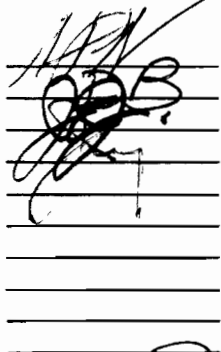


The Commission hereby authorizes the Chairman to sign and issue Order, LIS 85-01, based upon the evidence presented at the hearing held in the matter raised upon petition by Husky Industries, Inc. for Commission review of the Director's decision to deny the variance request from the permitting and visible emission requirements of the Arkansas Air Pollution Control Code.

COMMISSIONERS




CHAIRMAN

SUBMITTED BY: Phillip Deisch DATE PASSED: 9-27-85

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
BEFORE THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

HUSKY INDUSTRIES, INC.
Facilities located at Omaha
and Huntsville, Arkansas

APPLICANT

vs.

No. LIS 85-01

PHYLLIS GARNETT, Director of the
Department of Pollution Control and
Ecology in the State of Arkansas

RESPONDENT

ORDER
AND
FINDINGS OF FACT

I. STATEMENT OF CASE

Husky Industries, Inc. applied for a variance from Sections 3 and 4 of the Arkansas Air Pollution Control Code (Code) for 24 charcoal kilns at its Huntsville facility and 17 kilns at its Omaha facility. Section 3 of the Code prohibits the installation, alteration or replacement of equipment without first obtaining a permit from the Department. Section 4 of the Code establishes the visible emission limits of 40 percent opacity for existing equipment and 20 percent opacity for new equipment.

Husky's variance request is as follows:

1. A variance be granted from Sections 3 and 4 of the Air Pollution Code for our existing kilns at Omaha and Huntsville;

FILED 9-13-85 *Marilyn Woods*
SECRETARY, ARKANSAS COMMISSION ON POLLUTION
CONTROL AND ECOLOGY, 8001 NATIONAL DRIVE,
LITTLE ROCK, ARKANSAS 72209

2. After August 20, 1984, new kilns at a facility, or modification of the facility which would result in a net increase of emissions, or which would constitute expenditures in excess of 50 percent of the replacement costs of the existing facility would be controlled to meet the requirements of the Code. The kilns could be replaced with kilns of the same size without controls, provided that the cumulative cost of replacement does not exceed 50 percent replacement cost of the facility;

3. Husky Industries will submit annual economic data on the feasibility of controlling the existing kilns with afterburners;

4. Husky will continually review the control technology for charcoal kilns and, if a new economically feasible method becomes available, will evaluate the method, including the possibility of testing the new control technique on one of its existing kilns; and

5. Husky seeks to have a baghouse for its lump charcoal processing area permitted separately.

On November 30, 1984, the Director denied the variance requested but approved a two-year variance from the requirements of Section 3(f) of the Code for kilns in existence as of August 20, 1984, contingent upon Husky submitting complete applications for air permits for the Huntsville and Omaha facilities by February, 1985.

Husky subsequently requested an adjudicatory hearing and Commission review of the Director's decision pursuant to Section 4 of Part III of Regulation No. 8.

On May 7, 1985, an adjudicatory hearing was held. Mr. James McHaney served as the hearing officer. Husky Industries, Inc. was represented at the hearing by Gene Campbell and Gail Campbell and presented testimony and other evidence in support of the variance application. Ellen Carpenter and Phillip Deisch appeared on behalf of the Director and presented testimony and other evidence in support of the Director's decision.

Husky seeks a variance on the basis that the installation of pollution controls on the existing kilns could result in the curtailment and closing of its operations due to economic factors.

Section 82-1939 of Arkansas Statutes Annotated provides that "the Commission may grant specific variances from the particular requirements of any regulation upon such conditions as it may deem necessary to protect the public health and welfare if it finds that strict compliance with such regulation is inappropriate ... because strict compliance would result in substantial curtailment or closing down of a business... ." However, that section further provides that in determining whether or not a variance shall be granted, the Commission shall weigh the equities involved and the relative advantages and

disadvantages to the residents and the occupation and activity affected.

Based upon the evidence presented at the hearing, the Commission on Pollution Control and Ecology hereby issues the following Findings of Fact and Order:

II. FINDINGS OF FACT AND ORDER

1. Husky has never had and has not applied for a permit under the Arkansas Water and Air Pollution Control Act to operate its charcoal kilns at either its Omaha or Huntsville facilities.

2. The National Ambient Air Quality Primary Standards (NAAQS) are designed to protect public health and the Secondary Standards are designed to protect public welfare.

3. A charcoal kiln with no control equipment can be monitored for compliance with NAAQS by a high volume air sampler located downwind of the plant near the plant property line.

4. Husky did not submit any monitoring data on the actual emissions from any of its charcoal kilns for determining compliance with the provisions of the Code or for predicting compliance with the NAAQS.

5. Computer modeling may be used to predict violations of the NAAQS for particulates.

6. Husky, in the materials submitted in support of its variance application, used the emission factor contained in U.S. EPA publication AP-42, 1983, to calculate the estimated emission rate of particulates from its charcoal kilns.

7. Based on the emission inventories submitted by Husky, ADPC&E conducted computer modeling to predict violations of the NAAQS as a result of Husky's operations.

8. The last computer modeling conducted by ADPC&E predicted 13 violations of the NAAQ Primary Standards for particulates with no particulate background assumed and 67 violations of the NAAQ Secondary Standards with no background. With a background of 90 ug/m³ particulates assumed, the modeling predicted 25 violations of the NAAQ Primary Standards and 316 violations of the NAAQ Secondary Standards.

9. An uncontrolled charcoal kiln cannot reasonably be expected to comply with the emission limitations of the Code.

10. Testimony from both parties established that technology does exist for controlling the emissions from charcoal kilns such that they can comply with the visible emission limits of the Code. Therefore, it is not technically infeasible to comply with Section 4 of the Code.

