

ILLINOIS POLLUTION CONTROL BOARD  
September 22, 1988

IN THE MATTER OF: )  
 )  
ORGANIC MATERIAL EMISSION )  
STANDARDS AND LIMITATIONS: ) R86-18  
ORGANIC EMISSION GENERIC RULE )  
 )

ORDER OF THE BOARD (by J. Marlin):

On June 13, 1988, Viskase Corporation (Viskase) filed a Motion for Withdrawal and Reconsideration. Allsteel, Inc. (Allsteel) and Stepan Company (Stepan) each filed a Response to that Motion on June 27, 1988.

By its Order of June 30, 1988, the Board granted the Illinois Environmental Protection Agency's (Agency) request for an extension of time to file a response. The Agency then filed a Motion to Stay on July 12, 1988 which requested that the Board stay its decision until further notification. The July 12th motion stated that recent legislation could obviate the need for the Board to rule on the motion. Viskase concurred in the Agency's request to stay the decision. The Board stated in its Order of July 13, 1988 that it would defer its ruling on Viskase's motion until either Viskase filed a motion to withdraw its June 13th motion or the Agency filed a response to the June 13th Viskase motion. On September 20, 1988, The Agency filed such a response entitled "Agency Motion to Deny Viskase's Request for Withdrawal and Reconsideration".

In its June 13th motion, Viskase requests that the Board withdraw the generic rule which was adopted on April 7, 1988 from U.S. Environmental Protection Agency (U.S. EPA) review. Viskase then wants the Board to incorporate into a new generic rule a specific emission limitation for Viskase which would be determined by the Board after hearing. Viskase claims that an Adjusted RACT limitation adopted pursuant to procedures set forth in the existing generic rule would be viewed by U.S. EPA as an impermissible relaxation and therefore unapprovable. Evidently, Viskase believes that a specific emission limitation for Viskase which is written into the generic rule would not be viewed as an impermissible relaxation by the U.S. EPA. As evidence of U.S. EPA's view, Viskase cites a U.S. EPA notice of a proposed disapproval concerning a site-specific emission limitation for Ford Motor. That notice appeared in the Federal Register on April 21, 1988. 53 Fed. Reg. 13135. Specifically, Viskase points to the U.S. EPA's reliance, in the notice, on a July 29, 1983 U.S. EPA memorandum concerning emission relaxations. Viskase claims that this memorandum sets forth a "no-relaxation" policy for U.S. EPA. The Federal Register Notice and 1983 memorandum are appended to Viskase's motion.

In their Responses both Allsteel and Stepan support Viskase's request. They, too, request similar action for their emission limitations.

On the other hand, the Agency requests in its response that the Board deny Viskase's motion. The Agency gives a number of reasons for its conclusion. First, it states that it is the Agency, not the Board that controls the submission of rules to U.S. EPA for its review. According to the Agency, the Board cannot withdraw a rule from U.S. EPA consideration.

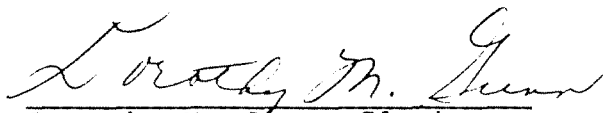
Secondly, the Agency asserts that motions for reconsideration are inappropriate in a rulemaking context, because 35 Ill. Adm. Code 102 does not expressly provide for such motions. The Agency then alternatively argues that even if motions for reconsideration are allowed in rulemakings pursuant to 35 Ill. Adm. Code 103.240, Viskase's motion is untimely since it is filed more than 35 days after the Board's final order in this matter.

Finally, the Agency asserts that the 1983 "no relaxation" policy memorandum is not newly discovered evidence that could not have been discovered by due diligence before the Board's April 7, 1988 Order. Consequently, Section 103.241(b)(1) also does not apply, according to the Agency. The Agency cites a number of Federal Register notices, one published as early as August 28, 1984, for the proposition that the U.S. EPA's reliance on this memorandum is not new.

Notwithstanding the arguments of Viskase and the Agency, the Board simply lacks jurisdiction to modify the generic rule under this docket. On April 22, 1988, Viskase appealed the Board's Final Order of April 7, 1988 which adopted the generic rule. Consequently, the propriety of the generic rule is now an issue to be decided by the Appellate Court of Illinois, First District, under case number 1-88-1228. The Board hereby denies Viskase's June 13, 1988 motion.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 22<sup>nd</sup> day of September, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board