

ILLINOIS POLLUTION CONTROL BOARD  
July 18, 1996

GENERAL BUSINESS FORMS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 95-155
	)	(Variance - Air)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

JACQUELINE M. VIDMAR AND CYNTHIA A. FAUR OF SONNENSCHNEIN, NATH & ROSENTHAL, APPEARED ON BEHALF OF PETITIONER;

BONNIE R. SAWYER APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On May 26, 1995, General Business Forms, Inc. (GBF) filed a petition (Pet.) seeking a variance from the provisions of 35 Ill. Adm. Code 218.Subpart H. GBF filed two amendments to the original petition, the first (Am. Pet.) on August 11, 1995, and the second (2Am. Pet.) on January 22, 1996. The Illinois Environmental Protection Agency (Agency) filed a recommendation (Rec.) on July 6, 1995. The Agency also filed recommendations in response to the two amended petitions on November 16, 1995, (Am. Rec.) and March 13, 1996, (2Am. Rec.) respectively. GBF filed responses to the Agency's recommendations on November 22, 1995, (Resp.) and March 20, 1996 (Am. Resp.).

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1994).) The Board is charged in the Act with the responsibility of granting variance from Board regulations whenever it is found that compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner. (415 ILCS 5/35(a).) The Agency is required to appear in hearings on variance petitions. (415 ILCS 5/4(f).) The Agency is also charged, among other matters, with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. (415 ILCS 5/37(a).)

A hearing (Tr.) was held before Board Hearing Officer June Edvenson on March 25, 1996. GBF filed post-hearing briefs on April 12, 1996, (Pet. Br.) and April 29, 1996 (Rep. Br.). The Agency filed its post-hearing brief on April 23, 1996 (Resp. Br.). No members of the public were present at the hearing.

For the reasons discussed below, the Board will grant GBF the variance as requested by GBF.

### BACKGROUND

GBF, a manufacturer of high quality business forms and personalized promotion mail, is located at 7300 Niles Center Road in Skokie, Cook County, Illinois. (Tr. at 15-16.) GBF has operated its facility since 1966 and employs approximately 270 people in its 200,000 square foot facility. (Tr. at 16.) GBF operates 15 presses at the facility including four heatset web offset presses, seven non-heatset web offset presses, two electropresses with catalytic emission control units and two flexographic presses. (Tr. at 16; Pet. at 5.) GBF also operates four tinters in association with certain of its non-heatset presses. (Pet. at 5-6.)

Actual volatile organic material (VOM) emissions from the facility in 1994 were reported at 46.71 tons of VOM per year; 8.6 tons per year were attributed to the heatset web offset presses, 0.055 tons were from the non-heatset web operations, and 15.9 tons were from previous tinting operations. (Tr. at 16-17.) According to Mr. John Mudge, who testified on behalf of GBF at hearing, a majority of emissions associated with the non-heatset and heatset lines were from cleaning operations. (Tr. at 17.) The estimated emissions for 1995 from the heatset web offset presses are approximately 20 tons per year. (Tr. at 17.) This is consistent with emissions reported in 1993 for GBF's facility. (Am. Resp. at 4; Tr. at 18.) Thus, the 1994 emission may not represent a normal year for emissions from GBF's facility. (*Id.*)

### STATUTORY AND 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.

GBF is requesting a variance from the requirements for control of VOM emissions from printing presses at 35 Ill. Adm. Code 218.Subpart H. Those provisions were adopted by the Board on April 20, 1995 in R94-31 In the Matter of: 15% ROP Plan Control Measures

for VOM Emission - Part V: Control of Volatile Organic Compound Emissions From Lithographic Printing: Amendments to 35 Ill. Adm. Code Parts 211, 218, and 219 (hereinafter R94-31). The amendments became effective on May 9, 1995, with the provisions for VOM emissions control becoming applicable on March 15, 1996. In that rulemaking, the Board extended VOM emission limitations to all lithographic printing lines which emit over 100 pounds per day of VOM. (Pet. Br. at 2; Am. Rec. at 2.) Specifically, Section 218.405(d)(2) requires that the provisions of Section 218.407 through 218.411 (emission control requirements) apply to:

All owners or operators of heatset web offset, non-heatset web offset, or sheet-fed offset lithographic printing line(s), unless the combined emissions of VOM from all lithographic printing line(s) never exceed 45.5 kg/day (100 lbs/day), as determined in accordance with Section 218.411(a)(1)(B), before the application of control devices.

