ILLINOIS POLLUTION CONTROL BOARD March 23, 1989

DEMERT & DOU	GHERTY, INC.,	
	Petitioner,)	
	v.)	PCB 89-54
ILLINOIS ENV PROTECTION A	,	
	Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

Demert & Dougherty, Inc. ("Demert") filed a March 15, 1989 petition "pursuant to 35 Ill. Adm. Code, Parts 104, 302 and 304" seeking "a variance from the total dissolved solids limitation of 35 Ill. Adm. Code 302.208 and a corresponding modification of NPDES Permit No. IL0002836. That petition is deficient as a variance petition in the following ways:

- 1. It seeks relief from a water quality standard, rather than from Section 304.105, which is the prohibition against causing or contributing to violation of such standards. (The Board can establish a site-specific rule granting relief from water quality standards, but can only grant a variance from Section 304.105.)
- 2. It fails to set forth a fixed term for the requested variance. (The Board may only grant a variance for a fixed term not to exceed five years.)
- 3. It fails to outline a plan by which Demert will ultimately achieve compliance. (The Board may only grant a variance upon a showing that the petitioner will make reasonable progress toward ultimate compliance with the relevant rule.)
- 4. It does not include a statement whether the Board may grant the requested relief consistent with federal law. (The Board may only grant variance relief to the extent such relief is consistent with federal law and regulations.)

5. Paragraph 15 of the petition asserts that Section 304.103 would not require "compliance with numerical effluent standards," but does not explain how this provision would apply to the water quality standard from which relief is sought.

The Board is aware that alternative possibilities exist for Demert. Demert could pursue a variance seeking a Board determination that such relief is inappropriate because the challenged rule somehow does not apply. Demert could seek a short-term variance until it can determine alternatives for compliance or file a petition for some other form of relief. In either instance, Demert must correct the above-described deficiencies. Alternatively, Demert could seek a site-specific rulemaking or an adjusted standard. However, the petition does not assert such. Rather, the petition apparently seeks a permanent variance from a water quality standard. As such, it is not adequate.

Unless an amended petition is filed within 45 days of the date of this Order curing the above-noted defects this matter will be subject to dismissal.

IT IS SO ORDERED

Dorothy M. Synn, Clerk
Illinois Poliution Control Board