ILLINOIS POLLUTION CONTROL BOARD
September 16, 1971

DALE MOODY	)	
	)	
	)	
v.	)	## 70-36, 71-67
	)	
	)	
FLINTKOTE CO.	)	

Order on Motion for Rehearing (by Mr. Currie):

We entered an order August 13, 1971, after exhaustive hearings, finding air pollution violations and ordering certain remedial measures to be taken. An explanatory opinion was adopted September 2. On August 31 we received from the company a motion to clarify or modify our order and to postpone the posting of a performance bond. The Agency filed a response in opposition, and we deny the motion for reasons stated below.

Flintkote asks first that we allow it, if it proves desirable, to operate its asphalt reduction equipment without additional controls. As the Agency points out, Flintkote in its variance petition and testimony agreed to terminate the use of this equipment, and we will not modify an order entered after great expenditure of time and effort because the company has changed its mind. The entire subject of the reduction equipment was completely explored at the hearing, and now is no time to reopen it.

Flintkote asks several revisions regarding the requirement of a bond, arguing first that a forfeiture bond is not contemplated by the statute. We disagree; as we have held numerous times before, that is just what the statute contemplates, as assurance that it will be more expensive to default than to comply. The question of exactly what sum is to be forfeited upon various types of default, also questioned by the company, is one we left to be worked out between the company and the Agency, not to be litigated at length before the Board after completion of the case.

Flintkote's next argument is that we should not have ordered correction of the limestone dust problem admitted by the company and amply proved in the record. As with the asphalt reduction equipment, the company is asking us to undo what it itself promised in the record and what we found reasonable after full consideration. The violation was amply proved, and we will not depart from our initial order.

Flintkote next asks us to extend the period allowed for a report on emissions from storage tanks and suggests there was insufficient proof of any violation from these tanks. There was ample evidence that the tanks in which hot asphalt is held are open to the air so that fumes can escape and that asphalt has a significant odor. This is enough to place the burden on the company under the statute to show that it is doing all it can or that the problem is insignificant. Our order requires the company to do that. It is also justifiable as a condition to the variance we grant as to other violations; in order to obtain special dispensation from the law, a company must accept reasonable conditions designed to assure that related operations do not cause trouble. See Greenlee Foundries, Inc. v. EPA, # 70-33 (March 17,1971). As for the time element, we agree with the Agency that tests can be done on days when the rest of the plant is not in operation, and ample time is allowed.

Paragraph E of the motion is addressed once more to the details of the required bond. Once again these are to be worked out with the Agency. For example, if as contended much of the money required has already been spent, no security will be necessary to assure its expenditure.

Paragraph 10 of our order was intended not to preclude expanded use of facilities after brought into full compliance with the law and regulations but to preclude increased use of facilities that have not been brought under control.

We trust this opinion has clarified both whatever ambiguity may have existed in our order and our position with respect to motions for rehearing. It should be clearly understood that we will not reexamine every order as soon as we issue it, or allow reargument of matters that were fully hashed out or should have been in the initial proceeding. Our orders are intended to be final, not provisional, and rehearing or reexamination will not be permitted except in the most extraordinary circumstances. To do so would work for interminable litigation and delay the correction of pollution.

The motion to modify and to postpone the filing of a bond is denied. This opinion stands as a clarification of the order.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Order on Motion for Rehearing this 16 day of September, 1971.