

ILLINOIS POLLUTION CONTROL BOARD
February 23, 1989

IN THE MATTER OF:)
)
PETITION OF MODINE MANUFACTURING)
COMPANY FOR SITE SPECIFIC) R87-36
EXCEPTION TO WATER POLLUTION)
REGULATIONS: 35 ILL. ADM. CODE)
304.120, 304.124 AND 304.301)

ORDER OF THE BOARD (by R. C. Flemal):

Section 27(a) of the Environmental Protection Act ("Act") has recently been amended by P.A.85-1048 to give the Board exclusive authority in deciding whether an EcIS should be performed for a rulemaking. Since that change became effective January 1, 1989, Resolution 89-1 sets forth the procedure that the Board will utilize for rulemakings which were filed prior to 1989 and for which an EcIS determination had not been made by the Department of Energy and Natural Resources ("DENR"). In part, the amendments to the Act provide:

[T]he Board shall determine whether an economic impact study should be conducted. The Board shall reach its decision based on its assessment of the potential economic impact of the rule, the potential for consideration of the economic impact absent such a study, the extent, if any, to which the Board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of such a study, and any other considerations the Board deems appropriate. The Board may, in addition, identify specific issues to be addressed in the study.

Section 27(a) of the
Act. (as amended by
P.A.85-1048)

It is upon these criteria that the Board must make its EcIS determination in this matter.

On October 15, 1987 Modine Manufacturing Company ("Modine") filed a Petition with the Board for site specific exception to certain of the Board's water pollution regulations. On January 18, 1989, pursuant to Res 89-1, the Hearing Officer requested comment on the necessity for the preparation of an EcIS in this matter. Comments were filed by the Illinois Environmental

Protection Agency ("Agency"), the Department of Energy and Natural Resources ("DENR"), and Modine*.

DENR commented that although it believes that the Petition contains certain deficiencies in economic information, it prefers that this information be entered into the record at the merit hearing. (The merit hearing is currently scheduled for March 10, 1989.) The Agency states that it also believes the preparation of an EcIS is not necessary in this proceeding. The Agency and DENR both discuss what type of information Modine should provide for the economic issues to be sufficiently addressed at hearing.

Modine requests that an EcIS be prepared. In support of its request, Modine discusses economic reasonableness issues and asserts its basic position that there are no economically reasonable or technically feasible means for Modine to comply with the Board's effluent regulations.

The Board finds that the economic issues which Modine presents are matters which are more appropriately addressed by the Board in its determination on the merits of the Petition. The mere fact that economic issues are present does not necessitate the preparation of an EcIS. In fact, Modine further states that it has submitted testimony prior to hearing on the issues of economic reasonableness and technical feasibility and that its consultants have determined cost estimates for compliance.

After consideration of the above comments and the proposal for rulemaking, the Board presently believes that the presentation of economic information at hearing in this proceeding should be sufficient for its consideration of the economic impact of the proposed rule. The Board therefore finds that the preparation of an EcIS need not be conducted in this matter at this time.

The Board notes that the recent amendments to the Act further provide for the Board to change its determination that an EcIS need not be prepared under specific circumstances:

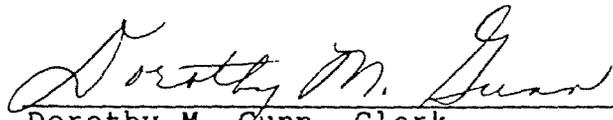
...any time prior to the close of the record during the rulemaking proceeding, the Board may determine that an economic impact study be prepared, if the proposal has been substantially modified or if information in the record indicates that an economic impact study would be advisable.

* Modine's comments were submitted late with a motion to file instanter. That motion is granted.

The Board cautions that irrespective of the Board's ability to later request an EcIS, Modine bears the burden to justify its site specific request, including submission of adequate economic information to so justify the request.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 23rd day of February, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board