

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Petition of

NATIONAL GRAPE CO-OPERATIVE
ASSOC., INC., and WELCH FOODS
INC , A CO-OPERATIVE

DECLARATORY
RULING

27-11

For a Declaratory Ruling

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The National Grape Co-operative Association, Inc., a New York farmers co-op corporation, and its subsidiary Welch Foods, Inc., ("Petitioners") seek a Declaratory Ruling under Section 204 of the State Administrative Procedure Act and 6 NYCRR Part 619, that their carbonated grape juice products are not subject to the New York State Returnable Beverage Container Act, L. 1982, Ch. 200, codified as Title 10 of Article 27 of the Environmental Conservation Law ("Act"). Their petition was received October 31, 1983.

Petitioners sell red and white grape juice as "Welch's Sparkling Grape Juice." It is a seasonal product, with most consumption occurring between Thanksgiving and the New Year's celebrations. In order to clarify the status of their beverages so as to be able to sell them in the near future, Petitioners seek the instant ruling. Since the Act is not clear on its face as to its applicability to Petitioners' products, it is appropriate to grant the petition.

Petitioners market their juices in bottles shaped like a champagne bottle. The juices are a blend of grape juice and grape juice concentrate, preserved with sodium benzoate and

potassium bisulfide. Neither sweeteners nor artificial flavors and colors are added.

Petitioners urge that their product should be treated under the Act in the same way as carbonated apple juice. In our declaratory ruling entitled In the Matter of the Petition of S. Martinelli & Company, DEC 27(10)-01 (October 27, 1983), carbonated apple juice was deemed to be outside the scope of the Act since it was not a "beverage" within the meaning of §27-1003(1), ECL. Specifically a natural fruit juice was held not to be a "soft drink," even when carbonated.

In the instant case, Petitioners have blended juice and juice concentrates, adding preservatives. Given the prevailing industry definition of a "soft drink," Petitioners' sparkling grape juice is a fruit juice and not a "carbonated soft drink." This finding accords with the classification of Welch's Sparkling Grape Juice by the U. S. Department of the Treasury's Customs Service, to the effect that "carbonation and the addition of a small quantity of preservatives would not alter the classification of a fruit juice." Report of Classification and Value, 12/28/81 (Entry No. 563260).

So long as Petitioners' Sparkling Grape Juice is not diluted nor sweetened artificially, except by the addition of natural

grape juice concentrate, it does not qualify as a "beverage"
subject to the Act.

DATED: Albany New York
November 15, 1983



Nicholas A. Robinson
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