

4-11-1986

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

In the Appeal of the Mayor and Council of New Castle, Jacob Kreshtool, Ramon A. Florez, John H. Nickle, Jr., and Anne Dorsey Fiske from a Decision of the Secretary of the Department of Natural Resources and Environmental Control dated January 24, 1986 to Grant a Coastal Zone Permit to Crown Zellerbach Corporation.

Appeal No. 176

A hearing was held before the Coastal Zone Industrial Control Board ("the Board") on 17 and 31 March 1986 in the appeal of the Mayor and Council of New Castle, Jacob Kreshtool, Ramon A. Florez, John H. Nickle Jr. and Anne Dorsey Fiske ("the Appellants") from a decision of the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") which granted a permit under the Coastal Zone Act, 7 Del. C. c. 70 ("the CZA" or "the Act") to Crown Zellerbach Corporation to install and operate four flexographic presses for the printing of polyolefin film and to construct and use a 4,600 square foot building addition for storage of ink and solvents. Present at the 17 March Session were Dr. Donald Crossan, Chairman, Lynn Williams, Robert Tunnell, Esquire, Harry M. Fisher, III, Esquire, Louis Papineau, V. Eugene McCoy, Jack Roe and John Allen Members

of the Board. Messers. Tunnell and Allen were absent from the 31 March session. Deputy Attorney General Regina M. Mullen acted as legal counsel to the Board.

The Honorable John Klingmeyer appeared on behalf of the Mayor and Council of New Castle, Mr. Kreshtool, Mr. Nickle and Ms. Fiske appeared on their own behalves, Mr. Florez was out of the county on business.

No one appeared on behalf of DNREC.

Walter Pepperman, II, Esquire appeared on behalf of Crown Zellerbach. Also present for the Company was Michael E. Winkler, Plant Manager.

Pursuant to notice and its practices, the Board also received statements of position from members of the public including The Honorable James Vaughn, Delaware City Councilperson Henry Nickle, Thomas Niegga of the Llangollen Civil Association, George Loebe, Charles Zency, Nancy Reilly and Donald Priscoe.

At the conclusion of the Hearing, the Board, on the motion of Mr. Fisher, seconded by Mr. Papineau, announced its decision to affirm the Secretary's decision. The Board voted six (Crossan, McCoy, Roe, Fisher, Williams and Papineau) for and none against; Messers. Tunnell and Allen absent. This is the Board's written decision.

#### SUMMARY OF THE EVIDENCE

The Coastal Zone permit application file before the Secretary, including a transcription of the public hearing held on 25 November 1985, was made part of the record.

Mayor John Klingmeyer testified on behalf of the Mayor and Council of New Castle ("the City"). He stated that the City primarily is residential in nature with a small business area. The City is a tourist area. Recently, tourism-related commercial development worth \$1 million has taken place in the City. The City has a riverfront park, Battery Park, which is a recreation center.

The Mayor also testified that the City was concerned that increased traffic to and from the Crown Zellerbach plant would have an adverse effect on recreation and tourism in the City. The Mayor said that the City had not conducted a study or hired consultants to study the effects on tourism because of its limited financial resources.

The City also is concerned with the possible effects on health and safety. The Mayor recalled the explosion at the Amoco plant across Rt. 9 from Crown Zellerbach several years ago.

Mr. Kreshtool testified that he was a member of Delaware Citizens for Clean Air, an environmental group which long has been interested in the Coastal Zone and the New Castle to Delaware City river shoreline. He also is a member of the New Castle Sailing Club and sails the Delaware River in the area. Mr. Kreshtool said that he visits the parks in New Castle and Delaware City.

Mr. Kreshtool said that under federal air pollution regulations New Castle County has a problem with unacceptable ozone levels. He stated that DNREC's September 1985 air monitoring

reports showed several stations above safe levels. He said that the goal for a safe level of ozone for human health purposes was 0.12 parts per million. According to Mr. Kreshtool ozone is the product of a reaction among NOX (nitrogen oxides) and VOC (volatile organic compounds) in certain atmospheric conditions. He also testified that ozone is generated by emissions from mobile sources like automobiles and stationary sources like Crown Zellerbach's operations.

Mr. Kreshtool argued that the conditions which the Secretary placed on the Crown Zellerbach permit would be applicable to any plant not just one located in the Coastal Zone. He contended that the Secretary cannot balance economic development against the environment under the Coastal Zone Act.

Mr. Kreshtool stated that he had no information, other than that contained in the Crown Zellerbach application about Crown Zellerbach's efforts to reduce VOC emissions through the use of new technology nor the amount of money which the company has spent on the technology.

John Nickle, Jr. a chemist who lives in Delaware City, testified that the Delaware City - New Castle area has a tremendous environmental burden and it does not need another source of pollution. He said that the components of the VOC emissions from the Crown Zellerbach printing process had low flash points and posed an additional risk of fire.

Under cross examination, Mr. Nickle testified that these emissions were not carcinogenic. He said also that the emissions

were likely to be explosive when airborne but he did not know the air dispersion patterns in the area.

Ms. Fiske noted that the Coastal Zone Act is intended to protect tourism and recreation which constitute a valuable part of the State's resources. She expressed the concern that the revitalization of New Castle's tourist industry could be affected adversely by the Crown Zellerbach expansion. She also expressed the fear that the added emissions would increase breathing problems for New Castle residents.

