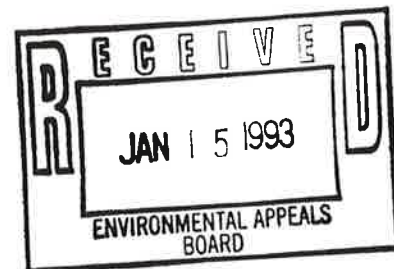


BEFORE THE ENVIRONMENTAL APPEALS BOARD
OF THE STATE OF DELAWARE



IN RE:)
)
APPEAL OF MEMBER) Appeal No. 92-18
ORGANIZATIONS OF)
CHRISTINA RIVER CONSONANCE)
)

FINAL ORDER

The Environmental Appeals Board ("Board") held a hearing on this appeal on October 27, 1992. The Board members present were Thomas J. Kealy, Chairman, Clifton H. Hubbard, Jr., Richard Sames and Mary Jane Willis. Steven C. Blackmore, Deputy Attorney General, advised the Board. Appellants, Member Organizations of Christina River Consonance ("CRC"), were not represented by an attorney, but they selected Susan Collins as their spokesperson. The Secretary of the Department of Natural Resources and Environmental Control ("DNREC") was represented by Deputy Attorney General Kevin P. Maloney. The permittee, International Petroleum Corporation of Delaware, was represented by W. Harding Drane, Jr., Esquire. This appeal involves three construction permits for process heaters and a boiler and associated used oil recycling process equipment. The Board affirms DNREC's issuance of the permits.

SUMMARY OF THE EVIDENCE

DNREC granted three construction permits ("Permits")¹ to IPC and issued Secretary's Order No. 92-0040 ("Order") on July 17, 1992, following a public hearing. CRC then appealed to the Board based primarily on the argument that DNREC should not have issued these permits without first having issued specific regulations governing used oil recycling facilities. CRC contended that DNREC violated the general purposes behind Title 7, Chapter 60, which include protecting the land, water and air resources of the State. See 7 Del. C. sec. 6001. At the pre-hearing conference, it was determined that the nature of this appeal involved primarily a legal argument and therefore each party only needed to present one witness. See the October 7, 1992 letter from the Board's counsel. However, at the hearing, the Board allowed CRC to present five witnesses who each offered factual testimony and legal argument in addition to the statements from their spokesperson.

CRC offered the Board's Interim Order from the Harvey & Harvey Appeal to support their argument that DNREC's issuance of the Permits were unauthorized here since no oil recycling regulations had been duly promulgated. CRC also offered

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The permits issued were APC-92/0118 - Construction - H-501, APC-92/0431 - Construction - H-502 and APC - 92/0432- Construction - H-503.

additional testimony and evidence concerning the risks of used oil which will be transported to and from IPC's facility and most likely burned as fuel elsewhere. CRC was concerned about the presence of contaminants such as lead, benzene and phenols and their release during combustion. CRC's witnesses were also upset by the location of the IPC facility as well as the potential pollution and health risks associated with used oil recycling.

IPC responded with expert testimony describing how IPC's Wilmington used oil recycling facility ("Facility") will not be burning any of the used oil. It is not a refinery. IPC's recycling process involves the distillation of water from the used oil so that the processed oil may be sold as a combustible product. The emissions from the Facility will have a relatively minimal impact; they will be within air control standards. The Permits also contained additional requirements restricting the used oil recycling operation. DNREC limited its participation at the hearing; it deferred to IPC as the primary defender of the Permits.

CRC presented the testimony of Thomas Colgan, Dean Bunge, Gregory F. LaVelle, Richard David Chalfant and The Honorable James H. Sills, Jr. These individuals were primarily concerned about the potential adverse health effects of used oil combustion and the operations and emissions of the Facility, as well as the potential harm from used oil transportation. The CRC

witnesses did not approve of the location of the Facility on the Christina River within the close proximity of residential neighborhoods. The existence and location of the Facility will probably hinder efforts to revitalize the Christina River-front area as a recreational site. Mayor-elect Sills wanted the Secretary to exercise a higher responsibility and be guided by the concerns of the majority of the affected local citizens who, he believes, are opposed to the Facility.

IPC presented the testimony of The Honorable Herman M. Holloway, Sr. who visited a similar facility in Plant City, Florida owned by an entity related to IPC. Senator Holloway stated that the Florida facility did not appear to pose a risk to the environment and the additional employment at the facility here would be beneficial. IPC's other witness was David F. Strahorn, an engineer and Registered Environmental Assessor with a California consulting firm. He stated that Delaware's restrictions on the used oil which could be processed at the Facility (requiring "on specification" oil and zero PCBs) were very restrictive and the record keeping and management controls which IPC must follow were extensive. He indicated that the amount of lead in used oil has substantially decreased since the early to mid-1980s due to the elimination of leaded gasoline, that lead in used oil is not a significant source of lead in the atmosphere today and that lead is not a major technical issue here. Mr. Strahorn testified that IPC's recycling

process is environmentally beneficial since it involves a distillation process which eliminates water and allows more complete combustion of the used oil. The distillation process does not produce chemical changes in the oil which might produce additional contaminants. Also, IPC plans to place booms around any barges unloading used oil at the Facility. These precautions exceed United States Coast Guard requirements for handling and unloading oil.

FINDINGS OF FACT

1. Air emissions from IPC's Facility will comply with State and Federal Ambient Air Quality Standards, including particulates and sulfur dioxide limitations. See Order, Finding No. 5.