The effect of the amendments would be to require GBF to install control equipment on its heatset web offset printing lines at its facility for the first time. (Pet. at 2; Pet. Br. at 2.)

Section 38(b) of the Act provides:

If any person files a petition for a variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition . . . .

As this petition was filed within 20 days of the effective date of the adoption of R94-31, the provisions adopted in R94-31 have been stayed as to petitioner until the Board renders a decision to grant or deny the variance.

#### REQUESTED VARIANCE

GBF seeks a variance from the VOM emission limits adopted in R94-31 which limit emissions from both the heatset web offset and non-heatset web offset printing lines. (Am. Pet. at 2.) GBF is seeking the variance only for its heatset web offset printing lines. (Resp. at 3.) GBF is asking for additional time to investigate the use of inks and cleaning solutions containing low VOM which may reduce emissions for the lithographic printing lines below the threshold of 100 pounds per day of VOM emissions. (Am.Pet. at 3-4.)

GBF, in its second amended petition, also is seeking a variance for a “replacement press” on the heatset web offset printing line. (2Am. Pet. at 3.) GBF intends to replace the oldest existing heatset web offset press to lower maintenance, labor and production cost. (*Id.*) GBF maintains that this replacement press is necessary to allow GBF to be competitive in the business. (Pet. Br. at 9.)

#### HARDSHIP AND ENVIRONMENTAL IMPACT

GBF states that it is seeking this variance only for the heatset web offset printing lines which emit about 56 pounds per day of VOM. (Am. Pet. at 9.) The remainder of the emission sources at the facility will be able to comply with the appropriate regulations. (*Id.*) GBF has also undertaken several measures to reduce emissions from other sources at its facility including replacing solvent-based tinters with water-based units. (2Am. Pet. at 10.) GBF provided information which indicates that the “second highest ozone readings” at the nearest monitoring station in Evanston, Illinois were: 0.115 ppm in 1991, 0.129 ppm in 1992, 0.093 ppm in 1993 and 0.097 ppm in 1994. (Am. Pet. at 10.) These numbers would represent only one exceedence of the 0.12 ppm ambient air quality standard for ozone. (Am. Pet. at 10.) GBF argues that the small amount of VOM emissions involved in combination with these other factors establishes that there will be no adverse environmental impact if the variance is granted.

In the second amended petition, GBF states that the replacement line will potentially increase its production capacity. (2Am. Pet. at 5-6.) However, GBF does not anticipate that the replacement of an old press with the new one will result in an increase in actual emissions from the heatset web offset presses. (2Am. Pet. at 6.) GBF argues that inclusion of the replacement line will allow GBF to continue investigation into low VOM inks and solutions, which could potentially result in greater emission reductions. (Pet. Br. at 9.)

GBF asserts that for its existing lines the cost of compliance with the new regulation would be “excessive in light of the emission reduction that this control would achieve.” (Am. Pet. at 6.) Mr. Mudge testified that the emission reduction from control would be approximately 6.9 tons per year. (Tr. at 22.) The capital cost of control for four heatset presses is \$483,400 and the annual operating cost are estimated at \$12,859, according to GBF. (Tr. at 22.) Mr. Mudge stated that the “annualized cost of control for controlling the press dryers on the four heatset presses is estimated at \$90,203 per year.” (Tr. at 22-23.) This would result in a cost per ton reduced, based on 1994 emission numbers, of \$13,072. (Tr. at 23.) GBF asserts that the cost per ton reduced emissions is approximately “four to seven times greater than the cost per ton estimates included in the CTG.”<sup>1</sup> (Pet. Br. at 6.) GBF argues that given this “excessive cost of control” it would be arbitrary and unreasonable to require GBF to install control in its existing lines. (*Id.*) Mr. Mudge testified that given the high cost of control, GBF would “like to comply” with the provisions of 35 Ill. Adm. Code 218.Subpart H by reducing emissions to below 100 pounds per day. (Tr. at 23.)