John Sherman, the DNREC hearing officer, testified that he had prepared a decision memorandum for the Secretary offering justification for granting or denying the permit. His superior Mr. Ashbee wanted to send a single recommendation to the Secretary and polled Mr. Sherman who recommended denial and Mr. McPherson who recommended approval. Mr. Ashbee decided to recommend approval.

Michael Winkler testified for Crown Zellerbach. He is the Plant Manager and holds a BA in Mechanical Engineering. Mr. Winkler testified that the expanded printing operation will meet all environmental regulations. He said that Crown Zellerbach had made substantial investments for equipment designed to reduce pollution. He testified that the company had reduced the amount of solvents in the ink and the amount of ink used in the process as well as changing the process to contain the solvents and then incinerate the solvent vapors.

Winkler said that uncontrolled emissions from the existing four presses would be 500 tons/year. Controlling those emissions to the lowest achievable emission rate (LAER) as required by existing regulations has reduced emissions to 228 tons/year. The four new presses will generate an additional 150 tons/year of VOC emissions. The total emissions from 8 presses will be 378 tons/year.

Winkler testified that the presses shut down if the incineration equipment does not function.

He also said that the solvents are not carcinogenic and their toxicity level was in the same scale as drinking alcohol. Winkler also testified that the ink and solvent constitute hazardous waste because of their flammability. He said a licensed transporter removes the waste from the plant.

Winkler referred to the data in the company's permit application to show that the expansion would create new jobs, increase State personal and corporate income and stimulate business with service suppliers.

He said that the new storage building would be located on the river side of the plant and the only other visible change would be the additional incineration vent pipes. No other outside supporting facilities would be constructed. He testified that the addition would not be visible from Battery Park in New Castle; that the expansion would have no effect on recreational use of the Delaware River or on access to the wetlands.

Winkler described how, in response to the City's concern over increased truck traffic, Crown Zellerbach had imposed as a condition of doing business with the company the requirement that plant truck traffic not travel through the City unless the trucker had other business in New Castle.

On cross examination, Mr. Winkler presented Alan Dash from Roy F. Weston, Inc. which will perform the environmental monitoring. Mr. Dash described the testing protocol.

Mr. Winkler also testified that the company's track record on compliance with environmental regulations was good. He knew of only technical reporting violations.

Joseph Hardman, an engineer in the DNREC Air Resources Section, testified that he had reviewed the permit data for purposes of the Coastal Zone Act only. He recommended approval based on the fact that the increased VOC emissions will not exceed the growth allowance in the State Implementation Plan (Reg. XXV, §2) and would be subject to stack tests for compliance monitoring.

Robert French, Manager of the Air Resources Section, testified that New Castle County was a non-attainment area for ozone and that there were occasions when the ozone concentration was in excess of allowable limits. However, he said that the DNREC expected that net emissions reductions from both mobile and stationery sources would bring the State into compliance on schedule.

#### FINDINGS OF FACT

1. Crown Zellerbach operates a manufacturing plant at New Castle, Delaware which produces cast film and printed film packaging materials. The plant presently has four presses which emit 228 tons/year of volatile organic compounds (VOC). VOCs are constituents of ozone.

2. Crown Zellerbach received a coastal zone permit from the Secretary of DNREC to install four additional printing presses within the existing plant structures and to build a 4,600 square foot addition for the storage of ink and solvents to the existing building. The new presses will emit a net additional 150 tons/year of VOCs.

3. Ozone is a significant air pollution problem. New Castle County is a "non-attainment" area for ozone, that is, ozone concentrations exceed recognized safe levels at some point or points during the year. The State has an approved Implementation Plan (SIP) for bringing ozone levels within acceptable tolerances. An element of the SIP is a growth allowance. The additional 150 tons/year of VOC emissions are within the growth allowance.

4. The City of New Castle is a tourist area with several popular museums operated by the State, and the Delaware and New Castle Historical Societies. New Castle's Battery Park is a popular recreation area. New Castle also is the home of the New Castle Sailing Club which operates on the Delaware River. Other public parks and recreation areas south of New Castle are operated by the State, New Castle County and Delaware City. No



evidence was presented that Crown Zellerbach's expansion would affect either tourism or recreation in the area.

5. The expansion will result in 62 new jobs, most of which will be filled by Delaware residents under the company's projections. Additional personal and corporate income taxes will be generated.

6. No additional support facilities will be constructed.

7. The expansion will not impact negatively on aesthetic values.

#### CONCLUSIONS OF LAW

Contrary to the Appellants' arguments, the Secretary is required to balance environmental, economic and other effects when passing on a CZA permit application. Section 7004 identifies the environmental, economic and land use considerations which the Secretary must evaluate. A permitted use which is environmentally benign--that is which meets applicable air, water and other environmental regulations--may be rejected because it would affect negatively tourism or recreation, or impede access to wetlands or be aesthetically unacceptable. An economic development project which raises serious concerns about the applicant's responsibility in meeting environmental regulations might be rejected. The Secretary considered the factors under 7 Del.C.§ 7004 when granting this permit to Crown Zellerbach. The Appellants did not present any evidence to this Board to convince us that the Secretary was wrong in his factual conclusions.

Accordingly, the Board affirms the Secretary's decision.

/S/ Donald Crossan

/S/ Lynn Williams

/S/ Harry M. Fisher III

/S/ Louis Papineau

/S/ V. Eugene McCoy

/S/ Jack Roe

Dated: April 11, 1986