

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

IN THE MATTER OF:)
)
COASTAL ZONE PERMIT) DECISION AND ORDER
DETERMINATION OF GETTY)
REFINING AND MARKETING)
COMPANY)

INTRODUCTION

1. A hearing in the above-captioned matter was held on Wednesday, January 7, 1981 by the Coastal Zone Industrial Control Board in the Townsend Building, Dover, Delaware, at 3:00 p.m. to consider an appeal filed by Watch Our Waterways, the Delaware Audobon Society, and Save Our Seashores, (Appellants") appealing the status decision of November 14, 1980 of Nathan Hayward III, former Director, Office of Management, Budget, and Planning, ("Director") holding that the proposed methanol plant the Getty Refinery and Marketing Corporation ("Applicant") is seeking to install at its plant in Delaware City is not regulated by the Coastal Zone Act. A subsequent meeting of the Board was held on Wednesday, January 14, 1981 at 10:00 a.m. in the Townsend Building in order for the board to reach its decision.

2. The hearing was conducted by Dr. Donald F. Crossan, Chairman of the State Coastal Zone Industrial Control Board. Other members of the Coastal Zone Industrial Control Board present at the hearing were: Mrs. Lynn Williams, Robert W.

Tunnell, Esquire, Mr. Charles W. Cole, the Honorable J. H. Wilson, III, Dr. V. Eugene McCoy, Mr. E. Winfred Davis, and Mr. Jack Roe. Roger A. Brown, Deputy Attorney General, acted as counsel to the Board. Dr. Crossan was not present at the second meeting and Dr. McCoy acted as chairman of the Board.

3. F. L. Peter Stone, Esquire, represented the appellants. He called no witnesses. Charles F. Richards, Jr., Esquire and Stephen E. Herrmann, Esquire, represented the applicant. R. W. Ladd appeared as a witness for the applicant. The Honorable Nathan Hayward, former Director of OMBP appeared on behalf of himself. In accordance with the rules and regulations of the State Coastal Zone Industrial Control Board, members of the audience posed questions and submitted written statements to the Board for its consideration.

4. Subsequent to the appellants presentation of its case the applicant moved to dismiss the appeal because of lack of standing of the appellants and filed a memorandum of law in support thereof. The Board reserved judgment and allowed the appellants time to file an answering memorandum.

THE LAW

Under the provisions of 7 Del.C. §7007 any person aggrieved by a final decision of the Director under 7 Del.C. §7005(a) may appeal that decision to the State Coastal Zone Industrial Control Board within fourteen (14) days following announcement by the Director of his decision. Appeals of the decision

of the Director shall be conducted in accordance with 29 Del.C. §6425 under regulations promulgated pursuant to 29 Del.C. §6412. Pursuant to 7 Del.C. §7007, the Board may affirm or reverse the decision of the Director with respect to the applicability of any provision of 7 Del.C. Ch. 70 to a proposed use; it may modify any permit granted by the Director grant a permit denied by him, deny a permit, or confirm his grant of permit; however, the Board may grant no permit for uses prohibited in 7 Del.C. §7003.

SUMMARY OF THE EVIDENCE

All exhibits introduced into the record are incorporated herein.

1. On July 29, 1980, Getty Refining and Marketing Company requested a status decision from the Director of the Office of Management, Budget, and Planning. On November 14, 1980 the Director rendered his status decision that the proposed Methanol plant at the Getty Refinery does not fall within the Coastal Zone Act as the methanol plant is neither a new manufacturing use, nor an expansion or extension of a nonconforming use, nor a prohibited heavy industry use.

2. While the appellants did not present any live factual witnesses, the appellants did attack both the factual foundations of the Director's decision and the Director's interpretation of the Coastal Zone Act. In support of their attack on the Director's decision the appellants submitted: a

statement from the National Audobon Society contending that the methanol plant is new heavy industry and therefore impermissible; a statement excerpted from the Delaware State Implementation Plan for Achieving and Maintaining National Ambient Air Quality Standards to the effect that no growth is projected for the petroleum refinery industry in the State as such industry is prohibited by the Coastal Zone Act; a memorandum from Alan Simpson to Robert R. French stating that the uncontrolled VSC emissions from the Methanol plant would exceed 100 tons per year and the controlled emissions would be 85 tons per year; a chapter from the EPA Chemical Hazard Information Profile Manual setting forth the chemical hazards of methanol which indicate that it is toxic; a copy of a Wall Street Journal article from February, 1974, reciting the fact that there was a fire at the duPont Company's Methanol plant in Texas; and, finally, a copy of the applicant's own press release stating that the plant is "one of the largest single construction projects in the State's history" and "the Company...has to receive a number of permits from appropriate government agencies....Included ...are: ...State Office of Management Budget and Planning (Coastal Zone)...."

3. The former Director of the Office of Management, Budget, and Planning then gave a statement to the Board outlining the reasons for his decision. These reasons included: that the methanol plant would not be heavy industry, not having

all the attributes of heavy industry listed in the Act, and that the methanol plant was not an expansion or extension of a nonconforming use. The former Director further stated that there was ample precedent to support his decision in that on three previous occasions similar construction of manufacturing facilities in the coastal zone had been found not to fall within the Coastal Zone Act when such facilities had been added to non-conforming uses. On this latter point, the prior decisions of the Director of Office of Management, Budget and Planning were introduced into the record.

4. R. W. Ladd, professional specialist in air and water conservation for Getty Refinery and Marketing Company, testified for the applicant. He testified that the methanol plant will use seven acres of land. In addition, he testified that although the product mix would change there would not be any increase in the productive capacity or in the feedstock use of the Getty plant. Mr. Ladd further testified that Getty, in connection with the construction of the methanol plant, would be installing stringent air and water pollution controls, and because of this there would be no significant environmental impact. On this latter point he testified and produced supporting documents to show that both the EPA and DNREC had issued all necessary environmental permits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Board found, by a vote of 7-0, that the appellants had standing. As local organizations interested in the protection of the environment in general, and in the protection of the Coastal Zone, in particular, for recreational, environmental and educational purposes, the appellants would suffer an injury in fact if the decision of the Director were in error.

2. The Board found that the Getty Plant was a non-conforming use in existence on June 28, 1971. The Board further found by a vote of 5-2 that: there will be no significant increase in feedstock use of the plant; there will be no significant increase in the land use area of the proposed methanol plant; and that there will be no significant adverse environmental impact from the operation of the methanol plant. Accordingly, the Board concluded that the construction of the methanol plant at this Getty Refinery is an allowed use under the Coastal Zone Act, that no permit is required therefor, and that in making his status decision the Director acted correctly.

3. Two members of the Board dissented on the ground that the construction of the methanol plant constituted a legal extension of a non-conforming use for which a permit is required under 7 Del.C. §7004. Accordingly, they would have remanded the proceeding to the Director in order that a hearing could be conducted on the question of whether a permit should be granted.

DECISION AND ORDER

IT IS HEREBY ORDERED that the status decision of the Director of Office of Management, Budget and Planning be affirmed.

Eugene McCoy
Acting Chairman

Lynn W. Williams

Jack R. Doe

Robert W. Tunell

**

*

Dated: January 27, 1981

* Mr. E. Winfred Davis died on January 15, 1981.

** Mr. Charles W. Cole's signature was unavailable because of his absence from the State.

