

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1986

IN THE MATTER OF:)
)
AMERICAN NICKELOID DELISTING) R 86-5
PETITION)
)

ORDER OF THE BOARD (by J. Anderson):

On December 19, 1985, American Nickeloid Company (Nickeloid) filed a petition for rulemaking with the Board. The petition seeks to have certain wastes which Nickeloid produces "delisted" from the hazardous waste listings of 35 Ill. Adm. Code 721. The petition was filed pursuant to Section 22.4(a) of the Environmental Protection Act (Act), and 35 Ill. Adm. Code 102.120, 720.120(a) and 720.122(a).

The wastes in question are wastewater treatment sludges from electroplating operations and from lime treatment of spent pickle liquor from steel finishing operations. Such sludges are listed as hazardous wastes from non-specific and specific sources under generic codes F006 and K062 in 35 Ill. Adm. Code 721.131 and 721.132 and 40 CFR 261.31 and 261.32. They were listed as generic hazardous wastes upon a finding by USEPA that such sludges usually contain the following hazardous constituents: cadmium, chromium (VI), lead, nickel and complexed cyanide. (35 Ill. Adm. Code 721. Appendix G, 40 CFR 261, Appendix VII).

On December 16, 1981, the United States Environmental Protection Agency (USEPA) granted Nickeloid a "temporary exclusion" from the listing pursuant to 40 CFR 260.22 (46 Fed. Reg. 61277). USEPA determined that, although the waste was a wastewater treatment sludge from electroplating operations and lime treatment of spent pickle liquor from steel finishing operations, it did not contain the hazardous constituents which caused the wastes 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. Nickeloid may need 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).

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 December 16, 1981 temporary exclusion granted Nickeloid. 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, Nickeloid 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 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 or not to publish a proposal for public comment. The Board requests that the USEPA respond to the following questions by March 15, 1986. This request does not preclude other participants from responding during this time period. In particular, the Board welcomes any clarifications from IEPA.

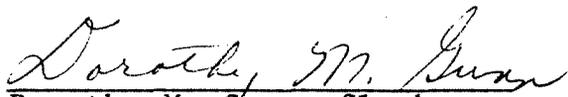
- 1) Are the December 16, 1981 temporary exclusions "federal regulations" under federal law and thus subject to delisting under Section 22.4(a) of the Act?
- 2) During the interim authorization period, did the Board listings in 35 Ill. Adm. Code 721 define the scope of the RCRA hazardous waste program 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?

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