

BEFORE THE  
COASTAL ZONE INDUSTRIAL CONTROL BOARD  
OF THE STATE OF DELAWARE

In the Appeal of J-M  
Manufacturing Company, Inc.

Appeal No. 165

A hearing was held before the Coastal Zone Industrial Control Board ("the Board") on 21 May 1985 in the appeal of J-M Manufacturing Co., Inc. ("J-M") from a decision of the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") which denied J-M a permit under the Coastal Zone Act, 7 Del. C. c. 70 ("the CZA" or "the Act"), to construct and operate a plant for the manufacture of polyvinyl chloride ("PVC") pipe. Present were Dr. Donald Crossan, Chairman, Lynn Williams, Charles Cole, Robert Tunnell, Esquire, Harry Fisher, Esquire, and Grover Biddle, Members of the Board. Deputy Attorney General Regina M. Mullen acted as legal counsel to the Board.

Dean Reynolds, Engineering Manager, J-M Manufacturing, Stockton, California, presented J-M's appeal. Robert Boyer,

Plant Manager, Formosa Plastics Delaware City ("Formosa Delaware") PVC plant testified on J-M' behalf.

Deputy Attorney General Ellen R. Chaikin represented DNREC. Also present and testifying for DNREC were Robert Touhy, Director, Division of Environmental Control, Robert French, Manager, Air Resources Section and Joseph Hardman, an Environmental Engineer.

Pursuant to notice and to its practice, the Board also received statements of position or evidence from members of the public including Senator James Vaughn, Grace Pierce of the Delaware Audubon Society, Hans Borchardt of the Delaware Saltwater Sportfishing Association, Delaware City Council Members Hough, Nickle and Harrison, Jacob Kreshtool, Esquire, of Delaware Citizens for Clean Air, George Loebe, Dick McGlonehan and Frank Hetzell.

At the conclusion of the hearing the Board, Mr. Biddle abstaining, announced its unanimous decision to affirm the Secretary's decision. This is the Board's written decision.

#### SUMMARY OF EVIDENCE

After the required hearing, the Secretary of DNREC denied J-M's permit application on 16 April 1985. In his decision, the Secretary found that while the potential for pollution in case of a malfunction or human error at the proposed J-M PVC pipe plant was not significant by itself or in comparison with the potential from nearby plants, he had to take into consideration the conditions in the surrounding industrial complex. He was particularly concerned that additional emissions

of vinyl chloride monomers ("VCM") into the atmosphere of the industrial complex would worsen the VCM problem in an already environmentally stressed area. Given public concern about the health effects of even a low level exposure to VCM and the lack of specific information relating to exposure parameters and health effects, the Secretary decided that it would be imprudent to allow an additional source of VCM emissions to locate in the industrial complex.

Mr. Reynolds testified that J-M and Formosa Delaware were subsidiaries of US based corporations in the Formosa Group which is headquartered in Taiwan. J-M proposes to purchase raw PVC resin with a purchase standard of 10ppm of residual VCM from the existing Formosa plant in Delaware City. The J-M plant would manufacture PVC pipe using a blending and extruding process. The J-M plant would be located adjacent to the Formosa plant on land owned at the time of the application by Formosa. J-M wants to locate its PVC plant at Delaware City to serve existing and potential customers more economically.

J-M estimated that there would be economic benefits to New Castle County in the form of job creation for the construction of the plant and its operation as well as by the generation of additional state, county and school tax revenues.

Mr. Reynolds testified that J-M did not plan to control VCM emissions because they were low level emissions.

Mr. Boyer testified that Formosa had reduced its VCM emissions from 41% in 1981 to 23% as a result of improvements to the plant's recyclers and the introduction of new

quality. Mr. Hardman did not know of any ambient standards for VCM emissions.

Mr. Touhy testified that because of the additive effects of VCM emissions no additional VCM emissions should be permitted in the industrial complex whether those emissions are great or small. He said that while DNREC did not have a staff economist to prepare an elaborate cost/benefit analysis on the project, the Secretary's decision did weigh the economic effect but found that the most important factor was the additive effect of the emissions.

All of the public comments received by the Board, except that of Mr. Hetzell, opposed the permit. Mr. Hetzell testified that job development was a more important goal in his view than too strict environmental regulation.

#### FINDINGS OF FACT

J-M and Formosa Delaware are elements of the Formosa Group. J-M's application designated Mr. Boyer, the Formosa Delaware plant manager, as J-M's agent. Formosa owned the land on which the J-M PVC pipe plant was to be sited.

Formosa currently emits significant amounts of VCM into the atmosphere. While there has been a reduction in such emissions from 1981 levels, it is likely that the reduction is explainable, at least in part, by plant shut downs of significant durations. J-M's proposed plant would increase emissions of VCM in the Formosa Delaware industrial complex by an estimated 0.1%. VCM is toxic and a carcinogen. It is a hydrocarbon which will contribute to the degradation of air quality in

the area. New Castle County is a non-attainment area in which the state must reduce hydrocarbon emissions to be in compliance with federal requirements.

#### CONCLUSIONS OF LAW

The purpose of the CZA is to "control the location, extent and type of industrial development in Delaware's coastal areas....[To] better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism." 7 Del. C. § 7001. The General Assembly directed the Secretary in considering permit applications under the CZA to take into consideration the environmental impact, including the probable air pollution likely to be generated by the proposed use. 7 Del. C. §7004. This Board is enjoined to consider that factor as well. Id.

Reviewing all of the facts presented to us at the hearing and the Secretary's decision in light of this expression of legislative concern for development in the coastal zone to occur in an environmentally responsible fashion always taking into account the alternatives to industrial development promoted by the Act, we conclude that the Secretary's decisions not to issue a permit to J-M Manufacturing Co., Inc. to construct and operate a PVC pipe manufacturing plant in Formosa Delaware's industrial complex was appropriate and should be affirmed. To permit J-M to add VCM emissions to the atmosphere in that location which is in a non-attainment area and which suffers from significant VCM emissions at present would be

imprudent and contrary to the purpose of the CZA. J-M has not persuaded us otherwise.

Accordingly, the Board unanimously, Mr. Biddle abstaining, affirms the Secretary's decision.

Donald Crossan, Chairman

Lynn Williams

Charles Cole

Robert Tunnell

Harry Fisher

Dated: November 29, 1985