

ILLINOIS POLLUTION CONTROL BOARD
August 8, 1974

STEPAN CHEMICAL COMPANY)
PETITIONER)
)
)
)
)
v.) PCB 73-460
) PCB 74-235
) (CONSOLIDATED)
ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)

ORDER OF THE BOARD (by Mr. Marder)

This matter coming to be heard on the Motion to Incorporate Record and Motion to Limit Issues, filed by the Environmental Protection Agency on July 29, 1974, the Board being fully apprised in the premises, finds as follows:

- 1) The Environmental Protection Agency's Motion to Incorporate the Record of Koppers Co. v. Environmental Protection Agency, PCB 73-365, is denied. The Board feels that should the Agency wish to submit portions of the Koppers record, it may do so at hearing, subject to the right of Stepan Chemical to full cross examination of such material.
- 2) The Environmental Protection Agency's Motion to Limit Issues is denied. There is no res judicata to Stepan based on either the Koppers case as Stepan was not a party to that action. Res judicata applies to a party to an action. That party is barred from further litigation on all issues that have been litigated or could have been litigated. The Board also finds that Stepan is not barred by res judicata based on the proceeding that developed the Air Regulations (R 71-23). Here, Stepan is not attacking the Rules but is litigating the question of whether the Rule applies to Stepan. This is a question of fact to be determined at hearing. The Board further finds that Stepan is not barred from litigating this question based on its Petition for variance in this matter.

ORDER

IT IS THE ORDER of the Pollution Control Board that Motion to Incorporate the Record is hereby denied. Motion to Limit the Issues is hereby denied.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted by the Board on the 8th day of August, 1974, by a vote of 4 to 0.

Christian L. Moffett