

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
)	
Knauf Fiber Glass, GmbH)	PSD Appeal Nos.
)	99-8 through 99-72
PSD Permit No. 97-PO-06)	
)	

ORDER DENYING MOTIONS FOR RECONSIDERATION

Timely motions for reconsideration of the Board's decision in *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 99-8 et al. (EAB, Mar. 14, 2000), 9 E.A.D. ____ (*Knauf II*), were received from 1) Mary C. Scott, Petition No. 99-10, 2) Betty Doty, Petition No. 99-13, 3) Ivan A. Hall, Petition No. 99-21, 4) Vicki C. Caraway, Petition No. 99-33, 5) Joanna L. Caul, Petition No. 99-35, 6) Heidi Silva, Petition No. 99-38, 7) Linda A. Andrews, Petition No. 99-63, and 8) Joy L. Newcom, Petition No. 99-71.¹ *Knauf II* denied these movants' petitions

¹Untimely motions for reconsideration were filed by Citizens for Cleaner Air, et al., Petition No. 99-16, and Arnold J. Erickson, Petition No. 99-17. In accordance with 40 C.F.R. § 124.19(g), motions for reconsideration must be filed -- that is, "received," see *In re Beckman Production Services*, 5 E.A.D. 10, 15 (EAB 1994)-- within ten days after service of the Board's Order Denying Review. In cases where service of an order is effected by mail, three additional days are added to the prescribed period. 40 C.F.R. § 124.20(d). The Board's decision in *Knauf II* was served by mail on March 15, 2000, making the due date for filing a motion for reconsideration March 28, 2000. The motion of Citizens for

for review, which were seeking review of a reissued permit determination made by the Shasta County Air Quality Management District (SCAQMD) on remand from an earlier decision on appeal involving the same proceeding.²

The regulation governing motions for reconsideration of final orders such as *Knauf II* requires that a motion "set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." 40 C.F.R. § 124.19(g). Reconsideration is generally reserved for cases in which the Board is shown to have made a demonstrable error, such as a mistake of law or fact. *In re Knauf Fiber Glass, GmbH*, PSD

Cleaner Air, et al., was not filed until March 29, 2000. As a result the motion is late and is denied as untimely. (Documents received by the Board after normal business hours are not accepted for filing until the following business day. In this instance, the motion was received by facsimile copy after normal business hours on Tuesday March 28 and, therefore, was not logged in for filing until Wednesday March 29.) The motion of Arnold J. Erickson was not received by the Board until April 3, 2000 (as an attachment to a letter addressed to the Administrator, dated March 20, 2000). As a result the motion is late and is denied as untimely.

²In the earlier appeal, the Board issued a decision denying review of many issues raised on appeal, but also remanding SCAQMD's permit decision on two issues. *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 through 98-20 (EAB, Feb. 4, 1999), 8 E.A.D. ___ ("*Knauf I*"). *Knauf II* is the product of the appeals that followed the re-issuance of the permit following the remand in *Knauf I*.

Appeal Nos. 98-3 et al., at 3 (EAB, Feb. 4, 1999) (Order on Motions for Reconsideration); *In re Arizona Municipal Storm Water NPDES Permits*, NPDES Appeal No. 97-3, at 2 (EAB, Aug. 17, 1998) (Order Denying Motion for Reconsideration). The reconsideration process "should not be regarded as an opportunity to reargue the case in a more convincing fashion." *In re Southern Timber Prods., Inc.*, 3 E.A.D. 880, 889 (JO 1992). A party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider. *Arizona* at 2, citing *Publishers Resource, Inc. v. Walker-Davis Publications, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) ("Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during the pendency of the [original] motion. * * * Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time.") (citation omitted).

With this as our context, we consider each of the motions in turn.

Scott, Petition No. 99-10

This motion raises objections to determinations made (or not made) in the Board's decision regarding the availability of proprietary process technology, the size of the wet electrostatic precipitator (WEP), use of multiple WEPs, selection of the PM10 emission limits, and environmental justice. The objections, for the most part, amount to nothing more than disagreement with the determinations made by the Board in deciding not to review the reissued permit. For example, Petitioner objects to the use of a "safety factor" of 1.25 in the formula for calculating the PM10 emission limit. See *Knauf II* at 20-21. This same subject and Petitioner's same objections were addressed once already in the Board's decision, *id.*, and do not need to be addressed again in response to the motion for reconsideration. Expression of continued disagreement with a particular outcome does not, without more, provide the requisite demonstration of error to warrant reconsideration of the decision.