In its second amended petition, GBF also requests that the variance include a “replacement press” which GBF wishes to install to remain competitive in the market place. (2Am. Pet. at 2; Pet. Br. at 9.) GBF maintains that under the provisions of 35 Ill. Adm. Code 218.Subpart H, GBF would be required to install controls on the replacement press and the

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<sup>1</sup> “CTG” is the acronym for Control Techniques Guideline. CTGs are developed by the USEPA to assist States in developing rules for pollution control. The CTG for controlling emissions for offset lithographic printing was used in R94-31 and incorporated in this record at pages 62-63 of the hearing transcript.

installation of control on this line would be “premature”. (2Am. Pet. at 7.) GBF asserts that if the use of low VOM inks and cleaning solutions is successful, the emissions from the facility will be below 100 pounds per day and control would no longer be necessary for this line. (2Am. Pet. at 7.)

GBF estimates that the total capital cost for the installation of control on the replacement line would be approximately \$200,000. (2Am. Pet. at 7.) Conversely, the cost of installation of one central control system for the four heatset lines would be \$483,400. (Tr. at 22.) The annual cost of control for a single system on the replacement line ranges from \$7,500 to \$14,700 per year and based on these estimates the total annualized costs for a single unit would range from \$39,000 to \$46,700. (2Am. Pet. at 8.) While the total annualized cost for a central control system is \$90,203 per year. (Tr. at 23.) Therefore, GBF maintains that it is significantly more cost effective to install a central control system. (2Am. Pet. at 8.)

The Agency agrees that GBF would suffer an arbitrary or unreasonable hardship if it is required to install control equipment, on its existing lines, prior to investigation of the low VOM inks and cleaning solutions. (Am. Rec. at 5.) However, the Agency does not believe that the cost of control equipment should by itself establish an arbitrary or unreasonable hardship. (Am. Rec. at 5.) Further, the Agency did question the cost estimates provided by GBF regarding the cost of control at hearing. (Resp. Br. at 3-4.) The Agency indicated that the costs presented at hearing were new costs and the Agency investigated those costs after hearing with leave of the Hearing Officer. (*Id.*) The information received by the Agency indicates that the differences in the cost figures are “attributable to differing standard cubic feet per minute capabilities of the equipment evaluated.” (*Id.*) The Agency states that it is not in a “position to evaluate the size of equipment Petitioner would need to install to control VOM emissions.” (*Id.*) The Agency further states that it believes that the costs are consistent with the costs estimated in R94-31. (Am. Rec. at 6; Resp. Br. at 3-4.)

The Agency does not agree that GBF has demonstrated that an arbitrary or unreasonable hardship will occur if the variance does not include the “replacement line”. (2Am. Rec. at 4.) The Agency argues that the costs of controls should be included in the capital expenditure when evaluating the feasibility of a new project. (*Id.*) Therefore, the cost of controlling emissions from the replacement line is not an arbitrary or unreasonable hardship.

With regard to environmental impact of the proposed variance, the Agency argues that the variance period should end on May 1, 1997. The Agency asserts that while exceedences in April are unlikely, there have been ten exceedences in Chicago area between 1988 and 1994. (Tr. at 55.) Further, a facility like GBF does impact the overall air quality in the Chicago area. (Tr. at 56.) There are over 374 sources in the Chicago area which emit 25 tons or more per year and these sources account for 94.5 percent of the VOM emissions from point sources. (*Id.*) Thus, the Agency maintains that it is very important to limit the variance to one ozone season. (Tr. at 56; 2Am. Rec. at 4.) However, the Agency also states that it recognizes that the replacement of the supplier of low VOM inks and solutions was beyond the control of GBF

and that GBF may need additional time to come into compliance as discussed below under "Compliance Plan". (*Id.*)

### CONSISTENCY WITH FEDERAL LAW

The amendments to 35 Ill. Adm. Code 218.Subpart H have been approved by USEPA effective January 8, 1996 (60 F.R. 56238). (2Am. Rec. at 5.) Therefore, the Agency would be required to submit the variance to the USEPA as a State Implementation Plan (SIP) revision. (*Id.*) GBF concedes that the requested variance would be subject to federal approval. (2Am. Pet. at 12.) The Agency states that it is "concerned that the variance relief sought for the new heatset line would not receive USEPA's approval." (2Am. Rec. at 5.)

