

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

LOCATION - SUBJECT
Request for Variance by Zeneca Inc.

DOCKET NO. 99-002-R

MINUTE ORDER NO. 99- 10

PAGE 1 OF 2

By Minute Order Nos. 95-52 and 95-54 (Aug. 28, 1995) and Minute Order No. 95-87 (Dec. 1, 1995), the Commission adopted various revisions to Regulation No. 23, Hazardous Waste Management. Those revisions included the adoption and incorporation verbatim of EPA's Final Rule for Carbamate Production, Identification and Listing of Hazardous Waste, 60 Fed. Reg. 7824 (Feb. 9, 1995) ("Carbamate Final Rule"). The Carbamate Final Rule identified and listed for the first time certain carbamate-related compounds as "hazardous wastes." However, on November 1, 1996 the United States D.C. Circuit Court of Appeals issued a decision in the case Dithiocarbamate Task Force v. EPA vacating ab initio all but one of the challenged waste listings from EPA's Carbamate Final Rule, including 24 carbamate-related discarded products identified by EPA as "U" wastes (namely: U277, U365, U366, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403, and U407) and the category of solid thiocarbamate wastes listed as K160 waste. The result of the federal court's holding in that case is that portions of EPA's Carbamate Final Rule are now void, and the 24 carbamate "U" wastes and various waste streams, including K160, are not regarded as "listed hazardous wastes" subject to regulation under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. EPA formally withdrew the invalidated portions of the listing of carbamate waste, effective May 29, 1997. 62 Fed. Reg. 32974 (published June 17, 1997).

The Commission finds that compliance with the requirements of Regulation No. 23 which incorporates EPA's Carbamate Final Rule for the 24 carbamate "U" wastes and K160 would cause undue or unreasonable hardship to Zeneca, Inc., and its customers in Arkansas who handle Zeneca's carbamate-related products. The Commission further finds that granting a variance from those requirements will not violate RCRA and will not cause substantially adverse environmental effects.

The Commission, by Minute Order No. 97-10, granted Zeneca and its customers a variance to the subject hazardous waste management requirements for carbamate waste. The Commission, by Minute Order No. 98-23, extended the variance granted Zeneca and its customers by Minute Order 97-10. The Commission finds Zeneca Inc., has petitioned the Commission for extension of the variance granted by Minute Order No. 98-23, and the public has been afforded the opportunity for public comment.

IT IS THEREFORE ORDERED, pursuant to the provisions of Ark. Code Ann. § 8-7-211,* that Zeneca Inc. and its customers in Arkansas are granted a variance from the subject hazardous waste management requirements for up to and including February 28, 2000, or until the final effective date of revisions to the same requirements of Regulation No. 23, whichever comes first. This variance may be renewed or extended after opportunity for public comment in accordance with Ark. Code Ann. § 8-7-211.

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PAGE 2 OF 2

* Ark. Code Ann. § 8-7-21 (Michie 1993) states:

8-7-211. Variances, waivers, or extensions.
Where the application of, or compliance with, any rule or regulation issued under this subchapter, in the judgment of the commission, would cause undue or unreasonable hardship to any person and not cause substantially adverse environmental effects, the commission may grant a variance, waiver, or extension to the same extent that such variance, waiver, or extension would be allowable under the federal Resource Conservation and Recovery Act of 1979, as amended, and the regulations promulgated thereunder. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after opportunity for public comment on each such renewal or extension.

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Chair

SUBMITTED BY: Allan Gates

PASSED: 02/26/99