

ILLINOIS POLLUTION CONTROL BOARD  
September 2, 1982

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

ORDER OF THE BOARD (by D. Anderson):

On August 5, 1982 Aurora Metals Division, Aurora Industries, Inc. (Aurora) filed a motion for reconsideration and modification of the Board's Order of July 1, 1982, which granted Aurora a variance from certain regulations contained in Chapter 9: Special Waste Hauling. Aurora now requests either a determination that its core sand is not a special waste, or a variance from the definition of "special waste".

Aurora has advised the Board that, contrary to the Board's assumption, it is not the hauler of its special waste. The reference in the response to "its special waste disposal permit" referred to a Chapter 7 supplemental permit held by the disposer, rather than a Chapter 9 permit held by Aurora. In retrospect, it appears that the petition was deficient under Procedural Rule 401(a), in particular, codified Sections 104.121(b) and 104.121(h).

Aurora has also retracted its statement in the response that it was seeking a variance from the substantive provisions of Chapter 9 rather than the definition of "special waste". In the first place, it is now too late to amend the request for relief. In the second place, the Board would be unable to grant such a variance for two reasons: it would essentially create a category of "variance waste" which would be indistinguishable from special waste; and, it would not require acceptance of the variance conditions by the transporter and disposer of the waste.

If Aurora alone were granted a variance from the definition, it would be in a position to place transporters and disposers in violation of the rules when they accepted the waste for transportation or disposal.

As a practical matter the Board must insist that the generator, transporter and disposer involved in any special waste movement subject to a variance either accept variance conditions or operate pursuant to special permit conditions. The entire regulatory program would be undermined if indistinguishable special waste subject to a variance were allowed to move outside the manifest system. Before any variance is granted, the Board must have the identity of the transporter and some assurance of control over delivery to the disposal site. The simplest approach would be for Aurora to file a new variance petition, jointly with the transporter and disposers, fully addressing the deficiencies in this petition.

The Board will not reconsider its denial of the Agency's motion to dismiss. Aurora may advance its additional grounds for a determination that the waste is not in fact "special" in a new petition. The motion for reconsideration is granted in part. The Opinion and Order of July 1, 1982 is withdrawn. The petition is dismissed.

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 2<sup>ND</sup> day of September 1982 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board