

BEFORE THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE

APPEAL OF)
SOUTHBRIDGE CIVIC ASSOCIATION)

OPINION AND ORDER

This matter came to a hearing before the Environmental Appeals Board on July 30, 1986. Present for the Board were Thomas J. Kealy, Chairman, and members Evelyn Greenwood, Clifton Hubbard and Ray Woodward. Jeanne Langdon, Deputy Attorney General, represented the Department. The permittee, Blacktop Products Co., was represented by Jeremy W. Homer, Esquire. The appellants appeared on their own behalf. The Board was represented by Barbara MacDonald, Deputy Attorney General.

The appellants contested that the Secretary had erred in issuing a permit to construct and operate a hot mix asphalt plant to be located near the residential area of Southbridge, in Wilmington.

SUMMARY OF EVIDENCE

Mrs. Frances Reed testified that she is a resident of Southbridge. She testified that she and other residents are concerned over reports in the newspaper concerning a different hot mix asphalt plant, located in Harrington, Delaware, which Harrington residents complain emits unpleasant odors. She testified that Southbridge residents are concerned that the Blacktop Products plant, if permitted to operate, would similarly

cause odors. She testified that the proposed site for the Blacktop Products plant is even closer to residences than is the plant in Harrington.

Kenneth Proctor testified that the Civic Association opposes the construction of the Blacktop Products plant. The Civic Association believes the plant will affect life in the community and will cause pollution, noise, smoke and smell. Mr. Proctor testified that there are already a number of industrial plants in the neighborhood.

Mr. Proctor presented demographic information concerning South Wilmington. He testified that the Southbridge area is a predominantly poor, black community with high unemployment. He testified that in his opinion the Secretary's action in granting the permit demonstrates a lack of concern for Southbridge residents.

Marvin Thomas testified that he believes that the Department did not comply with applicable state and federal regulations. He stated that the State is required to prepare an environmental impact statement prior to issuing permits of this nature. Further, he charged that the Department did not conduct adequate ambient air testing prior to issuing the permit. Mr. Thomas did not provide citations to any specific statutes or regulations containing these requirements.

Sheila Lucas presented a slide show showing that Southbridge is a residential community surrounded by areas zoned M-1 and M-2, which allow light and heavy industry. She testified that there

is already a great deal of industry in the area. She testified that the proposed site of the plant is located very close to residential areas.

Mr. Jack Clements, of Standard Havens, the company which Blacktop Products has retained to construct the plant, testified that the proposed plant will feature "bag house" type anti-pollution technology. He testified that bag house containment is a cleaner method than traditional "scrubber" systems.

Mr. William Sienni, Sr. testified that he is a partner in Blacktop Products. He testified that the previous Blacktop Products asphalt plant which had been operating in Southbridge is currently shut down and will remain shut down for all times when the new plant is operating. He testified that the new plant would release approximately one-fifth of the particulates that the old plant released. He testified that asphalt emits an objectionable odor when it is overheated; the bag house system is designed to prevent overheating. When overheating occurs the plant automatically shuts down. He testified that because of the purpose to which asphalt is put, most hot mix asphalt plants are located in cities, very close to residential districts.

Mr. Robert J. Taggart, supervisor of the Engineering and Compliance Division of the Air Resources Section of the Department, testified that he had reviewed the permit application submitted to the Department by Blacktop Products. He testified that the state and federal standards regarding particulate emission from hot mix plants are the same. He testified that the

source performance standards applicable to the new plant would allow emissions of .04 grains per standard cubic foot, or, in other words, eight pounds of particulates per hour. He testified that the proposed plant would meet these standards. The former Blacktop Products plant located in Southbridge, however, had to meet only a much lower standard: it was permitted to emit 40 pounds of particulates per hour.

He testified that ambient air monitoring is conducted from six locations in New Castle County. The only monitoring station in the City of Wilmington is located at 3rd and Union Streets. Monitoring stations which had been located closer to the Southbridge area were shut down because they did not meet federal regulation regarding siting. He testified that ambient air studies must be conducted over a period of time, therefore, such studies cannot be done prior to the granting of an individual permit. He testified that the results from the air monitoring station at 3rd and Union show that air in the city is within an "attainment area" which would permit construction of the proposed hot mix asphalt plant. He further testified that the results from air monitoring stations located closer to Southbridge were suspect because the stations had been improperly sited.

Mr. Taggart testified that neither state nor federal statutes or regulations require an environmental impact study to be completed prior to issuing a permit for the construction of a plant of this nature. He testified that subsequent to his review of the permit application, he concluded that the application

demonstrated that the proposed plant would comply with all applicable state and federal laws and regulations.

FINDINGS OF FACT

The appellant contends that the Secretary erred because:

1. The Department failed to conduct an environmental impact study prior to issuing the permit for the proposed plant, and


2. The Department has not conducted adequate ambient air studies.

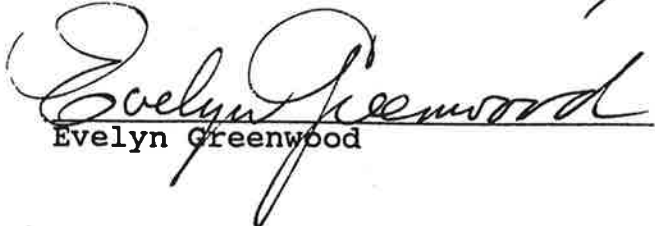
The appellants did not present any evidence demonstrating that either environmental impact studies or ambient air studies of the type demanded by appellants are required under either state or federal law or regulation.

CONCLUSIONS OF LAW

The appellants failed to demonstrate that the Department failed to follow any applicable laws or regulations in reviewing and granting the permit to Blacktop Products. Therefore, the Board upholds the Secretary's decision.

SO ORDERED.


Thomas J. Kealy, Jr., Chairman


Evelyn Greenwood

Clifton Hubbard
Clifton Hubbard 8/7/86

Ray K Woodward 8/7/86
Ray Woodward

R. C. Jones
Richard E. Sames

Dated: August 7, 1986