ILLINOIS POLLUTION CONTROL BOARD
December 18, 1975

THE SHERWIN-WILLIAMS COMPANY, Petitioner,	)	
v.	)	PCB 75-268
ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

MR. CLIFTON A. LAKE AND DIXIE L. LASWELL, appeared on behalf of Petitioner;
MS. KATHRYN S. NESBURG, appeared on behalf of Respondent.

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

On April 21, 1975 Respondent, Illinois Environmental Protection Agency (Agency), denied Petitioner, The Sherwin-Williams Company (Sherwin-Williams) application for construction and operating permits for its para-cresol manufacturing facility located at 11541 South Champlain Avenue in Chicago, Illinois. Petitioner filed a "Petition for Review of Permit Denial" with the Illinois Pollution Control Board (Board) on July 10, 1975. A hearing was held on October 16, 1975, at which the only exhibit received was a "Stipulation of Fact"(Stipulation) signed by both Petitioner and Respondent. No witnesses testified at the hearing.

Petitioner and Respondent agree that the sole reason for the Agency's denial of Petitioner's permit application is the Agency's decision to apply Rule 205(g)(1)(C) of the Illinois Air Pollution Control Regulations (Air Rules) to Petitioner's process. According to the Stipulation and briefs of both parties, the only issue in this case is whether Rule 205(g)(1)(C) is applicable to emissions at Petitioner's para-cresol manufacturing facility. Since it is stipulated that Petitioner's emissions do not conform with the Rule, (Stipulation #9) a finding by this Board that Rule 205(g)(1)(C) is applicable, would necessarily result in an affirmation of the permit denial and a dismissal of this appeal.

The primary issue in this case is whether Petitioner's para-cresol manufacturing process is a "petro-chemical manufacturing process" within the meaning of Rule 205(g)(1)(C).

This term is not further defined in the Rules, as the Board had found it to be self-explanatory.

Petitioner asserts in its brief that Rule 205(g)(1)(C) is intended to apply only to processes which occur within a petroleum refinery (page 7 of Petitioner's Brief lines 6-11). However, this is inconsistent with the very title of Rule 205(g)(1) "Petroleum Refinery and Petrochemical Manufacturing Process Emissions" (emphasis added). Had the Board intended Petitioner's interpretation, it would not have included "and Petrochemical Manufacturing Processes" (emphasis added), as that addition, on its face, is contrary to the interpretation which is suggested by Petitioner.

Petitioner, in its interpretation of the term "petrochemical manufacturing process" relies on the Standard Industrial Classification Manual (SIC Codes). The Board agrees with the Agency that SIC Codes were "not meant to be used as a source of definitions of words used in Chapter 2 of the Illinois Air Pollution Control Regulations". Nowhere does Petitioner demonstrate any intent by the Board to construct Chapter 2 Rules so as to conform with the definitions of SIC Codes. Reference is made to the use of SIC Codes in Chapter 1 of the Air Rules. However, in that instant the distinctions involved were gross ones, and were made only to allow the Agency to have its workload distributed. The present case involves specific regulations and the applicability of emission standards; not the mere spacing of deadlines for administrative convenience.

Further, were it the Board's intent to apply SIC definitions to Chapter 2 it would at least have so stated in its discussion of the Rules (R71-23), if not by an adoption of the code definitions in the Rules themselves. In Chapter 1 of the Rules the Board refers specifically to SIC Codes. Here it makes no reference whatever to definitions of manufacturing processes to be derived from interpretation of SIC Codes. The Board finds that there is no basis for determining the definition of "Petro-Chemical Manufacturing Process" by referring to SIC Code definitions.

Petitioner states that reference to SIC Codes "indicates that the Board intended to include only processes which might be found within a petroleum refinery". That very conclusion demonstrates the error in reliance upon such definitions. The Board has not been shown any facts which would indicate why a given facility would be allowed to emit 8 pounds of organic material per hour or 100 ppm depending solely upon whether the plant is physically located at a petroleum refinery. There

is no basis for such an interpretation.

In further support of this contention, Petitioner cites the Board's discussion of Rule 205(g) as appears in R71-23 at page 41.

> Rule 205(g) requires that hydrocarbons in exhaust gases from catalytic cracking units and other petroleum or petrochemical processes be reduced to 100 ppm. These units, like other refinery facilities covered by Rule 205(a)-(d), can be major nuisance sources if uncontrolled...
> (emphasis supplied by Petitioner)

However, the correct interpretation of that passage hinges not upon the phrase emphasized by Petitioner, but rather upon the subject of the sentence in question, "These units..." Those words refer to "catalytic cracking units" in the preceding sentence, and not to the "other petroleum or petrochemical processes" with which we are presently concerned.

