ILLINOIS POLLUTION CONTROL BOARD
August 10, 1989

IN THE MATTER OF:	)	
	)	
IDENR SPECIAL WASTE	)	R89-13 (A)
CATEGORIZATION STUDY	)	

DISSENTING OPINION (by B. Forcade, J.D. Dumelle & M. Nardulli):

We disagree with a primary concept of the majority in this proceeding. We believe that the proposal should say that certain special wastes may be treated less stringently and certain special wastes must be treated more stringently. The proposal says only that certain special wastes should be treated less stringently; the more stringent concept has been deleted. The scientific and technical section (STS) drafts of July 12, 1989 and earlier, all had this more stringent concept articulated in the regulatory language.

This rulemaking implements Section 22.9 of the Act. That Section requires the DENR to study, and requires this Board to consider adopting regulations, "classifying and regulating special wastes according to their degree of hazard. Such study shall include, at a minimum, an assessment of the degree of hazard of the special waste streams produced in the State, alternative systems for classifying these wastes according to their degree of hazard and an evaluation of the benefits of assessing hazardous waste fees and developing storage, treatment and disposal standards based on such classes of wastes. Clearly, the General Assembly contemplated that under Section 22.9 certain special wastes could be subject to statutory controls AS A HAZARDOUS WASTE. This concept has been lost from the majority proposal. We would include this concept.

The Department of Energy and Natural Resources ("DENR") prepared a study of the degree of hazard of special wastes. That September, 1988 report shows at pp. 4-5 that 24.4% of the Illinois non-RCRA special waste has a "high hazard" equivalent to the "high hazard" of a RCRA hazardous waste. The DENR report makes it clear that some special waste is as hazardous as hazardous waste. The majority proposal totally eliminates any reference to the idea that something can be as hazardous as hazardous waste; regardless of how it would be treated, stored or disposed. We would retain the concept.

We also have significant difficulty with the 0, 1, 2, 3 ranking system. The statute commands us to evaluate "the degree of hazard". In their report, the DENR report followed common sense and said there were four degrees of hazard: "high", "moderate", "low", and "none". The proposal uses a numerical

ranking that does not convey ANY information about the degree of hazard. We believe the public is entitled to know the degree of hazard. We would revert to the "high hazard", "moderate hazard", "low hazard", and "no hazard" descriptive titles for the wastes.

The IEPA has previously proposed that non-RCRA wastes must be "disposed of" at a fully permitted RCRA hazardous waste facility. In R84-33 the Agency proposed modifications to the air regulations that would require non-RCRA wastes to be burned at RCRA incinerators. The Agency support document said, "Table 6 very clearly shows that some components of wastes burned in the non-RCRA regulated incinerators may produce emissions that have similar impacts on human health and welfare as do hazardous substances defined by RCRA. Therefore, it is logical to propose that substances with such similar potential to affect public health would be treated with the same degree of destruction when incinerated." The Agency clearly felt it was legally acceptable to require that certain non-RCRA wastes must go to a fully permitted RCRA hazardous waste facility; and, they felt it was appropriate to impose such an obligation without modifying the RCRA regulations. They also felt that certain Illinois special wastes had sufficient threat of harm to factually justify such a decision. We would suggest that the same theory should apply here. The DENR report has very clearly shown that some special wastes have components that have the same degree of hazard to human health as hazardous wastes, and it is logical to propose that they be subject to the same treatment, storage or disposal as a hazardous waste. The majority's proposal would eliminate this concept. We would retain it.

In addition, these concepts should be voted out now, not in in some other docket. This proceeding focuses on degree of hazard. To open another docket to focus on the same concept is a duplication of effort; participants would be required to follow and attend two proceedings to address one subject. Also, questions or decisions from one proceeding could affect the other, but would be difficult to address. Suppose, for example, in the "high hazard" docket we decide that the wastestream equivalent toxic concentration formula [Section 808.Appendix B(a)] is not accurate because it fails to include a "frambus factor". Do we then go back into the recently finalized "low hazard" regulations and modify that same equation ? Isn't it a waste of time to make these decisions twice ?

We think that the ideas listed above are at least good enough to go to first notice with the rest of the proposal. If the world at large does not support those ideas, we can choose to delete them prior to second notice and no harm is done. If we do not put them in at first notice, it will be nearly impossible to include them for the first time at second notice, no matter who asks us to do so. Our usual practice has always been to include it up front.

Bill S. Forcade, Board Member

J.D. Dumelle, Board Member

Michael L. Nardulli, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 15th day of September, 1989.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board