In a couple of instances, Petitioner alleges error of a specific nature. For example, Petitioner asserts that the figures used by SCAQMD in setting the PM10 emission limit are clearly erroneous, claiming that SCAQMD used the total

suspended particulate (TSP) for the CertainTeed plants rather than the PM10 limits so as to mislead the public and the Board. As we noted in the decision, the permit limits in the CertainTeed permits express PM10 limits differently from the way PM10 limits are expressed in the reissued permit. *Knauf II* at 19, n.13. Petitioner argues that they "are not stated any differently in the CertainTeed permit than in the Knauf permit." Petition at 3. However, Petitioner then states that "SCAQMD simply used an entirely different limit (TSP) to compare with Knauf's PM10 emission limit." *Id.* It is unclear to us what point the Petitioner is attempting to make by this seeming self-contradiction. Under the circumstances, the allegation of error does not persuade us to reconsider our decision.

With respect to environmental justice, the motion disputes the statement in the Board's decision that "there has been no serious contention that the additional PM10 emissions from the proposed facility would in fact lead to an adverse impact." Petitioner claims this statement to be "clear error" because (i) California regulations governing PM10 are more stringent than the federal PM10 standards, (ii) Shasta County is non-attainment for PM10 under California regulations, and

(iii) EPA's Environmental Justice Guidance allows use of local, regional, and state standards in determining whether an effect is significant. Given the foregoing, Petitioner maintains that the air quality impacts from the proposed facility will necessarily be significant and adverse. Petitioner claims that the Environmental Impact Review (EIR)³ for this project supports this conclusion. The administrative record, however, suggests a contrary conclusion. As noted in EPA Region 9's response to comments on the environmental justice issue, "the EIR did not identify any major environmental impacts on the community. According to the EIR, 'impacts on public health from the operation of the proposed project were determined to be less than significant' (Knauf Fiber Glass Manufacturing Facility Revised Draft EIR, July 1997). The EIR identified the applicable federal and state regulations that will be met. The EIR has been challenged, but upheld by the courts." EPA's Response to Public Comments on the Knauf Environmental Justice Review (Aug. 12, 1999) (AR 9648). Petitioner has not cited or otherwise demonstrated any basis for refuting these conclusions by Region 9. Therefore, we decline to reconsider the environmental justice analysis.

³The EIR is a document prepared to comply with the California Environmental Quality Act.

Doty, Petition No. 99-13

This motion asserts that the Knauf plant is "designed so that it couldn't be shut down, even in a worst-case scenario," such as when pollution from other sources such as forest fires causes severe, excessive smoke. Petitioner claims that this concern was communicated to SCAQMD but she regards the response she received as inadequate. Petitioner does not describe the response or state in what respect it is inadequate. Although Petitioner cross-references letters she submitted in September 1999 in support of her petition for review, her failure to provide an explanation of the alleged inadequacy in the motion itself necessarily defeats the motion, since the motion consequently fails to supply a supporting rationale for reconsidering the Board's decision. Moreover, merely repeating (here, cross-referencing) assertions made in an earlier phase of the proceeding does not provide adequate grounds for reconsideration.

Hall, Petition No. 99-21

This motion focuses on Part II.B.2 of the Board's decision, which addresses the use of wet electrostatic precipitators (WEPs). Petitioner asserts that there is no technical analysis to support SCAQMD's analysis of Knauf's

single WEP configuration versus that of CertainTeed's multiple WEP configuration. Petitioner's assertion is, at best, an attempt to reargue and more finely hone positions and matters previously considered, namely, the issue of single versus multiple WEP configurations. SCAQMD responded in detail to Petitioner's extensive comments on the reissued permit that raised, inter alia, WEP issues, and the Board was aware of those comments and responses when it rendered its decision not to review SCAQMD's permit determination. See AR 9740-46. See *Knauf II* at 18-19. As indicated previously, a motion for reconsideration should not be regarded as an opportunity to reargue the case in a more convincing fashion. Manifest error in the Board's decision has not been shown by Petitioner's motion.

