

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1996

THE KNAPHEIDE MFG. CO.,)	
)	
Petitioner,)	
)	
v.)	PCB 96-174
)	(Variance - Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

On February 7, 1996 The Knapheide Mfg. Co. (Knapheide) filed a petition for an extension of variance. The Board previously had granted Knapheide a variance from volatile organic material (VOM) emissions limitations as set forth in 35 Ill. Adm. Code 215.204(j)(2) and (3) for its temporary facility located in Quincy, Adams County, Illinois. (Knapheide Mfg. Co. v. IEPA (October 27, 1993) PCB 93-169.) On March 6, 1996, Knapheide filed an Amended Petition for Extension of Prior Variance, seeking a retroactive application of its request should the Board decision come after the expiration of its current variance. In its Amended Petition, Knapheide waived the hearing requirement in this matter.

Pursuant to Section 37(a) of the Illinois Environmental Protection Act (Act), the Illinois Environmental Protection Agency (Agency) sent notice of the petition for extended variance to Senator Laura Kent Donahue, State Representative Arthur Tenhouse, the Chairman of the Adams County Board, the State's Attorney for Adams County and the Illinois Press Association for publication in a newspaper of general circulation in Adams County. (415 ILCS 5/37(a) (1994).) (Rec. at 3.)¹ Several citizens have called the Agency regarding the nature of the variance and the location of the new facility; however, no request for a hearing has been filed. (Rec. at 3). The Agency also states that Senator Donahue expressed a favorable recommendation to granting of Knapheide's variance. (Id.) Since no request for hearing was received, no hearing was held in this matter.

The Board's responsibility in this matter arises from the Act which gives the Board the ability to grant variances from Board regulations whenever it is found that immediate compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner. (415 ILCS 5/35(a) (1994).) The Agency is required to appear at hearings on variance petitions, and is charged with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. (415 ILCS 5/4(f) and 5/37(a).)

¹ The Agency recommendation will be cited as (Rec. at ___), Knapheide's Petition will be cited as (Pet. at ___) and Knapheide's Amended Petition will be cited as (Am. Pet. at ___).

On April 5, 1996 Knapheide filed a Joint Motion for Extension of Time in Which to File Agency Recommendation. The Board granted the parties' request in its April 18, 1996 order. The Board received the Agency Recommendation on April 29, 1996 in which the Agency supports a grant of the requested extension of variance. The Agency also stated that it "does not intend to submit to the United States Environmental Protection Agency (USEPA) a State Implementation Plan revision regarding this variance because the area in which the facility is located is in attainment with all National Ambient Air Quality Standards".² (Rec. at 2.)

For the following reasons the Board finds that Knapheide has presented adequate proof that immediate compliance with 35 Ill. Adm. Code 215.204(j)(2) and (3) would result in the imposition of an arbitrary or unreasonable hardship. Therefore, the extension of its prior variance is granted, subject to the conditions set forth in the order below.

BACKGROUND

Knapheide is a manufacturer of tool boxes, miscellaneous truck bodies, hoists and platforms. Knapheide employs roughly 182 people with reported annual sales of approximately \$40 million. The operations involve metal shaping, forming, welding, fabrication and coating. (Pet. at 2.) To meet customer specifications, Knapheide's products must have a durable coating to withstand rough weather, road salts and heavy usage. (Rec. at 5.) To produce this type of coating, Knapheide uses high baked coatings in an electrocoat dip operation. (Rec. at 6.) This operation requires substantial amounts of vertical and horizontal space for metal cleaning, paint application, oven curing/baking and an assembly line. (Id.)

Knapheide's original plant was located in Missouri; however, the 1993 flooding of the Mississippi River rendered it inoperable. (Pet. at 2.) As a result, the company temporarily relocated its operations to its present site at 1701 North 16th Street in Quincy, Illinois. (Id.) Knapheide's temporary facility does not have enough space for the required ovens or for storage. (Id.) Thereafter, Knapheide requested and the Agency recommended two provisional variances to allow Knapheide to continue operations at its temporary facility without the requisite construction and operating permit and permit review procedures. The Board granted these variances in The Knapheide Mfg. Co. v. IEPA, (September 9, 1993) PCB 93-168, and The Knapheide Mfg. Co. v. IEPA, (July 29, 1993) PCB 93-141. Knapheide also filed a petition for variance from 35 Ill. Adm. Code 215.204(j)(2) and (3) which establish VOM emission limitations for miscellaneous metal parts and product coating manufacturers. The Board granted the requested variance until April 1, 1996. (Knapheide Mfg. Co. v. IEPA, (October 27, 1993), PCB 93-169.) It is this variance which Knapheide wishes to extend.

