

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1985

IN THE MATTER OF:)
)
PETITION OF AMOCO OIL COMPANY) R85-2

PROPOSED RULE. PUBLICATION FOR PUBLIC COMMENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a January 16, 1985, regulatory proposal by Amoco Oil Company ("Amoco") to exclude from regulation as a hazardous waste, a treated waste residue at its Wood River facility. This proposal was filed and docketed prior to final U.S. Environmental Protection Agency ("USEPA") action to delist the waste residue in question. On September 13, 1985, Amoco's petition for exclusion pending before the USEPA was granted and is published at 50 Fed. Reg. 37364. On November 14, 1985, Amoco filed an amended proposal that included additional exhibits presented to USEPA during the federal delisting, provided modified regulatory language and subsequent amendments to 40 CFR 260 through 265, as required by 35 Ill. Adm. Code 720.120(a).

Amoco proposes this delisting pursuant to Section 22.4(a) of the Environmental Protection Act ("Act"), Ill. Rev. Stat., 1983 ch. 111 1/2, par. 1022.4(a), and 35 Ill. Adm. Code 720.120(a) and 720.122(a). This is the first hazardous waste delisting proceeding to come before the Board and, consequently, a number of procedural issues arise that warrant some discussion. Section 22.4(a) of the Act reads as follows:

The Board shall adopt within 180 days regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 3001, 3002, 3003, 3004, and 3005, of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended. The provisions and requirements of Title VII of this Act shall not apply to rules adopted under this subsection. Section 5 of the Illinois Administrative Procedures Act relating to procedures for rulemaking shall not apply to rules adopted under this subsection.

Section 3001 of RCRA deals with the identification and listing of hazardous wastes. Presumably, section 22.4(a) also applies to the delisting of RCRA hazardous wastes before the Board. Section 720.122 of the State's RCRA regulations deals with waste delisting. Subsection (a) provides that:

General delisting or delisting of specific wastes from specific sources which have been adopted by USEPA may be proposed as state regulations which are identical in substance pursuant to Section 720.120(a).

Section 720.120(a) states, in pertinent part, that the "petition shall take the form of a proposal for rulemaking pursuant to Procedural Rule 203 [102.120]." Section 720.122(d) states:

Any petition to delist directed to the Board or request for determination directed to the Agency shall include the information required by 40 CFR Section 260.22.

These various sections seem to combine two types of procedures for a delisting petition. Sections 720.120 and 720.122 require delisting to take the form of substantive rulemaking. Petitioners must submit the proposed language with justification for the rule and submit the same substantive information that the USEPA requires under 40 CFR Section 260.22. Section 22.4(a) of the Act places the proposal on a 180 day time clock and suspends many of the conventional rulemaking requirements.

While the Board routinely amends its regulations to be "identical in substance" with federal RCRA amendments, the Board has decided not to include site-specific delistings in its RCRA updates. The reasons for this are two-fold. First, many site-specific delistings have no impact on the Illinois RCRA program and second, delistings may deserve more scrutiny than could be afforded in a RCRA update. Therefore, it is up to a waste generator to petition the Board in a timely manner to delist a waste that has an impact on the Illinois system.

Section 102.202 of the Board's Procedural Rules creates a procedure that is comparable to federal notice and comment rulemaking. Section 22.4(a) of the Act dispenses with merit hearings, economic analysis and review by the Joint Committee on Administrative Rules. The level of scrutiny that the Board may give to these petitions is more limited than in a conventional rulemaking. This is not to say that the Board may not independently evaluate the merits of a delisting petition that has been granted by the USEPA. Clearly, more scrutiny is envisioned than in peremptory rulemakings such as for New Source Performance Standards (NSPS) or National Emission Standards For Hazardous Air Pollutants (NESHAPS). The Board is allowed 180 days to act and the RCRA regulations require the compilation of a record equivalent to that presented to the USEPA. Additionally, while hearings are not mandatory, the Board is not prohibited from holding a merit hearing.

The Board, in the instant proceeding, has elected not to hold a hearing. However, the Board believes that it has authority to hold a hearing on its own motion or at the request of an interested participant. The only limitation on the Board is that it must act within 180 days of final federal action. Whether or not the Board has authority to refuse to delist a waste that has been delisted by the USEPA is a question the Board need not reach in today's decision.

As a final procedural note, Section 720.122(c) of the regulations provides a mechanism whereby the Illinois Environmental Protection Act ("Agency") "may determine in a permit or a letter directed to a generator that a waste from a particular source is not subject to these regulations." Such a permit or letter is only binding on the Agency and not on other persons or the Board. The Agency clearly is not required to make such a determination through a letter or permit.

Amoco operated a petroleum refinery at Wood River, Illinois, from 1908 to 1981. With the commencement of operation in 1977 of an advanced design wastewater treatment plant that included a dissolved air flotation (DAF) unit, Amoco began to produce DAF float, a material later listed by USEPA under RCRA as a hazardous waste and designated K048. See 40 CFR 261.32. DAF float is listed because it contains hexavalent chromium and lead. This material was so stable and resistant to treatment that it was necessary to store the waste in wastewater surge ponds until some methods of management could be developed (Petition, p. 3).

