

ILLINOIS POLLUTION CONTROL BOARD
April 15, 1982

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

DISSENTING OPINION (by J. Anderson):

I dissent because I believe the Board in this case should have denied outright the alternative motion to dismiss and explained why, i.e. that a variance (or site specific regulation) is necessary for the relief sought.

Core sands are specifically listed as an industrial process waste, a special waste. The merits of the petitioner's assertions, including the assertion that their core sands are not environmentally harmful, are a matter for Board determination. The Agency's assessment is properly contained in an Agency Recommendation, not in a motion to dismiss.

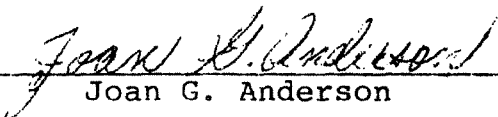
The Agency's interpretation of the general language in one part of this statewide rule in a manner that selectively voids the applicability of a specific "laundry list" that is included in the same rule is not correct. The mechanisms of variance or site specific petitions were included in the Act precisely because it was anticipated at the outset that individual circumstances might need a distinctive approach.

It should also be noted that the "general present or potential threat..." language in the "industrial process waste" definition recognizes that the listings were not intended to be all-encompassing. That is why the rule also contains "includes but is not limited to..." before the specific listings.

By delaying the ruling and allowing the case to proceed on its merits, the Board appears to be implying that a determination of the merits of the petition is necessary before deciding the procedure to be used. This is backwards. If the Board ultimately agrees with the Agency's assessment, it would express its findings through a grant of variance, not a dismissal of the petition.


To further delay such a ruling risks continuing the confusion that started with the Agency's Motion to Dismiss.

I believe the Agency is correct in its expectation that the Board would initially rule on its Motion to Dismiss. By denying that motion, both the petitioner and the Agency would have fully understood that there needs to be sufficient information for the Board to rule on the merits of the petitioner's particular core sand problem, and not on the question of whether the Board need deal with the problem at all.



 Joan G. Anderson

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 28th day of April, 1982.



 Christan L. Moffett, Clerk
 Illinois Pollution Control Board