### COMPLIANCE PLAN

GBF intends to use this variance period to investigate the use of low VOM ink and cleaning solutions. (Am. Pet. at 7.) GBF has made initial tests and believes that reformulation of the solutions will be necessary to facilitate GBF's use of such solutions. (*Id.*) Therefore, GBF would like the opportunity to continue this investigation. (*Id.*) GBF encountered a problem with the initial supplier of the low VOM solutions in that the supplier had stopped development on low VOM solutions. (Tr. at 26.) GBF found a new supplier and is continuing to investigate low VOM solutions (Tr. at 24-28; 2Am. Pet. at 2 and 9); however, GBF believes that it will be June of 1997 before compliance can be achieved. (2Am. Pet. at 1.) GBF has committed to complying with 35 Ill. Adm. Code 218.Subpart H by June 1, 1997. (Am. Pet. at 8.)

The Agency believes that GBF's commitment to the use of reformulated inks and cleaning solutions to lower emissions will be acceptable. (Am. Rec. at 8.) However, the Agency believes that GBF must also commit to the installation of an afterburner on the four heatset web offset lines if the plan does not succeed in reducing emissions to below 100 pounds per day. (*Id.*)

### ARGUMENTS

The Agency and GBF agree that an arbitrary or unreasonable hardship would exist if GBF is not granted a variance for its existing heatset web offset printing lines from the requirements at 35 Ill. Adm. Code 218.Subpart H. The Agency believes that GBF has met its burden to establish such a hardship exists if control is required prior to GBF's exploration of the use of low VOM alternatives. (Resp. Br. at 5.) Further, GBF has indicated that it will accept the conditions recommended by the Agency except that GBF still maintains that the variance should extend until June 1, 1997. (Pet. Br. at 8.) The length of the variance and the inclusion of the replacement line in the variance are the areas of disagreement between GBF and the Agency in this proceeding.

#### Replacement Line

The Agency opposes granting a variance to GBF for a replacement line because the Agency does not believe that GBF has demonstrated that compliance with the rule would impose an arbitrary or unreasonable hardship. (Resp. Br. at 6.) The Agency maintains that “the costs of compliance with the environmental requirements should be considered as a component of the capital costs associated with new equipment and, therefore, any associated hardship would be self-imposed.” (*Id.*; citing to EPA v. Lindgren Foundry Co., PCB 70-1 (September 25, 1970) (Lindgren)). The Agency does not contest GBF’s assertion that the replacement line is necessary to remain competitive. However, the Agency argues that the need to remain competitive is “not an uncommon consideration in the decisionmaking process that many businesses undergo when evaluating the addition of new equipment.” (Resp. Br. at 6.)

The Agency argues that it is inappropriate to allow the replacement line to commence operation without requiring compliance with 35 Ill. Adm. Code 218.Subpart H. (Resp. Br. at 7.) The Agency bolsters this point by indicating that the construction permit program is designed to insure that new sources or new equipment are in compliance with applicable regulations. (*Id.*) The Agency maintains that GBF’s abandonment of low VOM inks and solutions may be an unfortunate consequence of GBF’s decision to install new equipment prior to coming into compliance with 35 Ill. Adm. Code 218.Subpart H. (*Id.*)

The Agency also argues that this request for variance does not fall within the limited category of variances where even with a self-imposed hardship a variance was granted by the Board. (Resp. Br. at 8.) The Agency points out that the facility is located in an ozone nonattainment area and the Agency is “extremely reluctant to find any VOM emissions beyond allowable levels acceptable”. (Resp. Br. at 8.) The Agency indicates that it is not suggesting that the Agency would never find that an arbitrary or unreasonable hardship outweighs the environmental impact in the Chicago ozone nonattainment area. (Resp. Br. at 8.) The Agency states that: “[h]owever, the Agency does believe variance relief based on a self-imposed hardship is not consistent with the efforts that the State of Illinois is undertaking to achieve compliance.” (*Id.*)

GBF asserts that the inclusion of the replacement press will not result in any additional environmental impact as GBF does not anticipate increased emissions from the heatset web offset presses during the variance term. (Pet. Br. at 12.) GBF concedes that the replacement press could be a significant portion of total emissions, however, GBF anticipates a reduction in emissions from other presses due to a shift in production to the replacement line. (Pet. Br. at 12.) In addition GBF has already taken steps to reduce emissions from its facility including conversion to the use of low-vapor pressure cleaning solutions. (Pet. Br. at 13.)

