

ILLINOIS POLLUTION CONTROL BOARD  
May 29, 1975

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

INTERIM ORDER OF THE BOARD (by Mr. Zeitlin):

Petitioner Allied Metal Company (Allied) filed the instant Petition for Variance on May 23, 1975, seeking relief from Rules 203(a) and 103(b) of the Pollution Control Board (Board) Air Pollution Regulations, and Section 9(a) of the Environmental Protection Act. Ill. Rev. Stat., Ch. 111 1/2, Sec. 1009(a)(1973); PCB Regs., Ch. 3, Rules 103(b), 203(a).

The Petition for Variance in this matter is inadequate for several reasons. Petitioner fails in its Petition to comply with the Board's Procedural Rule 401(a)(iv), which requires an estimate of the quantity and type of contaminants discharged. In fact, on page 4 of the instant Petition, Allied states that "we have never regarded our plant as not being in compliance." On page 3 of the Petition, Allied states that, "up until now there have been emissions of certain particulate matter", but nowhere does Allied state the quantity or nature of such emissions. Allied does state that "your agencies" claim its equipment can exceed the emission standard when operating at capacity, although Allied's calculations have "always contradicted that position."

Petitioner states quite plainly, in Paragraph II, that it does not believe it is seeking a variance from the applicability of any statutory provisions or rules or regulations applying to emission standards from its plant. They state that they seek only a grant of sufficient time to achieve certain compliance goals set out in the Petition. The reason given for seeking such a variance is "to more than meet the requirements, without the burden of having to defend a multiplicity of legal action arising out of your offices, or out of the office of the Attorney General."

While the purpose of a variance is, in part, to provide a shield from prosecution, such a shield cannot be granted in the form sought here; that is to say, in the form of a blanket permission to pollute where the Board is given no indication of the quantity or quality of the pollutants to be emitted. The Petition herein plainly fails to comply with Procedural Rule 401(a)(iv). Nor, does the Petition meet the requirements of Rule 401(a)(v), requiring a showing of the nature and extent to which present emissions fail to meet the particular provisions from which the variance is sought.

Further, the Petition in this matter wholly fails to comply with the requirements for variances laid down in the recent United Supreme Court decision of Train v. Natural Resources Defense Council. 43 U.S.L.W. 4467 (April 16, 1975). Under that decision, this Board cannot grant a variance absent a showing that such grant will not result in a violation of the national ambient air quality standards, or a failure to maintain these standards. See, King-Seeley Co. v. EPA, PCB 75-159 (April 24, 1975) (Interim Order of the Board); see also, Great Lakes Carbon Corp. v. EPA, PCB 75-85 (May 22, 1975). No such showing has been made, or even attempted, by Petitioner Allied.

For the reasons stated above, the instant Variance Petition is inadequate. Petitioner shall, within 45 days of the date of this Interim Order, file an Amended Petition, correcting the deficiencies noted above. Failure to timely file such an Amended Petition shall render this matter subject to dismissal for inadequacy. The 90 day decision period set by statute shall run from the date of filing of the Amended Petition.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Interim Order was adopted on the 29<sup>th</sup> day of May, 1975 by a vote of 5 to 0.

  
Christan L. Moffett, Clerk  
ILLINOIS POLLUTION CONTROL BOARD