The parties state that volatile organic compounds (VOC) are emitted from the facility's coating operations. (Pet. at 2, Rec. at 3.) In 1995, approximately 116 tons of VOC were emitted as a result of the use of 36,086 gallons of paint and 18,466 gallons of thinner in the

² Pursuant to the Clean Air Act Section 110 if the State Implementation Plan was to be revised a public hearing would have been necessary. (42 U.S.C.A. 7410 (1993).)

coating process. (Pet. at 2.) Knapheide states that this emission number represents a 22.7% reduction in VOC emissions over the previous year; however, these emissions continue to exceed the applicable VOM content limitations cited above. (Rec. at 4.) Knapheide now seeks an extension of its current variance to allow continued operations at its temporary facility until it can relocate to a permanent facility at 24th and Kochs Lane, Quincy, Illinois. (Rec. at 3.)

REGULATORY FRAMEWORK

In determining whether a variance is to be granted, the Act requires the Board to decide if a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a).) Furthermore, the petitioner bears the burden of proving that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v. Pollution Control Board, 135 Ill.App.3d 343, 481 N.E.2d 1032 (1st Dist. 1977).) Only by such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

In addition, a variance, by its very nature, is a temporary reprieve from compliance with the Board's regulations, and compliance is to be sought regardless of the hardship which eventual compliance presents an individual polluter. (Monsanto Co. v. Pollution Control Board, 67 Ill.2d 276, 287, 367 N.E.2d 684, 688 (1977).) Accordingly, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance, unless certain special circumstances exist.

The instant variance request concerns two standards of the Board's organic material emissions standards and limitations. These standards are found at 34 Ill. Adm. Code 215.204, and read in pertinent part:

Section 215.204 Emission Limitations for Manufacturing Plants

No owner or operator of a coating line shall cause or allow the emission of volatile organic material to exceed the following limitations on coating materials, excluding water and any compounds which are specifically exempted from the definition of volatile organic material pursuant to this Part, delivered to the coating applicator:

j)	Miscellaneous Metal Parts and Products Coating		
	2) Air dried coating	<u>kg/l</u>	<u>lb/gal</u>
		0.42	(3.5)
	3) Extreme performance coating	0.42	(3.5)

(35 Ill. Adm. Code 214.204 (j)(2) and (3).)

COMPLIANCE PLAN

In order to achieve compliance with the Act and Board regulations, Knapheide reports that since 1993, it has trained its employees in the correct methods and procedures for properly applying coatings and has added a paint technician to its Manufacture Engineering Staff. (Pet. at 2.) In addition, Knapheide removed two paint booths, installed a bake oven capable of accepting a higher solid primer, and coordinated tests of low VOC compliant coatings with its paint supplier. (Pet. at Exhibit 6.)

Knapheide proposes to achieve compliance by constructing a new plant equipped with low VOM-compliant coatings. (Pet. at 3, Exhibit 6.) The new facility will include: a multi-stage metal cleaner; spraybooths for primer coat and topcoat; infrared bake ovens; electro deposition Prime Coat; and convection ovens. (Pet. at Exhibit 6.) Knapheide states that land has been purchased for the new facility, construction permits were applied for and received from the Agency, and construction began in March 1996 and is expected to be complete in the second quarter of 1997. (Id.)

HARDSHIP

Knapheide has spent approximately \$2 million in relocating its operations to its temporary facility, roughly \$500,000.00 in its battle against the Mississippi flood, and plans to expend another \$6 million in constructing its permanent facility. (Pet. at Exhibit 6, Knapheide Mfg. Co. v. IEPA, (October 27, 1993), PCB 93-169.) Knapheide states that it cannot accomplish compliance at its temporary location by the expiration of the current variance because the process of buying property and constructing a new facility has taken longer than originally anticipated. (Pet. at 3.) Knapheide contends that the only method of compliance available at its temporary site would be to reduce production, which would result in the loss of its major customers and possible legal liability. Knapheide argues that forfeited production, as a method of compliance, would impose an unreasonable hardship. (Id.)

The Agency agrees that denial of the requested variance would pose an arbitrary and unreasonable hardship. The Agency indicated that preferred methods of compliance are not available at Knapheide's temporary facility due to lack of physical space needed for either the air dried coatings process, which requires storage space to dry painted truck bodies, or the baked coatings process, which requires space for assembly lines and ovens. (Rec. at 9-10.) The Agency concurs that the most feasible method to achieve compliance would be to construct a new facility, a process which has taken longer than originally anticipated. Therefore, the Agency believes granting an extension of Knapheide's current variance is appropriate. (Rec. at 10-11.)

ENVIRONMENTAL IMPACT

Knapheide's temporary facility is located in an area that is in attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. In evaluating the 1992-1995 Illinois Annual Air Quality Reports from the Quincy monitor regarding ozone, the Agency concluded that the area has remained in attainment of NAAQS for ozone. (Rec. at 7.) The Agency further states that during cold weather, emissions of VOM have a minimal impact on ozone air quality; however, VOM emissions have a significant impact during the yearly ozone

season of April through October. (Id.) To further reduce emissions during the 1996 ozone season, Knapheide agreed to reduce actual VOM emissions for the months of June, July & August 1996 to a level of 40% below the limit set by its current state operating permit, and to not exceed 41.9 tons during that time period. (Rec. at 8.) Finally, Knapheide has also agreed to evaluate an automatic gun cleaning system, implementation of which could further reduce emissions at both its temporary and new facilities. (Rec. at 9.)

