ILLINOIS POLLUTION CONTROL BOARD
November 3, 1988

VILLAGE OF WESTERN SPRINGS, Petitioner,	)	
v.	)	PCB 88-96
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

OPINION AND ORDER OF THE BOARD ((by J.D. Dumelle):

This matter comes before the Board upon Petitioner's filing of a Petition For Review Of Special Waste Determination on June 2, 1988. In specific, Petitioner requests this Board to review the special waste designation of water treatment plant residue located in Western Springs, Illinois. Western Springs seeks the de-classification of calcium carbonate pellets (from the treatment plant) as a special waste; thereby facilitating easier disposal at a sanitary landfill. Petitioner urges that the Illinois Environmental Protection Agency (Agency) holds this authority pursuant to Ill. Rev. Stat. 1988 ch. 111 1/2, par. 1022.9(d).

On April 28, 1988, in response to a request by Petitioner, the Illinois Environmental Protection Agency denied a request to de-list as a "special waste" the calcium carbonate pellets from Petitioner's water treatment plant.

BACKGROUND

Western Springs owns and operates a water treatment plant which softens 1,000,000 gallons of well water per day, making it useful for domestic purposes. In 1985 Petitioner purchased and installed a unique water softening system called "spiracter". The spiracter consists of a cylindrical tank which contains a bed of silica sand. Lime is added to the raw water. As the lime interacts with the raw water, calcium carbonate deposits and sand will settle in the bed. Periodically some calcium carbonate covered sand is removed and fresh sand is added. The sand which is removed is the water treatment residue at issue in this case. Petitioner seeks that this residue be de-classified from being a "special waste" so it can be landfilled without the restrictions associated with special wastes.

The calcium carbonate pellets produced by the spiracter system are inert pellets consisting of 93.9 percent calcium (sic) and 0.5 percent silicon dioxide. The pellets vary in size from 1/16 inch to 1/4 inch in diameter. Petitioner asserts the pellets are not odorous, are not easily airborne, do not represent any handling problems and do not readily break down in the presence of water. Petition for review, 6/2/88, p. 3.

Petitioner contends that the pellets may be properly and safely de-classified from a special waste pursuant to Ill. Rev. Stat. 1988, ch 111 1/2, par. 1022.9(d) which states as follows:

> d. Until such time as the regulations required in subsection (c) of this Section are effective, any person may request the Agency to determine that a waste is not a special waste. Within 60 days of receipt of a written request the Agency shall make a final determination, which shall be based on whether the waste would pose a present or potential threat to human health or to the environment or if such waste has inherent properties which make disposal of such waste in a landfill difficult to manage by normal means.

On April 28, 1988, Lawrence W. Eastep, P.E., Manager for the Permit Section, Division of Land Pollution Control for the Agency, denied Petitioner's request for de-classification. Although the denial letter stated that the pellets at issue do not appear to pose a threat to human health and environment, the request for de-classification was denied because Section 3.45 of the Environmental Protection Act specifically identifies pollution control waste (calcium carbonate covered sand pellets) as a special waste, and the Agency believes it is without authority to de-classify substances specifically identified as special wastes by the General Assembly.

On June 2, 1988 Petitioner timely filed its Petition For Review of the Agency decision; on July 11, 1988 the Agency filed its Agency record. On September 20, 1988 a hearing was held in this matter. At hearing the parties stipulated that the calcium carbonate sand pellets at issue do not pose a present or potential threat to human health or to the environment, nor do the pellets appear to have inherent properties which make their disposal in a landfill difficult to manage by normal means. Stip. p. 2.

Petitioner's brief was filed on September 30, 1988; Respondent's responsive brief was filed on October 21, 1988; Petitioner's reply brief was filed on October 26, 1988. This matter is ready for adjudication.

In arguing that the Agency lacks authority to de-list wastes which are specifically identified in the Act (Sections 3.27 and 3.45) as special wastes, the Agency presents two arguments. First the Agency contends that Section 22.9(d), supra, is procedural in nature and, therefore does not supercede the clear definition of pollution control waste set forth at Section 3.27. Secondly the Agency asserts that the language of Section 22.9(d) of the Act merely codifies the same standard that preceded the adoption of Section 22.9(d); thus, there is no substantive change, thus, the Agency cannot de-classify this substance. In support of this argument the Agency cites Aurora Metals v. IEPA, PCB 82-12, July 1, 1982, as case authority for the fact that this Board has previously held that the Agency lacks authority to de-classify wastes which the General Assembly has specifically identified as being pollution control wastes, or special wastes.

The Agency's reliance on Aurora Metals is misplaced because the General Assembly amended the Act on September 4, 1986 to add the language of Section 22.9(d) which specifically requires the Agency to determine that a waste is not a special waste based upon whether the waste poses a threat or a potential threat to human health or to the environment or if such waste contains inherent properties which make disposal difficult. Ill. Rev. Stat. 1988, ch. 111 1/2, par. 1022.9(d). Aurora Metals was decided in 1982 -- 4 years before the above legislative amendment. The language of Section 22.9(d) is clear on its face and further construing the legislative intent is not necessary. The Agency must review the submitted request and determine whether the calcium carbonate covered sand pellets meet the criteria set forth in Section 22.9(d). If the criteria are satisfied, Petitioner's request should be granted.

The Board notes that the case at issue does not require the Agency to determine that all pollution control wastes are not special wastes. The issue presented in this case is whether the applicant has demonstrated to the Agency that calcium carbonate sand pellets do not constitute a present or future risk to human health or the environment and whether they may be safely landfilled by normal means. The Act clearly imposes a duty of the Agency to make this determination.

Having determined that the Agency holds the authority to make the determination requested by petitioner, the Board remands this matter to the Agency with instructions to review Petitioner's request consistent with this Opinion. The parties should note that the Board does not at this time address the substantive issues posed in Section 22.9. This is for the Agency to decide. Thus the Board does not at this time consider whether the pellets contain excessive amounts of combined radium 226 and 228.

This matter is remanded to the Agency for a decision on whether the pellets at issue meet the criteria set forth in Section 22.9(d).

IT IS SO ORDERED.

Board Member J. Anderson abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 3rd day of November, 1988 by a vote of 5-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board