

ILLINOIS POLLUTION CONTROL BOARD  
March 10, 1988

IN THE MATTER OF: )  
 )  
VOLATILE ORGANIC MATERIAL ) R82-14  
EMISSIONS FROM STATIONARY )  
SOURCES: RACT III )

ORDER OF THE BOARD (by B. Forcade):

On January 26, 1988, Allied Tube and Conduit Corporation ("Allied") filed a motion for modification, clarification or reconsideration of the Board's December 22, 1987, final Opinion and Order in this matter. Allied appears to ask the Board to review the record in this proceeding and make a determination that Allied's facility is in compliance with the regulations, to make a determination that the rules do not apply to Allied, or to make a determination that the record is incomplete and to reopen the record. On February 16, 1988, the Illinois Environmental Protection Agency ("Agency") filed a response urging the Board to deny the motion. The Agency asserts that a final regulation cannot be modified without a new rulemaking proceeding, that an "interpretive exception" would in fact be an impermissible modification to the rule, that the Board did not make a determination on Allied's compliance status in this proceeding, and that the record in this proceeding should not be reopened.

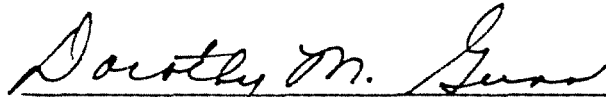
The Board agrees with the Agency that here, the final regulation may not be changed except by a new rulemaking proceeding. Also, the determination of whether a given regulation applies to a particular facility, and whether that facility is in compliance with a regulation, is not a matter best resolved in a regulatory format. Therefore, the Board will deny the motion for modification, clarification or reconsideration.

The Board notes that language in the Opinions of July 16, 1987 and December 22, 1987 stated that Allied was identified as potentially affected by the proposed rule, but had achieved a technological breakthrough that resulted in compliance. That statement is an accurate evaluation of the assertions of the participants in the proceeding to explain why Allied filed a petition for site-specific language and later in the proceeding withdrew its language. That statement does not reflect any determinations of fact or law by the Board as to whether Allied is governed by the regulation or whether Allied is in compliance. At the time Allied withdrew its request for site-specific language their presentation of witnesses had not been completed and Agency requests for information from Allied had not been ruled upon.

At this time Allied has a pending permit appeal action (PCB 88-35), and a pending variance proceeding (PCB 88-19). Questions of the applicability of certain regulations to Allied, and Allied's compliance status are more properly considered in those contexts.

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 10<sup>th</sup> day of March, 1988, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board