

ILLINOIS POLLUTION CONTROL BOARD
March 24, 1983

MODINE MANUFACTURING COMPANY,)
)
) Petitioner,)
)
) v.) PCB 83-18
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by I. G. Goodman):

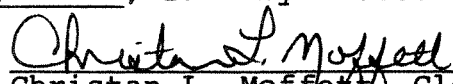
On March 16, 1983 the Illinois Environmental Protection Agency (Agency) filed a Motion to Dismiss arguing in support of the motion that none of the three alternative forms of relief requested by Modine Manufacturing Company (Modine) can be granted in the context of a variance proceeding. The Agency objects to Modine's request that the Board determine whether certain rules of Chapter 2 of the Board's Rules and Regulations apply to Modine's facilities or that its facilities are in compliance with said rules. In addition, the Agency argues that Modine has not presented a compliance program designed to achieve eventual compliance with the rules. Finally, the Agency argues that the petition is premature and that it is unable to develop a suitable recommendation due to lack of information.

Modine responds that the Board does have the power to determine the applicability of its rules to a facility in the context of a variance proceeding and to determine what constitutes compliance with a rule or regulation of the Board. Modine makes additional arguments concerning other allegations of the Agency in its motion. The Board agrees that it has the power to interpret the Statutes and the Rules and their application to a particular facility. It is also clear that the Board may find a facility in compliance with a rule when considering whether or not a variance shall be granted. With respect to the other objections voiced in the Agency's motion, they are all a matter of fact to be determined by the Board at the conclusion of this proceeding. The Agency's Motion to Dismiss will therefore be taken with the case.

IT IS SO ORDERED.

Board Member J. Anderson and D. Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 24th day of March, 1983 by a vote of 3-2.


Christan L. Moffett, Clerk
Illinois Pollution Control Board