

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
Steel Dynamics, Inc.) PSD Appeal No. 01-03
PSD Permit No. CP-183-10097-00030)
Significant Mod. No. CP-183-12692-00030)

)

**ORDER DENYING COW'S
MOTION FOR RECONSIDERATION
AND STAY OF DECISION**

By motion filed May 3, 2001, Citizens Organized Watch, Inc. ("COW") seeks reconsideration of the Environmental Appeals Board's April 23, 2001 Order Denying Review in the above-captioned appeal. *See In re Steel Dynamics, Inc.*, PSD Appeal No. 01-03 (EAB Apr. 23, 2001), 9 E.A.D. ____ ("SDI II"). COW asserts that "[t]he technical assistance provided by the United States Environmental Protection Agency as amicus curiae * * * is suspect and requires considerable review of the conclusions, assumptions, and misinterpretations of past practices and case decisions." Motion at 1. COW apparently conducted such a review on the topic of potential lead emissions, and its motion contains repeated charges that EPA made errors in its amicus brief. *See id.* at 2 (EPA made "three erroneous conclusions or assumptions" regarding the lead emissions averaging issue); *id.* at 6 ("COW cannot understand how or why the USEPA can call reasonable the rejection by IDEM of the RTI data"). COW also repeats some of the arguments it made in its petition for review. *See, e.g., id.* at 7 ("IDEM has not made a showing that its scrap management plan is enforceable as a practical matter").

In addition to requesting reconsideration, COW asks the Board to issue an order staying the effective date of the Order Denying Review. COW also requests an extension of time to file a motion for reconsideration of the SCR cost-effectiveness and form of the BACT limits issues (i.e., the two other remanded issues in this case besides the potential-to-emit-lead issue; *see SDI II*, slip op. at 3-4). Motion at 8-9.

As we have often explained in situations such as this, “[r]econsideration is generally reserved for cases in which the Board is shown to have made a demonstrable error, such as a mistake of law or fact.”” *In re Steel Dynamics, Inc.*, PSD Appeal Nos. 99-4 & 99-5, Order Denying IDEM’s Motion for Reconsideration or Clarification and SDI’s Motion for Reconsideration 5 (EAB July 13, 2000) (quoting *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 99-8 to -72, Order on Motions for Reconsideration 3 (EAB Feb. 4, 2000)). Strangely, COW does not allege in its motion a single specific occurrence of error on the Board’s part, but rather chooses to focus its attack on the arguments made in EPA’s amicus brief, without establishing any clear linkage between those alleged errors and the conclusions set forth in the Board’s decision. Reconsideration will be entertained only in the event that a mistake of law or fact on the Board’s part is demonstrated. *See* 40 C.F.R. § 124.19(g) (motions for reconsideration “must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors”); *see also Publishers Resource, Inc. v. Walker-Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) (“[m]otions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence””) (quoting *Keene Corp. v. International Fidelity Ins. Co.*, 561 F. Supp. 656, 665-66 (N.D. Ill. 1982), *aff’d*, 736 F.2d 388

(7th Cir. 1984)). COW has simply failed to show that the Board made a demonstrable error warranting reconsideration of the Board's prior analysis.

Accordingly, COW's motion for reconsideration of the Order Denying Review is hereby **DENIED**. COW's request for an extension of time to file a motion for reconsideration as to the SCR and BACT limits issues is also **DENIED**. COW's promise to use the extra time to identify for us the purportedly "false conclusions, inaccurate assumptions, and misinterpretations" in EPA's amicus brief (rather than in the Board's decision) again misses the mark and is, in any event, in conflict with the permitting rules. *See* 40 C.F.R. § 124.19(g) ("[m]otions to reconsider a final order shall be filed within ten (10) days after service of the final order"). Finally, COW's request for a stay of the effective date of the April 23, 2001 Order Denying Review is also **DENIED**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 05/07/01

By: _____ /s/
Scott C. Fulton
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying COW's Motion for Reconsideration and Stay of Decision in the matter of Steel Dynamics, Inc., PSD Appeal No. 01-03, were sent to the following persons in the manner indicated:

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Dated: 05/07/01

/s/
Annette Duncan
Secretary