BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF ALLIED CHEMICAL CORPORATION, INDUSTRIAL CHEMICALS DIVISION, Appellant, v. SOUTHWEST AIR POLLUTION CONTROL AUTHORITY, Respondent.	PCHB Nos. 1018 and 77-41 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of two orders invoking the air pollution control law, concerns the proposed alteration of an air contaminant source. Hearing was held before the Pollution Control Hearings Board, W. A. Gissberg, Chairman, Chris Smith and Dave J. Mooney at a formal hearing in Lacey, on June 20 and 21, 1977. Hearing examiner William A. Harrison presided.

Appellant was represented by its attorney, Robert L. Gunter; respondent was represented by its attorney, James D. Ladley. Sherri Darkow, court reporter, recorded the proceeding.

having heard the testimony, having seen the exhibits and being fully advised, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I

The appellant, Allied Chemical Corporation, owns and operates an alum manufacturing plant in Vancouver, Washington. In the course of manufacturing alum, appellant emits contaminants, known as particulate matter, into the air.

II

On April 20, 1976, the respondent, Southwest Air Pollution Control Authority, issued an Order of Violation No. 76-169 to appellant. The order required appellant to either (1) immediately abate its emission of air contaminants, or (2) immediately install new emission control apparatus. Appellant appealed that Order, which appeal is our No. 1018.

III

On November 8, 1976, appellant proposed the installation of new emission control apparatus by submitting plans to respondent. ("Notice of Construction and Application for Approval, CL-275.") Appellant's plans called for the addition of equipment known as a "slurry feed system" and a "mist eliminator." Respondent issued its Order No. 77-236 preventing the addition of this equipment on March 22, 1977. The Order found that the pollution control equipment proposed by appellant would not be effective enough to meet respondent's regulatory and statutory standards. Appellant appealed that Order, which is our No. 77-41.

IV

The effectiveness of appellant's proposed equipment, in reducing

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particulate emissions, depends on the size of particles involved. The size of the particles is not determinable without careful, complex testing. Although equally qualified experts differ on the type of testing which will reliably determine particle size, we find that the test conducted by appellant and reported as Exhibit A-5 is reliable and accurate. In doing so we note that this was the type of test recommended by respondent.

V

Application of the new equipment proposed by appellant will therefore probably reduce particulate emissions from present levels of 1.13 grains per standard cubic foot (gr/SCF) to .013 gr/SCF, a reduction of 98.85%.

Emissions of .013 gr/SCF is well within the emission standards requiring (a) less than .1 gr/SCF (respondent's Regulation 2, Article V, § 5.02) and (b) less than 20% opacity (State of Washington, Department of Ecology, WAC 18-04-040(1)(b)).

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Hearings Board has jurisdiction over the persons and subject matter of this proceeding.

II

In order to alter an air contaminant source so as to significantly

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affect emissions,[1] one must show that the alteration:

1. ". . . is designed and will be installed to operate without causing a violation of the emission standards,"[2] and

2. ". . . incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the equipment,"[3] and

3. ". . . will not cause any ambient air quality standard to be exceeded."[4]

See Weyerhaeuser v. SWAPCA, PCHB No. 735, (1975), Conclusion of Law II, p. 12.

The above three elements must be shown by plans submitted before the alteration is constructed. Respondent's Regulation 1, Article III, §§ 3.01 and 3.03.

III

During hearing, respondent stipulated that if appellant's proposed alteration would meet the .1 gr/SCF and 20% opacity emission standards by reducing emissions to .013 gr/SCF, such reduction would also constitute advances in the art and would not cause any ambient air quality standard to be exceeded. By our Finding of Fact V, we have established that appellant's proposed alteration will probably reduce particulate emissions to .013 gr/SCF. Appellant has therefore made the

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1. Respondent's Regulation 1, Article III, § 3.01.

2. Respondent's Regulation 1, Article III, § 3.03(b)(1).

3. Respondent's Regulation 1, Article III, § 3.03(b)(2).

4. RCW 70.94.152(2).

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showing which entitles it to alter its air contaminant source as proposed.

IV

In General Tire & Rubber Co. v. SWAPCA, PCHB No. 802, (1975) we held that:

> The requirement of advances in the art should be determined prior to approval of any construction and should not be the basis upon which an Order of Violation is issued. (Conclusion of Law IV, p. 7.)

The Order of Violation referred to was the post-construction Order of Violation described in Regulation 1, Article III, § 3.04(a).

In the same case, however, we stated that:

> Of course, if appellant hereafter [post-construction] exceeds any emission standard of Regulation I, it would be subject to enforcement action therein provided, Section 3.04(c). (Conclusion of Law III, p. 7, [Brackets added].)

Appellant therefore constructs its alteration at its own peril should actual performance cause violation of any emission standard, despite our present finding that the same will probably not occur based on tests and plans made prior to construction.

Further, even though the appellant's new construction actually operates in such a manner so as to meet the grain loading emission standard (Section 5.02 of Article V), we will not hesitate to affirm civil penalties, if factually warranted, imposed by the Southwest Air Pollution Control Authority for violations of its visual emission standards (Section 4.02) or its odorous gas standards (see Section 5.03). We therefore must caution appellant to carefully consider all of the potential consequences of its action in light of the fact that there is

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no guarantee to it that its proposal will enable it to meet all of the respondent's regulations while, on the other hand, the installation of more expensive equipment may prove to be more economical in the long term.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board makes this

ORDER

Respondent's Order of Violation No. 76-169 in PCHB No. 1018, is affirmed.

Respondent's Order for Prevention, No. 77-236 in PCHB No. 77-41, is vacated.

Remanded to respondent with instructions to issue its "Approval of Construction" for appellant's "Notice of Construction and Application for Approval, CL-275."

DATED this 11th day of July, 1977.

POLLUTION CONTROL HEARINGS BOARD

W. A. GISSBERG, Chairman

See dissent
CHRIS SMITH, Member

DAVE J. NOONEY, Member

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SMITH, Chris (dissenting)--I disagree with the majority for the following reasons: I find that the source test report conclusions (appellant's Exhibit 5) offered by appellant were based upon erroneous data because of the use of an improper testing procedure which could not accurately distinguish between quantities of sulfur dioxide and of sulfuric acid. Thus, I do not feel that appellant has met its burden of proof upon which the remainder of its case relies. Rather, the evidence shows that an average of 0.073 gr/SCF of acid would be emitted rather than 0.0053 gr/SCF as appellant contends and as the majority of the Board has been persuaded to find. These emissions are averages and do not account for the wide variation from batch to batch which can range from 0.031 gr/SCF to 0.105 gr/SCF. See Appendix 6, appellant's Exhibit A-5. Additionally, the duration of the test period over which the data was collected, i.e., 40 minutes, resulted in time averaged values for emissions rather than peak values. A shorter time period, e.g., 10 minutes, would have produced more accurate data. See Figure 2, Appendix 6, appellant's Exhibit A-5. Respondent has cast sufficient doubt upon the validity of the appellant's test and I would expect that the opacity and particulate matter emission standards of WAC 18-04-040(1)(b) (now WAC 173-400-040(1)), which standards are not to be exceeded, will be violated. I would affirm the action of respondent.

Chris Smith

CHRIS SMITH, Member