2. IPC will not burn recycled oil or its finished product as fuel for its operations. IPC will burn low sulfur oil and natural gas and recovered light hydrocarbons. Order, Finding No. 7; Permits, Condition No. 8.

3. IPC will not be a transporter of used oil; it will purchase used oil transported to its Facility.

4. The Facility, as permitted and planned, complies with local zoning or land use restrictions.

5. The Permits required IPC to satisfy specified air emissions levels and Delaware's regulations. Permits, Condition No. 5. The Permits imposed limitations on the odors emitting from the Facility. Permits, Condition Nos. 9, 10.

The Permits also imposed limitations on visibility of air emissions. Permits, Condition No. 12.

6. IPC is prohibited by the Permits from receiving oils which do not satisfy the specifications in 40 C.F.R. Part 266, subpart E (Used Oil Burned For Energy Recovery). Further, the Permits prohibit receiving oil which contains any Polychlorinated Biphenyls (PCBs). Permits, Condition No. 14.

7. The Environmental Protection Agency ("EPA") has decided that used oil shall not be classified as a hazardous waste.

CONCLUSIONS OF LAW

Appellants' concern about the release of potential contaminants from combustion of recycled waste oil is not a major issue here. The danger from the release of lead as a side-effect of waste oil combustion has been reduced since leaded gas was banned as an automobile fuel. IPC is also restricted to recycling "on-specification" used oil as defined by 40 C.F.R. sec. 266.40(e). Permits, Condition No. 14. Therefore, IPC cannot accept used oil with more than 100 parts per million of lead. This would be prohibited "off-specification" oil. Id. More importantly, IPC's Facility will not burn any of the oil it processes. Permits, Condition No. 8. Also, DNREC's Regulations Governing the Control of Air Pollution ("Regulations") prohibit the burning of waste (used) oil without a valid permit. (Regulations No. 22, sec. 1.1). Therefore, CRC's

concerns about the combustion of waste oil have been addressed by DNREC's permitting and regulatory process and also by EPA Regulations.

The air emissions from the Facility will comply with State and Federal Ambient Air Quality Standards and will have a relatively minor impact. Order, Findings Nos. 5, 7. Also, the Permits require IPC's emissions to comply with specified air emission levels, the Regulations, visibility and odor limitations. Permits, Conditions Nos. 5, 9, 12.

The Board's 1986 Interim Order in the Appeal of Harvey and Harvey, Inc. and the January 30, 1986 opinion letter from Deputy Attorney General Drake are not controlling on the issues here. The Harvey and Harvey Appeal involved a waste transfer station which was not authorized to receive a permit until DNREC issued applicable regulations. Here, a permit is required for the construction of two oil heaters and a boiler which may "cause or contribute to the discharge of an air contaminant." 7 Del. C. sec. 6003(1). The air contaminants which will be released from this equipment, including particulates and sulfur dioxide, are presently regulated by Federal and State regulations. No additional risk assessment is necessary. The additional risk and mitigating concerns in the Harvey and Harvey Appeal are not present here. Further, the Permits authorize construction and not operation of the heaters and boilers, see Permits, Condition No. 2. Other potential

environmental aspects of oil recycling facilities, such as pipelines, storage tanks, solid waste and water pollution, should be regulated by separate permit requirements. See 7 Del. C. sec. 6003(2), (4), (5) and related regulations.

The existing federal regulations impose certain analysis and record keeping requirements on used oil processors. Id. New and more extensive EPA regulations will take effect March 8, 1993 and will apply to IPC's Facility. See 57 Fed. Reg. 41566 et seq. (September 10, 1992) (IPC Exhibit "2"). The new regulations will apply to used oil recycling facilities which employ distillation procedures and regulate conditions of tanks, labelling, releases, etc. Table VI.4; 57 Fed. Reg. at 41593. While the Permits were issued before the effective date of these new EPA regulations, the Board concludes that the existing Federal and Delaware Regulations, when considered as a whole, do sufficiently regulate recycling facilities. It appears, as Mr. Strahorn testified, that the greatest environmental risks from used oil recycling stem not from the lack of regulations but from failures to comply with the existing regulations.

Therefore, DNREC issued the Permits based upon duly promulgated regulations, within the meaning of 7 Del. C. sec. 6003(c). The application of the Federal and State regulations and the additional permit conditions imposed by DNREC support the conclusion that DNREC acted consistent with the policy of

protecting the State's resources under 7 Del. C. sec. 6001. Further, transportation and storage of used oil are also regulated. See 40 C.F.R. Part 260 et seq. and DNREC's regulations. IPC's agreement to place booms around any barges unloading used oil add an additional safety precaution.

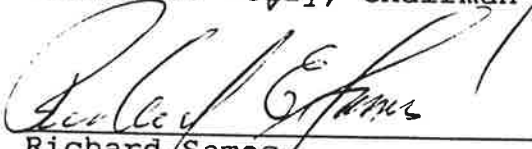
The Board is sympathetic with the concerns of individuals who wish see the Christina River shore-line redeveloped and beautified, but this is a local land use issue.

CONCLUSION

The approval by DNREC of IPC's application for the Permits is supported by the evidence on the record before the Board. Appellants failed to satisfy their burden of proof on appeal under 7 Del. C. sec. 6008(b). The decision of the Secretary is unanimously affirmed.


Thomas J. Kealy, Chairman


Clifton H. Hubbard, Jr.


Richard Sames

Mary Jane Willis

DATE: January 14, 1993

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Richard Sames



Mary Jane Willis

DATE: January 8, 1993