

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1977

E.W. KNEIP, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 77-46
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter is before the Board on a petition filed February 9, 1977 by E.W. Kneip, Inc. (Kneip) requesting a variance from applicable effluent and water quality standards. Kneip requests variance until October, 1978 from Rules 203, 402, 404, 405, 407, 408 and 903 of Chapter 3: Water Pollution Regulations (Regulations) and from Section 12 of the Environmental Protection Act. No hearing was held in this matter. Kneip has filed a waiver of the statutory 90-day decision period.

Kneip owns and operates a slaughtering and packing plant in Elburn, Kane County. The source of the compliance problem is the 400,000 gallons of water used daily in the slaughtering process. Kneip and the Agency have been working together since 1973 to develop a practical means to bring Kneip into full compliance with applicable effluent and water quality standards and various variance grants reflect these efforts. (PCB 73-147, 74-372, 75-171, 76-50). After the initially proposed treatment plant became economically unfeasible, time was needed to study alternatives until a consolidated system was agreed upon, whereby Kneip would install a pretreatment system (costing over \$400,000) to connect to a sewage treatment plant to be built by the Village of Elburn with contribution from Kneip. The last variance granted in PCB 76-50 on May 6, 1976 resulted from the delay in compliance with the Regulations necessitated by Elburn's failure to complete its sewage treatment plant on the date originally anticipated. That variance, from the same regulations as are involved here, was granted until April 1, 1977 and was conditioned on Kneip investigating an interim program to reduce BOD from the effluent from its pretreatment facility.

Kneip's pretreatment facility was completed in July of 1976, six months in advance of the originally scheduled completion date. Pursuant to the Board Order in PCB 76-50, Kneip investigated alternative interim compliance programs, including the construction of a lagoon suggested in that Order. The cost was estimated to be over several hundred thousand dollars, far in excess of the interim benefits. Using the Village's lagoon until completion of their system proved impossible because as Kneip learned, their system does not employ a lagoon. Bioxidation, combined either with the newly constructed pretreatment facility or with mechanical aeration, was rejected as well for reasons including the high costs, the lengthy construction period required, and the possibility that the whole process could prove ineffective. Accordingly, an interim compliance program is impractical.

The Agency Recommendation filed herein indicates the Agency's position that Kneip has shown the requisite good faith and hardship to warrant an extended variance but recommends denial based on a legal conclusion concerning Sections 301 and 510 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) with regard to achieving best practical control technology currently available (BPT), and Section 35 of the Illinois Environmental Protect Act. The Board has stated its position on this issue in City of Quincy v. Environmental Protection Agency, PCB 77-102. Not having authority under P.L. 92-500 to determine BPT, the Board may grant a variance from Illinois Regulations beyond July 1, 1977 to the extent consistent with relevant limitations determined by the U.S. EPA, the Agency charged with administration of P.L. 92-500.

Kneip has acted expeditiously and in good faith in seeking compliance. The company undertook immediate investigation of alternative interim measures, finished the pretreatment facility ahead of schedule, and has already spent a substantial amount on a program of compliance. The present delay is through no fault of its own. Under these circumstances, the Board finds denial of the variance requested would create an unreasonable and arbitrary hardship for Kneip, and the Board will therefore grant Kneip a variance subject to conditions set forth in the previous Board Order. The variance is granted either until April 1, 1979, a date the Agency believes more accurately reflects when Elburn's system will be completed, or the date of completion whichever is first. Because Rule 903 is not yet in effect, the request for variance from that particular Rule is dismissed.

This Opinion constitutes the Board's finding of fact and conclusions of law in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1) E.W. Kneip, Incorporated be granted variance from Section 12 of the Environmental Protection Act and Rules 203, 402, 404, 405, 407 and 408 of Chapter 3: Water Pollution Regulations for its facility in Elburn, Kane County, Illinois until April 1, 1979 or until the Village of Elburn completes its sewage treatment plant, whichever is first, subject to conditions 2, 3 and 4 as set forth in the previous variance, PCB 76-50.

2) Kneip's request for variance from Rule 903 is hereby dismissed without prejudice.

3) Within twenty-eight days after the date of the Board's Order granting said variance, Petitioner shall execute and forward to Respondent a Certificate of Acceptance and Agreement in the following form:

CERTIFICATION

I (We), _____ having read and fully understanding the Order of the Illinois Pollution Control Board in PCB 77-46, hereby accept said Order and agree to be bound to all of the terms and conditions thereof.

SIGNED _____

TITLE _____

DATE _____

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4th day of August, 1977 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board