

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1986

IN THE MATTER OF:)
) R 86-6
WOODSTOCK DIE CAST, INC.)

ORDER OF THE BOARD (by J. Anderson):

On December 27, 1985, Woodstock Die Cast, Inc. (Woodstock) filed a petition for emergency rulemaking with the Board. The petition seeks to have certain wastes which Woodstock produces "delisted" from the hazardous waste listings of 35 Ill. Adm. Code 721. The petition was filed pursuant to Section 22.4(a) and 27(c) of the Environmental Protection Act (Act), and 35 Ill. Adm. Code 102.120, 720.120(a) and 720.122(a). On January 16, 1986, Woodstock filed an additional statement of reasons.

The wastes in question are wastewater treatment sludges from electroplating operations. Such sludges are listed as hazardous wastes from non-specific sources under generic code F006 in 35 Ill. Adm. Code 721.131 and 40 CFR 261.31. They were listed as generic hazardous wastes upon a finding by USEPA that such sludges usually contain the following hazardous constituents: cadmium, chromium (VI), nickel and complexed cyanide. (35 Ill. Adm. Code 721. Appendix G, 40 CFR 261, Appendix VII).

On March 18, 1981, the United States Environmental Protection Agency (USEPA) granted Woodstock a "temporary exclusion" from the listing pursuant to 40 CFR 260.22 (46 Fed. Reg. 17198). USEPA determined that, although the waste was a wastewater treatment sludge from electroplating operations, it did not contain the hazardous constituents which caused the waste to be listed.

Section 3001(f)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) mandated USEPA to review all temporary exclusions by November 8, 1986, and provided that all temporary exclusions will expire on that date. Woodstock alleges that it needs Board action on the temporary exclusion up to that date. In the event the exclusion is continued under HSWA, the Board may be able to take further action pursuant to Section 22.4(a).

In 1980, IEPA determined that the waste was not hazardous based on law which existed at that time (Exh. D to Petition). The validity of this determination is uncertain because of the great changes to the definition of hazardous waste in Illinois since that time.

Beginning in 1981, the Board adopted regulations establishing the Illinois RCRA hazardous waste program. The regulations were adopted pursuant to Section 22.4(a) of the Act, and are "identical in substance" with USEPA's RCRA rules. The

RCRA rules were last amended in R85-22 on December 20, 1985. The history of these rulemakings is summarized in the Board's Opinion adopted January 9, 1986. Illinois received phase I interim authorization on May 17, 1982, and final authorization on January 31, 1986.

The Board has not adopted the March 18, 1981 temporary exclusion granted Woodstock. This exclusion does not appear in 40 CFR 260-266, the federal regulations which the Board has followed, pursuant to Section 22.4(a) of the Act, to fashion the Illinois program. Furthermore, Woodstock has, until now, never petitioned the Board pursuant 35 Ill. Adm. Code 720.122 to delist this waste at the State level. In the absence of such a petition, the Board had no way of determining whether it was necessary to adopt the specific exclusion as a part of the Illinois program.

Section 720.122(c) authorizes the Agency to determine that a waste from a particular source is not subject to the Board's RCRA regulations. The proposal alleges that IEPA has made such a determination (paragraph 8). However, Woodstock has attached no letter from IEPA containing the determination. As noted above, the 1980 letter from IEPA predates Section 720.122(c), and predates the Board's definition of hazardous waste (Part 721) which the Agency must apply in making its determination pursuant to Section 720.122(c). To the extent IEPA may have made such a determination since 1980, such action would seem to contradict USEPA's temporary exclusion pursuant to Section 260.22, which requires an initial determination that the waste meets the regulatory definition of hazardous waste. If the sludge did not meet the F006 listing in the first place, there was no need to delist it by regulatory action.

Woodstock has asked that the Board adopt a delisting regulation by way of emergency rulemaking pursuant to Section 27(c), alleging that the conflict between federal and state law is a "threat to the public interest, safety or welfare." However, this allegation is inconsistent with Woodstock's failure to file a regulatory petition until nearly four years after Illinois' receipt of interim authorization. The Board therefore will not proceed by way of emergency rulemaking.

Section 22.4(a) of the Act requires the Board to adopt regulations which are "identical in substance to federal regulations." Section 20(a)(5) et seq. establishes the legislative intent that Illinois get and keep RCRA authorization. Section 4(1) names IEPA as the lead agency in the authorization process.

The Board notes that the USEPA, in its January 31, 1986 final authorization action, addressed the delisting issues in part by stating:

Response. Due to the Sections 3006(g) and 3001(f) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984, (HSWA) and amendments made to 40 CFR 260.22 on July 15, 1985, (50 FR 28702), Illinois will not have independent authority to delist hazardous waste. Section 3001(f) of RCRA as amended requires U.S. EPA to examine factors in addition to those that caused the waste to be listed when delisting a waste. Furthermore, U.S. EPA is required to provide the public with notice and comment prior to making a final determination on any petition. These requirements were codified in 40 CFR 260.20 and 260.22 on July 15, 1985. The Illinois regulations, 35 IAC 720.120 and 720.122, do not appear to be equivalent to these new requirements. Furthermore, the Attorney General's Statement is based on an analysis of the State's equivalency to the federal regulations promulgated by July 29, 1984. Since the new Federal rules were promulgated subsequent to that date, U.S. EPA does not believe that the Attorney General has certified to this equivalence. According to Section 3006(g) of RCRA, as amended, until a State receives authorization for any HSWA provision, U.S. EPA is responsible for administering that portion of the program. Since U.S. EPA does not believe that 35 IAC 720.120 and 720.122 are equivalent to new 40 CFR 260.20 and 720.22, and these are HSWA requirements, the State is not authorized to delist wastes in lieu of U.S. EPA. Consequently, a company which wants its waste delisted must comply with both 40 CFR 260.20 and 260.22 and 35 IAC 720.120 and 720.122.

The proposal raises several fundamental questions on which the Board needs to be better informed before deciding whether to publish a proposal for public comment. The Board requests that the IEPA and USEPA respond to the following questions by March 15, 1986. IEPA is specifically asked to respond to question number 5. This request does not preclude other participants from responding during this time period.

- 1) Are the March 18, 1981 temporary exclusions "federal regulations" under federal law and thus subject to delisting under Section 22.4(a) of the Act?
- 2) During the interim authorization period, did the Board listings in 35 Ill. Adm. Code 721 define the scope of the RCRA hazardous waste program in Illinois?
- 3) Did USEPA authorize Illinois to delist wastes pursuant to interim authorization?

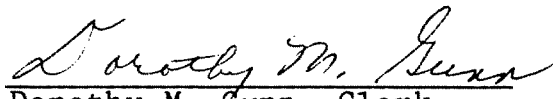
- 4) Will delisting authority change with future phases of authorization, particularly HSWA related?
- 5) Has IEPA in fact determined since interim authorization, pursuant to Section 720.122(c), that the waste does not meet the Part 721 definition of hazardous waste? If IEPA has done so, is this action inconsistent with USEPA's findings in temporarily delisting the waste?

Finally, the petition as filed does not include proof of service on the USEPA, as required to the Board's RCRA Procedural Rules adopted in R84-10 on December 20, 1984 (35 Ill. Adm. Code 102.123). The Petitioner shall promptly provide such proof of service.

IT IS SO ORDERED.

Bill Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 6th day of February, 1986 by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board