Petitioner also argues that it is governed by Rule 205(f) rather than Rule 205(g)(1)(C). Rule 205(f) regulates emissions of "organic material" which is defined in Rule 201 as "Any chemical compound of carbon...used as dissolvers, viscosity reducers or cleaning agents". Further, it is clearly shown at page 41 of R71-23 that the Board intended this Rule to apply to solvents or carriers, as opposed to situations like the present where the petrochemical is actually the basic feedstock in the manufacturing process.

On page 2 of Respondent's brief, the Agency quotes a definition of "petrochemical process" which it uses as a guide for its permit engineers. On page 2 of its reply brief Petitioner questions the origins of that definition and its consistency with Petitioner's interpretation of Rule 205(g)(1)(C). However, Petitioner fails to advance any arguments that prove the definition to be scientifically inadequate or inaccurate.

Petitioner goes on to state that because the Agency does not present a definition of the term "petrochemical", its product (para-cresol) is therefore not a petrochemical. However, Petitioner does not go on to show that, in fact, para-cresol is neither a petrochemical nor a petroleum product. Rather, Petitioner appears to advance the hypothesis that if omitted from the dictionary a rose would no longer be a rose.

The Agency's definition of petrochemical process clearly indicates that a petrochemical "is any chemical isolated or derived from petroleum..." It must be remembered that this definition is not a regulation and is not exclusive. Rather,

it is up to the Petitioner to show that the definitions used are scientifically inaccurate, unreasonable, or inadequate in their application to the present situation. It has failed to do so.

On page three of its reply brief Petitioner, citing paragraph 7 of the Stipulation, states that para-cresol is not a petrochemical. However, this conclusion is in conflict with paragraph 1 of the Stipulation, which states "The basic feed stock for manufacturing para-cresol is toluene,", and paragraph 12, which states that toluene is derived from petroleum. Therefore, the Board must reject that portion of the Stipulation which states that Petitioner does not produce petroleum products, as it is in conflict with other stipulated facts and facts stated in both Petitioner's brief and reply brief. Nowhere does Petitioner prove its conclusory statements that para-cresol is neither a petrochemical nor a petroleum product.

Further, the Board does not agree with Petitioner's statement (on page one of its brief) that the issue for the Board to consider is solely one of law. It is clear that in this case there are mixed questions of law and fact. A determination as to whether a regulation is applicable entails issues of fact when a Stipulation of Fact is self-contradictory, as in the present case.

Petitioner next applies the construction principle of ejusdem generis to Rule 205(g)(1). Petitioner there states that since subsections (A) and (B) apply to processes found within petroleum refineries, so must subsection (C). Firstly, Petitioner fails to explain why that particular principle of construction should apply rather than, for example, the opposite. Secondly, where the intent of a regulation is ascertainable from its face or through reference to other materials, such "last resort" principles of construction are not appropriate. Thirdly, the principle of ejusdem generis would not necessarily result in the Petitioner's intended result, as (C) is well within the context of the section (1) heading of which it, along with (A) and (B), describes and enumerates.

Petitioner then alleges that "because the Board in its opinion relies exclusively on testimony from the petroleum refining industry (Mr. Mowers of Amoco Oil) for its conclusion that the 100 ppm emission limitation is technologically feasible, it is not reasonable to apply that limitation to sources outside of the petroleum industry". Such an allegation, without more, is immaterial to this proceeding. If, as Petitioner states, the sole issue is over the applicability of Rule 205(g)(1)(C) any attack on the validity of the adoption process of that regulation is immaterial. Further, even if it were material, Petitioner not only fails to show

that attainment of the limitation is not feasible, but even fails to make such an allegation. Perhaps this is because Petitioner had already stated in Stipulation paragraph 9 the approximate cost to the Petitioner to meet the standards. Thus, Petitioner has in fact already admitted that compliance with the emission standard of 100 ppm is attainable.

Petitioner also raises issue as to the applicability of the term "waste gas stream" in Rule 205(g)(1)(C). The Agency defines that term "as process air which is emitted into the ambient air". Petitioner states that the term "waste gas stream" is not used in industry to refer to emissions from para-cresol manufacturing. However, Petitioner does not deny that its emissions constitute a stream of waste gas. On its face, it is obvious that Petitioner's emissions from its para-cresol manufacturing process constitute a "waste gas stream" within Rule 205(g)(1)(C).

Petitioner has failed to prove that Rule 205(g)(1)(C) is not applicable to emissions from its para-cresol manufacturing process. Therefore, as this is the only issue presented in this proceeding, the Petition must fail. The Board finds that the Agency's denial of Petitioner's permit application was proper.

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

Mr. Goodman abstains.

ORDER

The Petitioner's appeal from the denial of its permit is dismissed.

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 18th day of December, 1975 by a vote of 3-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board