

ILLINOIS POLLUTION CONTROL BOARD
September 18, 1975

ALLIED METAL COMPANY,)
Petitioner,)
)
v.) PCB 75-217
)
ENVIRONMENTAL PROTECTION AGENCY)
Respondent.)

OPINION AND ORDER OF THE BOARD (By Mr. Zeitlin):

The original Petition in this Variance proceeding was filed on May 28, 1975 by Petitioner Allied Metal Company (Allied) seeking relief from Rules 203(a) (particulates), and 103(b) (operating permits) of Chapter 2: Air Pollution, of the Pollution Control Board (Board) Rules and Regulations; and Section 9(a) (Air Pollution) of the Environmental Protection Act, Ill. Rev. Stat., Ch. 1111/2, §1009 (1973); PCB Regs., Ch.2, Rules 103(b), 203(a). In an Interim Order dated May 29, 1975, the Board found the Petition inadequate in several respects, and directed that an Amended Petition containing the necessary information be filed. An Amended Petition was filed by Allied on June 30, 1975; a Recommendation by the Environmental Protection Agency (Agency) followed on August 21, 1975. No hearing was held in this matter.

Allied's Amended Petition is also inadequate. The Interim Order of the Board directed that an Amended Petition address the issue of whether a grant of the requested Variance would result "...in a violation of the national ambient air quality standards, or a failure to maintain these standards." (Citations omitted.) Allied's Amended Petition fails to sufficiently allege that this test under Train v. N.R.D.C., 43 U.S.L.W. 4467, (U.S., April 16, 1975), has been met, much less bear its burden of proof for the grant of a Variance.

Allied alleges only that while the 1973 levels for particulate matter at the closest ambient air quality monitoring station showed levels exceeding the national standard, (79ug/m³ annual average, as against a 75ug/m³ primary standard), lowered industrial activity in the area would probably result in lower particulate concentrations. The basis for this conclusion was not shown. The Agency's Recommendation, on the other hand, shows that 1974 levels for particulates in the area were 84ug/m³. Based on the record before us, we can only reach the conclusion that Petitioner Allied has wholly failed to show that it does not cause or contribute to demonstrated violations of the national ambient air quality standard. As we interpret the Train decision, supra, this precludes our grant of a Variance.

Insofar as a grant of the requested Variance is thus precluded, we shall not address ourselves to the adequacy of the remaining portions of the Amended Petition or the matters raised in the Agency Recommendation. Some or all of the matters discussed there may be material to the case of People v. Allied, PCB 75-94, an enforcement matter now pending before the Board, and we feel that unnecessary comment on them might be unfair or prejudicial.

The Petition for Variance and the Amended Petition for Variance will be dismissed without prejudice. Petitioner Allied is invited to file a new petition for Variance more fully addressing the points in our May 29, 1975 Interim Order. As guidance on the matters which should be covered in any new Petition, Petitioner is referred to the Board's Interim Order of April 24, 1975, in the case of King-Seeley v. EPA, PCB 75-159, where we set out fully the burden of proof which must be met under the Train case.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD THAT the Petition for Variance and Amended Petition for Variance in this matter be dismissed without prejudice.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of September 1975 by a vote of 3-0.


Christan L. Moffett, Clerk
Illinois Pollution Control