GBF argues that if the replacement press is not included in the variance it will be forced to abandon its investigation into low VOM inks and solutions. (Pet. Br. at 15.) GBF points out that the cost to install control equipment for the replacement press is equal to \$189,400 and the annual cost equals \$4,286 per year. (Tr. at 37; Pet. Br. at 15.) The control equipment for the replacement press alone could not be used to control emissions from the remaining three presses according to GBF. (Tr. at 40.) Therefore, if GBF is forced to install

control equipment it does not make economic sense to control only the replacement press. (*Id.*)

GBF also argues that waiting for the variance period to end before installation of the replacement press is not an option. (Tr. at 40; Pet. Br. at 16.) GBF asserts that the replacement press will reduce production costs and allow GBF to deliver orders to customers in a shorter turnaround. (Pet. Br. at 16.) GBF maintains that such factors are vital in its business. (*Id.*) Further, this modernization will give GBF capabilities which competitors may already have. (Pet. Br. at 17.)

GBF concedes that the Board has in the past held that variance relief is not appropriate for new sources or new equipment because the hardship is self-imposed. (Pet. Br. at 10; citing to Lindgren.) GBF however asserts that this hardship is not self-imposed. (Pet. Br. at 10.) GBF was “compelled to pursue the installation of this line for competitive reasons.” (Pet. Br. at 10-11; Tr. at 40.)

Finally GBF argues that even if the Board finds the hardship is self-imposed, the Board should grant the variance. (Pet. Br. at 11.) GBF cites to two cases which GBF believes support its contention. In Lustour Packaging Corp. v. IEPA, PCB 87-98 (February 25, 1988), the Board granted a variance even though the hardship was self-imposed because the term of noncompliance was short. Secondly, in City of Geneva v. IEPA, PCB 88-11 (May 5, 1988) the Board granted the variance because there was little environmental impact, even though the Board found that the hardship was self-imposed.

### Length of Variance

The Agency argues that any variance granted to GBF should expire no later than May 1, 1997. (Resp. Br. at 9.) The Agency maintains that the impact of VOM emissions during the month of May vary significantly from emissions in April. (*Id.*) The Agency points out that the Chicago area experienced ten ozone exceedences in May from 1988 to 1994. (Tr. at 55-56; Resp. Br. at 9-10.) The Agency further argues that although no exceedences occurred in 1995, the conditions in 1997 may be conducive to ozone formation and exceedences could occur. (Resp. Br. at 10-11.)

GBF argues that there would be “little or no environmental impact” if the variance is extended to June 1, 1997. (Pet. Br. at 19.) GBF asserts that while the facility is a major source emitting over 25 tons per year, the heatset web offset lines are not a major source. (Pet. Br. at 20-21.) GBF also points out that of the ten exceedences in May noted by the Agency, nine occurred prior to 1991 and the tenth occurred in 1994. (Pet. Br. at 21; Tr. at 55-56.)

GBF maintains that due to the problems with the supplier of low VOM inks and solutions, the additional month is necessary to complete the investigation. (Pet Br. at 19-20.) GBF notes that the Agency acknowledged that GBF may need more time in the Agency’s second amended recommendation. (Pet. Br. at 19-20; 2Am. Rec. at 4.)

## DISCUSSION

The purpose of a variance has been stated many times by the Board and the courts. In Monsanto Company v. Pollution Control Board, (June 1, 1977), 67 Ill.2d 276, 10 Ill.Dec. 231, 367 N.E.2d 684, 688, the Supreme Court, in determining whether variances can be permanent, stated that the Act's ultimate goal is for all polluters to be in compliance and that "[t]he variance provisions afford some flexibility in regulating speed of compliance, but a total exemption from the statute would free a polluter from the task of developing more effective pollution-prevention technology". The Appellate Court, citing to Monsanto in City of Mendota v. Pollution Control Board, (3rd Dist. 1987), 112 Ill. Dec. 752, 757, 514 N.E.2d 218, stated "[t]he variance provisions of the Act are intended to afford some flexibility in regulating the speed for compliance." Finally the Appellate Court in Celotex Corporation v. Illinois Pollution Control Board (4th Dist 1978), 65 Ill. App. 3rd 776, 22 Ill. Dec. 474, 382 N.E.2d 864, 866, phrased the purpose as "[t]he issues in a variance proceeding focus upon whether compliance should be excused for a period of time."

The Board in following Monsanto and the other cases stated "[a] further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations, and compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter." (American River Transportation v. Illinois Environmental Protection Agency, (August 24, 1995), PCB 95-147.) The Board has also stated:

"[m]oreover the Board is displeased with a request for a variance which has a term, but for a few days, which is after the fact. While the Board allows that there may be circumstances where the latter condition might validly arise, it also believes that after-the-fact grants of variance are generally inconsistent with the intent of variance relief as enunciated by the Environmental Protection Act. At the minimum, it is not the intent of a variance to legitimize past failure to comply with rules and regulations." (Modine Co. v. Illinois Environmental Protection Agency, (December 22, 1987), PCB 85-154, 84 PCB 735.)

