

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1988

ALLIED TUBE & CONDUIT)
CORPORATION,)
)
Petitioner,)
)
v.) PCB 88-19
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On January 19, 1988, the Allied Tube & Conduit Corporation ("AT&C") filed a petition for variance from 35 Ill. Adm. Code 215.207. That petition is deficient in that:

It fails to specifically articulate the plan for compliance. The intention to file a future site-specific regulatory proposal is not a compliance plan. (City of Mendota v. PCB and IEPA, 514 N.E.2d 218 (1987))

The Board can entertain a challenge to the validity of regulations in a variance proceeding (Celotex Corp. v. IPCB 94 Ill. 2d 107, 445 NE2d 752 (1983) and Village of Carey v. IPCB 403 NE2d 83 (2nd Dist., 1980)), but if the regulations are determined to validly apply to AT&C, the Board cannot grant a variance absent a compliance plan.

Unless AT&C files an amended petition within 45 days of the date of this Order, curing the above-noted defect, this matter will be subject to dismissal. The amended petition must state whether AT&C intends to proceed exclusively on the basis of the invalidity of the rule or whether AT&C has a compliance plan it intends to implement. If AT&C's compliance plan includes a presently filed regulatory proposal, the variance must include a schedule for full compliance should the regulatory relief be denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2nd day of January, 1987, by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board