Caraway, Petition No. 99-33

This motion expresses dissatisfaction with the adequacy of the Board's explanation of the relationship between proprietary processes and selecting the best available control technology for the proposed facility. The motion also asserts that Shasta County is a non-attainment area for PM10 (apparently referring to a state PM10 standard, not the applicable federal standard) and that Knauf has a history of "violations" at another one of

its fiberglass plants and cannot be trusted to comply with the permit. Also, because of the alleged violations, the motion asserts that emissions data from the other plant should not be used as the basis for establishing emissions levels at the proposed Shasta plant. Finally, the motion expresses dissatisfaction with the adequacy of the Board's explanation of the environmental justice issues.

All of Petitioner's concerns have been raised and addressed by SCAQMD, and considered, in turn, by the Board. The fact that a petitioner remains dissatisfied with the responses does not by itself, as previously stated, provide a sufficient basis for reconsidering a decision. None of these assertions in any way demonstrates any error in the Board's decision not to review the SCAQMD permit determination on remand.

Caul, Petition No. 99-35

This motion, distilled to its essence, expresses disagreement with Part II.B.1 of *Knauf II*, wherein the Environmental Appeals Board left undisturbed SCAQMD's conclusion that use of a competitor's process technology was not a feasible, i.e., available, control option for the

proposed Knauf plant. Notwithstanding the Petitioner's disagreement with SCAQMD's conclusion, nothing in the motion persuades the Board that the decision was in error. The issue of the availability of a competitor's proprietary process technology was also addressed by the Board in *Knauf I*. Thus, there is little more for the Board to say by way of explaining its reasons in support of the decision.

Silva, Petition No. 99-38

This motion basically resubmits an earlier letter by the same Petitioner as the basis for reconsideration. The letter itself was not part of the original petition and was not filed with permission of the Board. It, like several other unsolicited letters received from various Petitioners during the course of this proceeding, was nonetheless placed in the administrative record of the proceeding before the Board as a record of their opposition to the project. Because the subject letter was received prior to *Knauf II*, its ultimate disposition will be deemed covered by that decision. Consequently, resubmittal of the letter does not constitute an appropriate basis for reconsideration.

Andrews, Petition No. 99-63

This motion asserts that the Petitioner never received a response from SCAQMD regarding a concern she had expressed over the conduct of "short-term experimental production runs without conducting additional performance tests." The Petitioner is referring to a provision, § 63.1384(a)(13), of the National Emissions Standards for Hazardous Air Pollutants rule for the fiberglass manufacturing industry. 64 Fed. Reg. 31,695 (June 14, 1999). Petitioner states that she raised a concern about this provision with SCAQMD but never got an answer. The exact nature of her concern is not set forth in the motion. One possibility might be that Petitioner is dissatisfied with a rule that allows short-term experimental production runs without first conducting performance tests. Such an objection is in the nature of a challenge to the rule, rather than a challenge to a permit condition. Such a challenge would be beyond the jurisdiction of the Environmental Appeals Board, and may not be entertained in an individual permit proceeding. Therefore, the challenge must also be dismissed as ineligible for consideration in a motion for reconsideration. Finally, given the motion's general lack of specificity, the motion is also denied for that reason.

Newcom, Petition No. 99-71

This motion, for the most part, raises issues well beyond the scope of *Knauf II*, including in particular such matters as the Petitioner's preference for a Shasta Lake that is less industrialized and more oriented toward tourism, education and cottage industries. Petitioner also expresses evident frustration in her inability, and that of other opponents of the facility, to fend off the siting of the proposed facility in Shasta Lake. These and other matters raised in the motion are obviously heartfelt but ultimately involve political choices that fall outside the scope of matters that can be considered in this permit proceeding under the Clean Air Act.

For the reasons stated above, the Petitioners' motions for reconsideration are denied.

So Ordered.

ENVIRONMENTAL APPEALS BOARD

By: _____/s/_____

Ronald L. McCallum
Environmental Appeals Judge

Dated: 2/10/2000

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Motions For Reconsideration in the Matter of Knauf Fiber Glass, GmbH, PSD Appeal Nos. 99-8 through 99-72, were sent to the following persons in the manner indicated:

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