Thus, as the courts and the Board have found, the purpose of variances is to provide for a period of time to allow individuals to come into compliance with the otherwise applicable rules and regulations when immediate compliance would cause an arbitrary or unreasonable hardship. The purpose, therefore, is not to avoid compliance, but rather only to allow time for compliance to be achieved.

The Board and the courts have interpreted the justification necessary in deciding when immediate compliance with the applicable rules and regulations would cause an arbitrary or unreasonable hardship. In Marathon Oil Company v. Illinois Environmental Protection Agency and the Illinois Pollution Control Board, 610 N.E. 2d 789 (5th Dist. 1993) (Marathon), the 5th District Appellate Court in reversing the Board stated the following:

When deciding whether to grant or deny a variance request, the Board is required to balance the hardship of continued compliance on the business against the adverse impact the variance will have on the environment. \* \* \* The party requesting the variance has the burden of establishing that the hardship resulting from denial of a variance outweighs any injury to the public or the environment from a grant of the variance. \* \* \* Specifically if the one requesting the variance demonstrates only that compliance will be difficult, that proof alone is insufficient basis upon which to grant the variance. The petitioner must go further and show that the hardship it will encounter from the denial of the variance will outweigh any injury to the public or environment from the grant of the variance. (Marathon at 793.)

Also in Marathon the Appellate Court found that Section 35(a) of the Act does not require that petitioner demonstrate that it is out of compliance with the rule or regulation prior to seeking a variance. It found that “evidence presented was ‘adequate proof’ that continued compliance with the current water-quality standards will impose an arbitrary or unreasonable hardship”. (Marathon at 793.) In doing so the Appellate Court stated that when the petitioner presents “unrefuted” evidence that it will violate the Board’s rule in conducting or increasing its normal business, a hardship is established requiring the Board to determine if such hardship outweighs any injury to the environment. (Marathon at 794.)

The Board has stated that the burden is on petitioner to show that its claimed hardship outweighs the public interest in attaining immediate compliance with regulations designed to protect the public. (Willowbrook Motel v. Pollution Control Board (1st Dist. 1977), 135 Ill.App.3d 343, 481 N.E.2d 1032). Only with such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship. (We Shred It, Inc. v. Illinois Environmental Protection Agency (November 18, 1993) PCB 92-180 at 3.) Additionally the Board has stated that when determining hardship:

The Board must emphasize that under the Act variances are not to be granted merely because the petitioner has shown that it cannot comply with regulations despite its efforts to achieve compliance. Rather, a shield from an enforcement action is only given to a petitioner who would suffer an arbitrary or unreasonable hardship. \* \* \* Certainly, most persons would view any defense to an enforcement action as a hardship. But it does not automatically follow that such a defense is an arbitrary or unreasonable hardship. (Village of Sauget v. Illinois Environmental Protection Agency, (November 3, 1988), PCB 88-18, 93 PCB 281.)

### Hardship

Replacement Line. The Board finds that the inclusion of the replacement line in GBF’s variance is appropriate. The Board is convinced that GBF has demonstrated that an arbitrary or unreasonable hardship which is not self-imposed exists for GBF regarding the replacement of an existing line with the new line. The Board is persuaded by the costs of control for the

replacement line versus the cost of controlling all four lines. The Board agrees that it does not make economic sense to install controls only for the single replacement line at this time and abandonment of other alternatives for lowering emissions at this point seems counterproductive. Therefore, the Board believes that installing control equipment at this time for the single replacement line would be an arbitrary hardship.

