

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1980

SAFETY-KLEEN CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 80-12
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by D. Satchell):

On March 10, 1980 the Environmental Protection Agency (Agency) filed, pursuant to Procedural Rule 333, a motion seeking reconsideration of the Board's Order of February 7, 1980 in which the Board dismissed as inadequate the petition of Safety-Kleen Corporation (Safety-Kleen) which requested a variance from the manifest requirements of Chapter 9: Special Waste Hauling Regulations. On May 16 Safety-Kleen filed a response and on May 22, 1980 the Agency filed a motion for leave to reply. On June 9 1980 the Agency filed a memorandum of law and facts in further support of its motion for reconsideration. On June 27, 1980 Safety-Kleen filed a reply.

The Agency contends that the Board violated the provisions of Section 37 of the Environmental Protection Act by acting before the Agency filed a recommendation. However, the Board's Order of February 7, 1980 was not an adjudication on the merits of Safety-Kleen's claims. It was rather a dismissal based on the inadequacy of the petition. The Board often dismisses inadequate variance petitions without awaiting a recommendation from the Agency.

The Agency points to the specific inclusion of "equipment cleanings" in the definition of "industrial process waste." However, prior to determining whether a material falls into one of the categories of special waste, it is necessary to determine whether it is "waste." Under the facts alleged in the petition, the spent solvent is not waste. The issue of whether, if it were waste, it would be industrial process waste is moot.

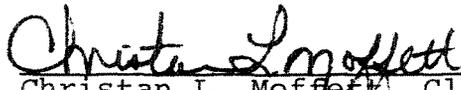
Although the transportation of flammable solvent may pose a threat to the public, this is not the problem which Chapter 9 addresses. Hazards to the public associated with the transportation of hazardous materials are within the jurisdiction of the Department of Transportation. The Board intends to regulate this transportation only after the materials become waste.

The decision of the Board is not based on a finding that the solvent in question is recyclable. Under the facts alleged in the petition, Safety-Kleen maintains control over the solvent at all stages. It is able to state that the solvent is in fact recycled. This situation is clearly distinguishable from the case in which a generator delivers material to a third person with no knowledge or control over its subsequent disposition.

The motion for leave to reply is granted; the motion for reconsideration is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10th day of July, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board