

IN THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE

IN THE MATTER OF:)
)
DEPARTMENT OF NATURAL RESOURCES) DECISION AND ORDER
AND ENVIRONMENTAL CONTROL,)
Temporary Holding Tank Permit)
Number WPCC-3059/80(S))

INTRODUCTION

1. A hearing in the above-captioned matter was convened on Wednesday, September 10, 1980, before the Environmental Appeals Board in Room 233, Townsend Room, Supreme Court Building, Dover, Delaware, at 10:00 a.m. to consider an appeal filed by Mr. and Mrs. Prentice Harrison, appealing the decision dated May 8, 1980, by John E. Wilson, III, Secretary, Department of Natural Resources and Environmental Control, granting Temporary Holding Tank Permit Number WPCC-3059/80(S) to 6-12 Dairy Markets, Inc. There being no quorum present, the hearing was thereupon continued until September 23, 1980, at 10:00 a.m.

2. The hearing was held in full on September 23, 1980, and was conducted by Thomas J. Kealy, Chairman of the Environmental Appeals Board. Other members of the Environmental Appeals Board present at the hearing were: Mrs. Phyllis Shabinger, Mrs. Evelyn Greenwood, and Mr. Earl Tull. Roger A. Brown, Deputy Attorney General, acted as counsel to the Board.

3. Appearing on behalf of the Secretary of the Department of Natural Resources and Environmental Control was Robert J. Touhey, Manager, Water Resources Section, Division of Environmental Control. June MacArtor, Deputy Attorney General, represented the Secretary.

4. Mr. and Mrs. Prentice Harrison appeared on their own behalf and were represented by William E. Wright, Esq.

5. Appearing on behalf of 6-12 Dairy Markets, Inc. were Archie Brittingham, Robert Bradley, Martin Furnish, and Howard Seymour. John E. Henricksen, Esq., represented 6-12 Dairy Markets, Inc.

THE LAW

Under the provision of 7 Del. C. §6008(a), any person whose interest is substantially affected by any action of the Secretary, may appeal to the Environmental Appeals Board within 20 days after the decision has been announced by the Secretary. Appeals of the decision of the Secretary shall be conducted in accordance with 29 Del. C. §6425 under regulations promulgated pursuant to 29 Del. C. §6412. Pursuant to 7 Del. C. §6008, the Board may affirm, modify or reverse the decision of the Secretary.

SUMMARY OF THE EVIDENCE

All exhibits introduced into the records are incorporated herein.

1. In the fall of 1979, 6-12 Dairy Markets, Inc. began construction of a convenience store and laundromat near the outskirts of

Lewes, Delaware, In January, 1980, the Harrisons wrote to the Department expressing their concern that construction of the project was proceeding without a permit, with special concern regarding the construction of a septic tank, and were told that they would be informed of the Department's receipt and advertising of the legal notices required by law.

2. The owner of 6-12 Dairy Markets, Inc. was subsequently indicted and arraigned on three counts of violating State statutes regarding installation of sewage systems without a permit.

3. 6-12 Dairy Markets, Inc. then applied for a temporary holding tank permit on April 9, 1979, seeking to install a one thousand (1,000) gallon tank, which application was denied by the Department. Later, on June 12, 1980, an amended application was submitted seeking installation of a twenty-two thousand (22,000) gallon holding tank. The Harrisons testified that they were not informed of this submission of the application by the Department.

4. The testimony of both parties was that the tank was placed in the ground and partially covered with earth prior to the Secretary's issuance of a permit. On that subject, 6-12 Dairy Markets, Inc. presented evidence that it did so because it received permission by telephone from the Department in order to avoid any resulting dangerous conditions. With regard to the tank, the Harrisons testified that, based on their observation, it was not a twenty-two thousand (22,000) gallon tank. 6-12 Dairy Markets, Inc., presented evidence by its owner and a consulting engineer that it was a twenty-two thousand (22,000)

gallon tank.

5. After the application was filed and advertised, full information on the application was not promptly sent to the Department's Georgetown office, as required by law.

6. The treasurer of the Board of Public Works of the town of Lewes testified that the town's sewage system could adequately treat the water removed from the temporary holding tank.

FINDINGS OF FACTS AND
CONCLUSIONS OF LAW

1. The Board finds that 6-12 Dairy Markets, Inc. did place a twenty-two thousand (22,000) gallon tank in the ground.

2. The Board finds that the Department of Natural Resources and Environmental Control acted in a cavalier and callous fashion towards the Harrisons in not notifying them of the Department's actions, after they had initially indicated they would do so.

3. The Board further finds that the documents to be inspected were not readily available in Georgetown before July 19, 1980, when such documents should have been available in June, 1980.

4. The Board finds that a public hearing on the issuance of the temporary holding tank permit would have been beneficial in order to allay any misunderstandings on the part of the Harrisons and others that may have arisen concerning 6-12 Dairy Markets, Inc.'s course of conduct.

5. However, despite these shortcomings of the Department, the Board does not find that these violations are sufficiently severe to require revocation of the permit to 6-12 Dairy Markets, Inc. inasmuch

as the Board finds that the permit was properly issued and satisfies the applicable regulations, with no resulting adverse environmental impact arising from the use of the temporary holding tank.

DECISION AND ORDER

Accordingly, the Board hereby orders that the decision of the Secretary be affirmed. The Board further requests that, in the future, all relevant documents be sent promptly to the offices listed in the public notice and, in addition, the Board requests the Secretary to hold a hearing on the town of Lewes' application to connect 6-12 Dairy Markets, Inc.'s sewage line to the town of Lewes' sewage line, should a hearing be requested, notwithstanding that public notice may have already been given by the Department because of the initial undertaking by the Department to advise the Harrisons of further action regarding 6-12 Dairy Markets, Inc.'s application for a sewage disposal system.

Thomas P. Keane
Chairman

Clifton W. Hubbard 10/27/80

Deputy Greenwood

Earl B. Tull

Roger A. Brown

Roger A. Brown
Deputy Attorney General
Department of Justice
820 North French Street
Wilmington, Delaware 19801

Phyllis B. Schebinger

DATE: 10/31/80