The Board does not believe that the hardship associated with this new replacement line is self-imposed. Both parties cite to the Board the Lindgren case on this issue. The Agency cites to Lindgren for the proposition that environmental compliance should be considered as a component of the capital costs associated with new equipment and any associated hardship would be self-imposed. (Resp. Br. at 9.) GBF reads Lindgren to imply that variance relief is not appropriate for new sources or new equipment because the hardship is self-imposed. (Pet. Br. at 10.) The Board does not agree that the Lindgren case applies in this proceeding. In Lindgren, a facility which had never come into compliance with particulate air emission regulations had shut down for business reasons. New owners purchased the closed facility and then sought a variance to allow the facility to operate out of compliance during the installation of control equipment. (Lindgren at 1.) The hardship for the facility involved potential financial losses to the new owners and creditors along with lost wages for former employees. (Lindgren at 8.) The record included substantial testimony from neighbors regarding the air contamination and interference with their lives when the facility was operating. (Lindgren at 11.) The particulate emissions from the facility were estimated at 170 pounds per hour. (Lindgren at 2.) The Board denied a variance making several findings including that the operation of the facility without particulate emission control would seriously inconvenience the many people living nearby and that any hardship suffered was brought about by the owners' voluntary investment with full knowledge of the risk. (Lindgren at 12.)

GBF is by no means similarly situated. GBF has demonstrated that it is diligently seeking compliance through alternative methods. The need for modernization of the GBF facility is resulting in GBF replacing an older, less efficient press with this new press. The replacement will not increase emissions from the heatset web offset lines. And the environmental impact of the variance with the replacement line will be no more significant than the variance with the existing lines. Further, GBF was not previously required to control emissions from its heatset web offset presses. The requirements for control were adopted in R94-31. GBF timely sought this variance to allow GBF to investigate alternatives to lower its emissions and GBF has committed to installing control equipment if lower emissions cannot be achieved.

GBF has stated that the new press is necessary in order for GBF to remain competitive and that GBF cannot simply wait until compliance is achieved to install the new press. The Agency states that it is not in a position to contest the importance of the replacement press to GBF's business. Rather the Agency's arguments center around the premise that new equipment should be subject to the regulations. The Board is persuaded that the replacement press is necessary for GBF's business to remain competitive. Therefore, after consideration of all the foregoing, the Board finds that the hardship is not self-imposed.

Length of Variance. The Board notes that the Agency does not object to a variance granted until May 1, 1997 which would include the 1996 ozone season. Rather the Agency is concerned with extending the variance into a second ozone season. (2Am.Rec. at 4.) The Board shares the Agency's concern regarding extension of the variances into a second ozone season. However, the Board is convinced that the extension of the variance period until June 1, 1997 is warranted. The Board finds that GBF has diligently examined alternative inks and solutions and through no fault of GBF's, a new supplier was necessary. The Board believes that the environmental impact of the variance during May of 1997 will be no more significant than in May 1996. Therefore the Board finds that a variance lasting until June 1, 1997, is justified.

### Retroactive Variance

The Agency has recommended that this variance period commence on March 15, 1996, which would be a retroactive variance. (Am. Rec. at 10.) The Board has determined that in the absence of unusual or extraordinary circumstances, the Board renders variances effective on the date the Board order is issued. (LCN Closers, Inc. v. EPA, (July 27, 1989), PCB 89-27, 101 PCB 283, 286; Borden Chemical Co. v. EPA, (December 5, 1985), PCB 82-82, 67 PCB 3, 6; City of Farmington v. EPA, (February 20, 1985), PCB 84-166, 63 PCB 97; Hansen-Sterling Drum Co. v. EPA, (January 24, 1985), PCB 83-240, 62 PCB 387, 389; Village of Sauget v. EPA, (December 15, 1983), PCB 83-146, 55 PCB 255, 258; Olin Corp. v. EPA, (August 30, 1983), PCB 83-102, 53 PCB 289, 291.) Although the Board does not generally grant variances retroactively, upon specific justification retroactive variances have been granted. (Deere & Co. v. EPA, (September 8, 1988), PCB 88-22, 92 PCB 91.) The Board stated that the reasoning behind the general rule is to discourage untimely filed petitions for variance, i.e. variances filed after the start of the claimed arbitrary or unreasonable hardship creating the desire for a retroactive start, and because the failure to request relief in a timely manner is a self-imposed hardship. (Fedders-USA v. EPA, (April 6, 1989), PCB 86-47, 98 PCB 15, 19, DMI, Inc. v. EPA, (February 23, 1987), PCB 88-132, 96 PCB 185, 187 and American National Can Co. v. EPA, (August 31, 1989), PCB 88-203, 102 PCB 215, 218.)