CONSISTENCY WITH FEDERAL LAW

Knapheide asserts that the requested variance is not contrary to federal law. (Pet. at 5.) The Agency agrees, stating that submission of an SIP revision to the USEPA was not necessary due to the exigency of surrounding circumstances, and due to the fact that Knapheide's facility is located in an attainment area. (Rec. at 10.)

DISCUSSION

Based upon the record the Board finds that to require immediate compliance with the VOM limitations set forth at 35 Ill. Adm. Code 215. 204(j)(2) and (3) would impose an arbitrary or unreasonable hardship on Knapheide. The flooding of the Mississippi River resulted in Knapheide's relocation of its plant to a temporary facility while it began the search for a permanent location. Knapheide spent millions of dollars recovering from the flood, moving its operations to Illinois, bringing its temporary facility into compliance, and purchasing a new site for its plant. Although Knapheide implemented several procedures by which VOM emissions were reduced, its temporary facility is unable to achieve compliance due to space limitations. During the period in which Knapheide constructs its new operation, it would be impossible for Knapheide to continue its operations and comply with Board regulations simultaneously. Knapheide has agreed to the Agency's requests regarding the reduction of emissions during the 1996 ozone season. In addition, the temporary facility is located within an air quality attainment area. Therefore, we find the environmental impact for this period to be minimal. Furthermore, Knapheide and the Agency state that the grant of this extension of variance will be consistent with federal laws due to the Agency's conclusion that the State Implementation Plan will not have to be revised. Thus, the Board will grant the requested variance with certain conditions recommended by the Agency.

Regarding the start date for the requested variance, the Board notes its well-established practice of beginning the term of a variance on the date the Board renders its decision, absent unusual or extraordinary circumstances. (DMI, Inc. v. IEPA (December 19, 1991), PCB 90-227, 128 PCB 245-249.) Here, Knapheide requests that the term of its variance commence retroactively on April 1, 1996. (Am. Pet. at 3.) Given the absence of uncontrolled emissions during the ozone season, the often lengthy time frames for real estate purchases, permit applications and facility construction, as well as the Agency's recommendation of no significant environmental impact in this case, the Board finds that the instant circumstances are sufficiently unusual to warrant the short retroactive start of the requested variance.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Knapheide Mfg. Co. (Knapheide) is hereby granted a variance from 35 Ill. Adm. Code 215.204(j)(2) and (3) as those sections apply to Knapheide's painting operations at its facility located at 1701 North 16th Street, Quincy, Illinois. The variance period shall be for 14 months, from April 1, 1996 to May 31, 1997. This variance is subject to the following conditions:

a. Knapheide shall continue to meet its monthly state operating permit requirements and shall reduce actual volatile organic material (VOM) emissions for the months of June, July and August 1996 at its temporary facility to a level 40% below the limit currently set by its state operating permit for that time period and not to exceed 41.9 tons.

b. Knapheide shall provide a detailed evaluation on the feasibility of implementing an automatic gun cleaning system at its temporary facility on or before October 20, 1996.

c. Knapheide shall send to the Agency quarterly status reports due July 1, 1996, October 1, 1996, January 1, 1997 and April 1, 1997 detailing the operations at its temporary facility at 1701 North 16th Street in Quincy, Illinois, and the progress of construction of its new facility at 24th and Kochs Lane in Quincy, Illinois. Quarterly status reports shall include the following information:

(1) Monthly reports listing pounds per gallon (lb/gal) VOM emissions from each paint and cleaning solvent used, as well as the total gallons per month of each coating and solvent used;

(2) Dates when construction of its new facility begins and ends; and,

(3) Date when the move from the temporary facility to the new facility is complete.

d. Knapheide will also provide the Agency within 60 days of the date this variance is granted a plan detailing when VOM coating trials will be conducted and completed. Knapheide will then provide the Agency with results of VOM coating trials within 10 days of receipt by Knapheide of such results. Finally, Knapheide will send the Agency, within 10 days of receipt by Knapheide, any correspondence from Korte Construction Company regarding the status of construction, including but not limited to unexpected delay, construction on schedule or construction completed ahead of schedule. This information can be included in the quarterly reports in paragraph (c) above as long as the timelines are met in this paragraph.

e. Notification of the above shall be sent to:

Dave Kolaz, P.E.
Manager, Compliance & Systems Management Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, Illinois 62794-9276

IT IS SO ORDERED.

If Knapheide chooses to accept this variance subject to the above order, within forty-five days of the grant of the variance, Knapheide must execute and forward the attached certificate of acceptance and agreement to:

Sheila G. Kolbe
Division of Legal Counsel
Illinois Environmental Protection Agency
P.O. Box 19276
2200 Churchill Road
Springfield, Illinois 62794-9276

Once executed and received, that certificate of acceptance and agreement shall bind Knapheide to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45-days renders this variance void. The form of the certificate is as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all the terms of the Order of the Pollution Control Board in PCB 96-174, June 20, 1996.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the _____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board