Refining operations at the Wood River facility were permanently shut down in 1981, and Amoco subsequently donated the wastewater treatment plant to the City of Wood River for use as a Regional Treatment Plant. In the transfer agreement, Amoco agreed to clean and lower these surge ponds to provide the City with 150 million gallons of surge capacity in order to complete construction and tie-in of the equipment for the treatment plant (Petition, p. 4)

Amoco proposes to engage Chemfix Technologies, Inc., to remove and chemically stabilize the DAF float. Amoco asserts that from a practical standpoint, the resulting treated waste will not be hazardous since it will exhibit none of the four characteristics of hazardous waste. Under current regulations, however, the treated DAF float would be defined as hazardous because it derives from the treatment of a listed generic hazardous waste. The treated material will be placed in a special solidification area nearby that has been suitably constructed. (Petition, p. 5).

Amoco petitioned USEPA to delist the treated DAF float. On October 23, 1984, USEPA proposed to exclude, on a one-time basis, 150 million gallons of the treated waste that will be generated by Amoco. 49 Fed. Reg. 42589 (October 23, 1984). However, in that notice, USEPA expressed concern over the level of

polynuclear aromatic hydrocarbons (PNA's) found in the waste. As previously noted, the waste in question was not originally listed based on hazardous characteristics associated with PNA content, but due to hexavalent chromium and lead. However, subsequent to DAF float's listing, USEPA became concerned with PNA levels in the waste. 50 Fed. Reg. at 37365 (September 13, 1985).

Since that notice was published, USEPA completed a study on PNA's to determine: (1) the toxicity of the various PNA's, (2) background levels of PNA's normally found in the environment, and (3) the ability of PNA's to migrate from waste into the environment. In particular, USEPA wanted to determine whether PNA's should be added as a basis for listing the chemically stabilized DAF float sludge generated by Amoco. This study was made available for public comment on May 9, 1985, at 50 Fed. Reg. 19551. Based upon the information contained in the PNA study, USEPA believes that the level of PNA's found in the wastes at Amoco's Wood River facility would not pose a threat to human health and environment.

Based on test data submitted by Amoco from representative samples which included total digestion for metals, EP toxicity and oily waste EP toxicity test data, multiple extraction test data, oily waste multiple extraction test data, and total analyses for 95 potential organic contaminants, USEPA found that Amoco has demonstrated that the Chemfix process successfully binds the inorganic toxicants within the matrix of the residue, thereby limiting their mobility. USEPA further believes that the Chemfix treated waste will not contain sufficient quantities of volatile organics to be of regulatory concern.

While USEPA found the treated waste to be non-hazardous for all reasons and excluded it from hazardous waste control under specified conditions, it did impose additional sampling and monitoring requirements. Due to the large volume of waste contained in Amoco's impoundments, the high content of toxic metals in the waste and the fact that the data in the petition was based on laboratory and pilot scale data, USEPA required testing of the treated waste to assure that stabilization occurs and that each day's treated waste be identified and retrievable. Amoco, in its amended petition, proposed modified language that reflects these additional conditions. (Amended Petition, p. 2).

Pursuant to Section 22.4(a) of the Act, the Board proposes to amend the RCRA regulations and will provide notice in the Illinois Register for public comment, pursuant to 35 Ill. Adm. code 102.103. This proposed amendment provides an exclusion for Amoco's treated waste that is identical to the exclusion adopted by USEPA on September 13, 1985. However, the Board will place the exclusion in Appendix I rather than J, as proposed by Amoco, because Appendix I has already been designated as the appropriate location in R85-22. Additionally, Amoco's proposed amendment of Section 721.132 is unnecessary as similar language has already

been proposed in R85-22 on October 10, 1985, and is adopted as final today, in separate Board action.

ORDER

The following proposed amendment to 35 Ill. Adm. Code Part 721, Appendix I is submitted for publication in the Illinois Register for public comment:

Section 721.Appendix I Wastes Excluded under Section 720.120 and 720.122

APPENDIX I, Table A -- WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| <u>Facility</u> | <u>Address</u> | <u>Waste Description</u> |
|-----------------|----------------|--------------------------|
| (Reserved) | | |

Appendix I, Table B -- WASTES EXCLUDED FROM SPECIFIC SOURCES

| <u>Facility</u> | <u>Address</u> | <u>Waste Description</u> |
|--------------------------|-----------------------------|--|
| <u>Amoco Oil Company</u> | <u>Wood River, Illinois</u> | <u>150 million gallons of DAF float from petroleum refining contained in four surge ponds after treatment with the Chemfix stabilization process. This exclusion applies to the 150 million gallons of waste after chemical stabilization as long as the mixing ratios of the reagent with the waste are monitored continuously and do not vary outside of the limits presented in the demonstration samples; one grab sample is taken each hour from each treatment unit, composited, and EP toxicity tests performed on each sample. If the levels of lead or total chromium exceed 0.5 ppm in the EP extract, then the waste that was processed during the compositing period is considered hazardous; the treatment residue shall be pumped into bermed cells to</u> |

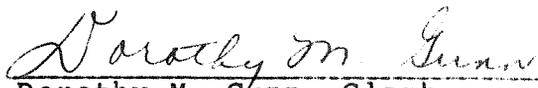
ensure that the waste is
identifiable in the event that
removal is necessary.

Appendix I, Table C -- WASTES EXCLUDED
FROM COMMERCIAL CHEMICAL PRODUCTS,
OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES,
AND SOIL RESIDUES THEREOF

| Facility | Address | Waste Description |
|------------|---------|-------------------|
| (Reserved) | | |

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Rule and Opinion and Order was adopted on the 20th day of December, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board