Timeliness of filing is a primary factor in considering "special circumstances". First in considering "special circumstances" the Board has routinely refused to apply a retroactive inception date where either the petitioner filed late without explanation or where delay resulted through some fault of the petitioner. (LCN Closers, Inc., 101 PCB 283, 286; DMI, Inc., 96 PCB 185, 187; Borden Chemical Co., 67 PCB 3, 6; City of Farmington, 63 PCB 97, 98; Hansen-Sterling Drug Co., 62 PCB 387, 389; Village of Sauget, 55 PCB 255, 258; Olin Corp., 53 PCB 288, 291.) Second, a "principle consideration in the granting of retroactive relief is a showing that the petitioner has diligently sought relief and has made good faith efforts at achieving compliance". (Deere, 92 PCB 91.)

The Board finds that granting this variance from March 15, 1996, is consistent with the Board's previous decisions. GBF timely filed this variance petition and therefore the regulatory provisions of R94-31 have been stayed during the pendency of this proceeding.

(Section 38 of the Act.) GBF has diligently investigated the alternative means of reducing emissions to below the 100 pounds per day threshold which would require control of emissions pursuant to 35 Ill. Adm. Code 218.Subpart H. GBF has amended its petition on two occasions to further delineate the relief it is seeking and to inform the Board and the Agency of its progress. Because GBF has timely and diligently sought compliance and due to the timely filing of this variance which stayed the effectiveness of the amendments from R94-31, the Board finds that granting the variance effective from March 15, 1996 is appropriate.

### CONCLUSION

The Board finds that the hardship which will be experienced by GBF outweighs the environmental impact of this variance. The Agency and GBF agree that a hardship which outweighs the environmental impact of the variance exists with regard to the existing presses at the GBF facility. The Board is convinced by the record that the replacement line will not increase emissions during the variance term; thus, the environmental impact should not be altered with the inclusion of the replacement line. The Board is further convinced that compliance with the regulations before the investigation into low VOM inks and solutions is complete would be premature. If the investigation results in low VOM inks and cleaning solutions which can be used, the emissions from GBF's facility will fall below the threshold of 100 pounds per day and no controls will be required on the heatset web offset lines. Further, GBF has provided the Board with a compliance plan which will achieve compliance with 35 Ill. Adm. Code 218.Subpart H prior to the expiration of the variance by committing to the installation of control equipment on all four heatset web offset lines. (Rep. Br. at 4.) Therefore, the Board grants a variance to GBF for its Skokie facility, including the replacement line, until June 1, 1997.

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

### ORDER

For the reasons set forth above, the Board grants General Business Forms, Inc. a variance from the requirements of 35 Ill. Adm. Code 218.405 through 218.411, for its facility, including a replacement heatset web offset press, located at 7300 Niles Center Road in Skokie, Illinois, subject to the following conditions:

1. The variance shall commence on March 15, 1996 and expire on June 1, 1997.
2. General Business Forms, Inc. shall submit quarterly reports outlining its progress with ink and cleaning solutions reformulation to the Agency at the following address:

Compliance Unit, Bureau of Air  
Illinois Environmental Protection Agency  
220 Churchill Road, P.O. Box 19276  
Springfield, Illinois 62794-9276

3. In addition to 2 above, General Business Forms, Inc. shall submit a report to the Agency at the address provided in 2 above whenever it receives a new batch of reformulated inks or cleaning solutions and shall notify the Agency of the results of any internal tests conducted for each such batch. Such report shall provide the date such materials were received and outline the internal testing procedures and related schedules that General Business Forms, Inc. will be undertaking.
4. If necessary, General Business Forms, Inc. shall submit an application for construction permit for an after burner to the Agency no later than December 1, 1996.
5. The VOM emissions from the heatset web offset printing lines at General Business Forms, Inc. facility shall not exceed current emission levels during the term of the variance.
6. General Business Forms, Inc. shall use fountain and cleaning solutions that are in compliance with the limitations in 35 Ill. Adm. Code 218.407 during the term of the variance.

IT IS SO ORDERED.

If petitioner chooses to accept this variance subject to the above order, within 45 days of the date of this order, petitioner shall execute and forward to:

Compliance Unit, Bureau of Air  
Illinois Environmental Protection Agency  
P.O. Box 19276  
2200 Churchill Road  
Springfield, Illinois 62794-9276

a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance, and such certification shall be in the form specified by the Board. 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 and of no force and effect as a shield against enforcement of the rules from which this variance is granted.

#### CERTIFICATION

I (We), \_\_\_\_\_, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 95-155, July 18, 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 order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board