm, a drum handling station, storage for neutralized sludge, an acid receiving basin, a laboratory and various other storage areas and related equipment, (R. 20-21).

The facility itself is adjacent to Lake Calumet on Chicago's south side. A large part of its area is composed of two long earth-fill peninsulas jutting into the lake. It is located in a largely industrial area, and is surrounded by various heavy industrial plants, bulk terminals and the like, (id.).

Hyon's facility treated a total of approximately 19 million gallons of waste in 1975. Although evaporation accounts for a considerable water loss, and some liquids are incinerated, a large amount of water nevertheless remains, and is discharged after treatment to sewers of the Metropolitan Sanitary District of Greater Chicago (MSD), (R.35-36). Discharges to the MSD began in January, 1975, (R.56), and amount to approximately 40,000 gallons per day, (R.57).

The permit application in question in this case was received by the Agency on September 2, 1975, (EPA Ex. 12). The application was rejected by the Agency on November 24, 1975, for the following reasons, (Hyon Ex. 12):

"1. Samples taken . . . on May 27, 1975 and October 16, 1975 of your discharge tributary to the Metropolitan Sanitary District . . . revealed concentrations of cyanide at 8.5 mg/l and 5.5 mg/l, respectively. The concentration of cyanide in the discharge to a public sewer system must comply with Rule 703 of the Illinois Pollution Control Board Rules and Regulations, Chapter 3 [setting a standard of 0.025 mg/l].

2. Test results from the monitoring wells have not been reported to this Agency as required by SPECIAL CONDITION as specified in the last 2 years operating permits for all facilities except the Receiving Station, Activated Sludge System and Force Main and Lift Station."

As was the case with PCB 75-413, Hyon bases its permit denial on two grounds:

1. The Agency's permit denial for the above reasons was improper; and,

2. Hyon's facility needs no permit under Rule 953 of Chapter 3: Water Pollution.

We shall dispose of the latter of these contentions first. Hyon bases its argument that no permit is needed for its water-related facilities on the grounds that it is not operating so as to constitute a "treatment works," "wastewater source" or "pretreatment works."

Hyon further argues, however, that even if it is operating a pretreatment works, it should still be exempt from the permit requirement by reason of the exemption in Rule 953(d). Hyon claims that it meets all three of the requirements of that Rule, and is therefore eligible for the exemption.

Most of Hyon's arguments in this regard need not be examined closely, since we find that Hyon is not entitled to an exemption under Rule 953(d). Part (1) of Rule 953(d) bars from the exemption any pretreatment works which will,

- (1) Discharge toxic pollutants, as defined in Section 502(13) of the FWPCA [Federal Water Pollution Control Act as amended by Public Law 92-500, 86 Stat. 816, on October 18, 1972], or pollutants which may interfere with the treatment process into the receiving treatment works. . . .

Hyon's argument in this regard is only that it will not discharge toxic pollutants "in toxic amounts" (Hyon Brief, p. 19, citing R. 58, 108). Neither Rule 953(d)(1) nor the FWPCA, however, limit the term "toxic pollutant," as does Hyon, with the qualification, "in toxic amounts." It is clear from the record that Hyon treats toxic industrial wastes and is indeed capable of discharging toxic pollutants to MSD sewers, (e.g., R. 62-72, 200, EPA Ex. 6, 7). Hyon does not seriously dispute the fact that cyanide, a toxic pollutant, has been found in its effluent to the MSD.

Nor are we convinced that Hyon's arguments that "in toxic amounts" is a defensible addition to our Regulation by reason of MSD sewer discharge limitations or historic "de minimus" effects of Hyon's discharges, (e.g., R. 87, 109-110). The permit system is designed to assure just such de minimus effects, and MSD's limitations have no relevance to the issue.

Having decided that Hyon's pretreatment facilities are indeed subject to a permit requirement, we next decide whether its application for such permit was properly denied by the Agency.

Testimony by the Agency witness who actually reviewed and denied Hyon's permit application, (R. 398, 399), indicated that his actions were, at least in part, based on misinformation and improper reasoning as regards what does or does not constitute a sufficient lack of information on which to base a permit denial. In particular, that witness made an erroneous interpretation of the Act in stating that a failure to comply with conditions in previous Agency-issued permits constitutes sufficient grounds for a permit denial. Section 12(a) of the Act does not, as he stated, empower the Agency to so act, unless such failure to comply with permit conditions does itself lead to a lack of information or an indication of violation of substantive provisions of the Act or our Regulations.

As regards Hyon's failure to supply test well data, testimony indicated that the wells actually had been drilled by Hyon -- twice. In an effort to comply with prior permit conditions, Hyon first drilled wells in 1974, (R. 183). However, those wells proved unsatisfactory, and Hyon constructed new wells in 1975, the first reports from which were submitted to the Agency on November 12, 1975, the same date as the Agency's permit denial in this case. (The Agency chose to characterize that data as a new permit application, which it also rejected.) The record indicates that Hyon took all reasonable steps to build and sample the required wells in a manner acceptable to the Agency and the Illinois State Geological Survey, which helped to plan the wells, (R. 184-190). The Agency's judgement on data which was submitted was questionable: One Agency witness, who denied the permit application, was unable to state, or even discuss, the meaning of dry wells where those wells were constructed to monitor leachate migration, (R. 414).

However, despite these errors, which would normally require reversal of the permit denial, the Agency must nonetheless be upheld in this case. Despite the Agency's failure to timely inform Hyon of the cyanide sampling results, and the Agency's apparent lack of concern over those samples (R. 392-393), and considerable testimony to the effect that those cyanide concentrations are probably not harmful, (e.g., 394, 110, 53, 76, 409-410, 423), those samples do indicate a violation of our Regulations. Letters from Hyon to the Agency indicate that Hyon was aware of its cyanide discharges, (Hyon Ex. 13, 14), and also indicate that Hyon felt that it was not subject to the 0.025 mg/l limitation for cyanide sewer discharges in Rule 703. Hyon felt instead that it was subject only to the limitation of 10.0 mg/l set by the MSD. To this extent, Hyon was wrong and the Agency's permit denial was correct.

Hyon's Brief correctly points out that the limitation in Rule 703 is currently under review by the Board. R 74-15, -16, "CYANIDE" (pending). That fact, however, cannot be construed as sufficient cause for the Agency to ignore the existing Regulation. Where Agency sampling indicated that the cyanide limit was being exceeded, it was required, barring a Variance, to reject Hyon's permit. This matter would more properly be raised by Hyon in a Variance proceeding.

Hyon also attempted to use the testimony of an MSD witness to show that the Agency was not rejecting permit applications by others for violation of the cyanide standard. We find that this is irrelevant to the present case. The Agency is not empowered to make such allowances for any discharger. In light of our decision on cyanide discharges, above, we need give further consideration to neither this nor any other of Hyon's contentions.


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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that the matter in PCB 75-457 be dismissed.

Mr. Jacob Dumelle and Mr. James Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of April, 1976, by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board