

ILLINOIS POLLUTION CONTROL BOARD
July 1, 1982

AURORA METALS DIVISION,)	
AURORA INDUSTRIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 82-12
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

This matter comes before the Board upon a petition and amended petition for variance filed February 5 and February 26, 1982 by Aurora Metals Division, Aurora Industries, Inc. (Aurora). The petitions requested a variance from the definition of industrial process waste, contained in Rule 103 of Chapter 9: Special Waste Hauling Regulations, as applied to certain core sands. On March 18 the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss the petitions on the grounds that the sands in question were not special waste. On the same date Aurora filed a response which stated that it was actually seeking a variance from the substantive provisions of Chapter 9 rather than the definition and which agreed to dismissal on the grounds urged by the Agency.

On April 14, 1982 the Agency filed its recommendation that the variance either be dismissed as requested in the motion or, in the alternative, granted with conditions. The recommendation was accompanied by a motion for leave to file which is granted. On April 15 the Board decided to consider the motion to dismiss together with the petition and recommendation.

On April 15 and April 27, 1982 Aurora filed a response and supplemental response. The Board deemed these second and third amended petitions in an Order entered May 27, 1982. The Agency has not filed an amended recommendation.

Aurora operates a facility in Montgomery, in Kane County. This is engaged in casting and machining of copper base alloys. In 1981 it shipped in excess of 1.25 million pounds of castings and utilized 1.5 million pounds of sand.

Aurora's waste is a mixture of cured and uncured core sand.¹ The uncured sand consists of a mixture of binder and sand. This is "cured" by passing sulfur dioxide through the mold, which is then ready for use. Aurora indicates that its ultimate waste consists of a mixture of about 3% uncured core sand and 97% cured core sand. The cured core sand results from molds which are discarded after use. It is not clear how the uncured sand enters the wastestream.

The Agency's motion to dismiss was based on its opinion that the waste was not special, even though it was a "core sand", because it did not "pose a present or potential threat to human health or to the environment" and did not have "inherent properties which make disposal of such waste in a landfill difficult to manage by normal means." (Section 3 of the Act, definition of "industrial process waste".)

The definition of industrial process waste, as contained in Section 3 of the Act, was slightly modified this legislative session by SB 875, to correct grammatical problems in the first part of the definition. The old version, as contained in Rule 901 of Chapter 9 was changed as follows:

"Industrial Process Waste" means any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service which. Any such waste which would pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means is an industrial process waste. "Industrial process waste" includes but is not limited to...core sands...

In arguing its motion to dismiss, the Agency has ignored the fact that what is now the third sentence of the industrial process waste definition by its terms presents a list, not of examples of waste which may be considered special, but instead a list of wastes which the legislature in its discretion has determined are special wastes. For the Board to hold that the core sands at issue here are not special wastes would in essence amount to unlawful acquiescence in administrative "de-listing" of core sands from the group of industrial process wastes which the legislature has specifically directed receive special handling. The Board therefore denies the Agency's motion to

¹Aurora has characterized its wastes as "core sand", one of the listed industrial process wastes. The Board has assumed this is correct. "Core sand" is not further defined in the Act.

dismiss and finds Aurora's core sands to be a special, industrial process waste. The Board accordingly will consider the merits of this petition.

The Board is concerned that sands of varying degrees of hazard are being combined into a single wastestream. The Board has therefore required Aurora to develop a plan for separating sands used in its process.

As noted above, the petition requested a variance from the definition of industrial process waste. Aurora subsequently stated that it was requesting a variance from the substantive provisions of Chapter 9. It has not specified which regulations. The Board will treat the petition as a request for variance from the following regulations:

Rule 201	Permit requirement
Rule 301	Manifest required for delivery
Part IV	Vehicle number and symbols
Part V	Manifests and records

Chapter 9 imposes duties on the generator, transporter and disposer. A permit is required of the transporter. The generator is obliged to prepare a manifest and deliver it to the transporter. The disposer must not accept the waste without a manifest. Chapter 7 requires a supplemental permit for each special waste handled by the disposer.

The transporter and disposer have not been expressly identified and have not joined. Insofar as Aurora had a Chapter 9 permit, the Board assumes it is the transporter. The disposal sites identified in Petitioner's Exhibit I are "Joliet ESL, Batavia/Midway, and Naperville/Green Valley". The Board assumes Aurora is not the operator. The disposer's problems will be addressed through conditions on Aurora's variance and conditions on the operator's supplemental Chapter 7 permit.

Aurora states that the classification of its sand results in a direct disposal cost premium of more than \$12,000 per year. This may result in part from preparation and mailing of individual manifests. It may also result from Chapter 9 permit application costs and Chapter 7 supplemental permit costs passed on by the disposer. The Board considers this cost a demonstration of arbitrary or unreasonable hardship when balanced against the insignificant environmental damage if the waste is properly landfilled. The Board will therefore grant a variance from Rules 301 and 501 of Chapter 9.

In its response, Aurora indicates that it has let its Chapter 9 permit expire in reliance on the Agency's position that the sand is not special waste. The Board will grant a variance from the permit requirement of Rule 201 for a sufficient time to allow Aurora to file a new application. It will thereafter be required to display vehicle numbers and symbols as required by Rules 401 and 402.

The variance will be conditioned on annual reports of loads and destinations instead of the Part V requirement.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Petitioner, Aurora Metals Division, Aurora Industries, Inc., is granted a variance from Rules 201, 301 and 501 of Chapter 9: Special Waste Hauling Regulations, subject to the following conditions:

1. The variance from Rule 201 will expire January 1, 1983.
2. The remainder of the variance will expire July 1, 1984.
3. This variance will apply only to "foundry core sands" produced by Aurora's casting operations in Montgomery, Kane County, as described in the petition, and transported by Aurora's own trucks.
4. Petitioner shall file with the Illinois Environmental Protection Agency an annual report listing quantities of wastes and destinations.
5. During the term of this variance, Petitioner shall develop a plan for separating the sands used in its foundry.
6. Petitioner shall not deliver waste for disposal unless the recipient has a Chapter 7 supplemental permit for this waste.
7. The Illinois Environmental Protection Agency shall specify the form of annual reports in any Chapter 9 permit issued Petitioner.
8. The Illinois Environmental Protection Agency may, on request by the recipient of Aurora's waste, issue or modify a supplemental Chapter 7 permit

in accordance with the Act, Chapter 7 and the terms and conditions of this variance.

- 9. The Illinois Environmental Protection Agency shall provide a copy of this variance to each waste recipient with a modified Chapter 7 supplemental permit for the waste described in Paragraph 3. A copy of this Order shall be carried in all trucks which transport this waste without a Chapter 9 manifest.
- 10. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Variance Section, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the Certificate shall be as follows:

CERTIFICATION

I, (We), _____, having read and fully understanding the Order in PCB 82-12, hereby accept that Order and agree to be bound by all of its terms and conditions.

SIGNED _____
 TITLE _____
 DATE _____

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 1st day of July, 1982 by a vote of 5-0.



 Christan L. Moffett, Clerk
 Illinois Pollution Control Board