11. The installation and operation of pollution control equipment would be an added cost to Husky's operations; however, it was not established that the cost of such equipment would make Husky's operations unprofitable.

12. Husky's facilities are significant in supporting employment in their areas although the evidence failed to establish reliably the actual extent of Husky's economic input into the community.

13. The record contains evidence of both local citizens' support of Husky's variance request and local citizens concerned with the smoke and particulates emitted from the charcoal kilns. Inspection reports submitted by ADPC&E indicate that the opacity of smoke from a charcoal kiln can range up to 100 percent.

14. Husky has failed to satisfactorily prove the requirements necessary for the Commission to grant Husky's variance from Sections 3 and 4 of the Code. Specifically, Husky has failed to show that the operation of its equipment will not cause violations of the NAAQS and not pose a threat to the public health and welfare. Husky has failed to prove that installation of pollution controls would create an economic hardship to such extent that it could not comply with the requirements of Sections 3 and 4 of the Code within a reasonable period of time.

IT IS, THEREFORE, ORDERED THAT:


1. Husky shall, within forty-five (45) days from the date hereof, submit permit applications and any other information necessary to obtain permits from ADPC&E for all the kilns at each facility located in Omaha and Huntsville. Each kiln at the two facilities shall be ascribed an estimated remaining life to be incorporated into the permit for the purpose of establishing a date of replacement for each existing kiln with a kiln having pollution control equipment.

2. All new kilns installed, or major modifications of existing kilns, at any of Husky's facilities after August 20, 1984, shall comply with all applicable permitting and emission limits of the Arkansas Water and Air Pollution Control Act and regulations promulgated thereunder.

3. Husky is granted a two-year variance beginning July 1, 1985, and extending through July 1, 1987, from the visible emission limits of Section 4 of the Arkansas Air Pollution Control Code. After July 1, 1987, at least one afterburner, or other pollution control equipment approved by the Director of ADPC&E, shall be installed no later than July 1, 1988. At least one afterburner or other approved pollution control equipment shall be installed each year at each facility until all kilns existing prior to August 20, 1984, are controlled by afterburners or other approved pollution control equipment.

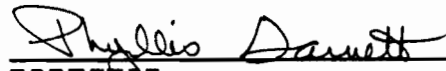
SO ORDERED this 27th day of September, 1985.

ARKANSAS COMMISSION ON POLLUTION
CONTROL AND ECOLOGY



CHAIRMAN

ATTEST:



DIRECTOR

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY
BEFORE THE COMMISSION ON POLLUTION CONTROL & ECOLOGY

HUSKY INDUSTRIES, INC.
Facilities located at Omaha
and Huntsville, Arkansas

APPLICANT

vs.

LIS 85-01

PHYLLIS GARNETT, Director of
Department of Pollution Control
and Ecology of the State of
Arkansas

RESPONDENT

POST HEARING BRIEF OF RESPONDENT

PHYLLIS GARNETT, DIRECTOR OF ARKANSAS DEPARTMENT OF POLLUTION
CONTROL & ECOLOGY

I. PLEADINGS

This proceeding was initiated under the variance provision of the Arkansas Water and Air Pollution Control Act (Ark. Stat. Ann. Section 82-1939). On August 13, 1984, Husky Industries, Inc. (Husky) submitted a request for a variance from Section 3 (Permits) and Section 4 (Visible Emissions) of the Arkansas Air Pollution Control Code to the Director of the Arkansas Department of Pollution Control and Ecology (ADPC&E). Husky's specific request is as follows:

- 1) A variance be granted from Sections 3 and 4 of the Air Pollution Code for its existing kilns at Omaha and Huntsville;
- 2) After August 20, 1984, new kilns at a facility, or modification of the facility which would result in a net increase of emissions, or which would constitute expenditures in excess of 50% of the replacement costs of the existing facility would be controlled to meet the

FILED 9-13-85 *Marilyn Wood*
SECRETARY, ARKANSAS COMMISSION ON POLLUTION
CONTROL AND ECOLOGY, 8001 NATIONAL DRIVE,
LITTLE ROCK, ARKANSAS 72209

requirements of the Code. The kilns could be replaced with kilns of the same size without controls, provided that the cumulative cost of replacement does not exceed 50% replacement cost of the facility;

3) Husky Industries will submit annual economic data on the feasibility of controlling the existing kilns with afterburners;

4) Husky will continually review the control technology for charcoal kilns, and if a new economically feasible method becomes available, will evaluate that method, including the possibility of testing the new control technique on one of its existing kilns; and

5) Husky seeks to have a baghouse for its lump charcoal processing area permitted separately.

The Director, stating her reasons, denied the variance request on November 30, 1984. The Director, however, approved a two year variance from Section 3(f) of the Code if Husky submitted complete and proper permit applications for its two facilities by February 1, 1985. Husky did not submit permit applications for the charcoal kilns at its facilities. Pursuant to Section 4 of Part III of Regulation No. 8, Husky filed a formal request for an adjudicatory hearing to submit evidence on whether the Commission should reverse or modify the Director's decision. Pre-hearing briefs were filed by both parties and an adjudicatory hearing was held on May 7, 1985 before James McHaney, Hearing Officer.

II. THE LAW

Husky seeks a variance on the ground that compliance with the regulations would create an economic hardship. Section 82-1939 of Arkansas Statutes provides that the Commission may grant a variance from the regulations upon such conditions as it deems necessary to protect the public health if it finds that strict compliance with the regulations is inappropriate because strict compliance would result in substantial curtailment or closing down of a business. However, that provision also requires the Commission to weigh the equities involved and the relative advantages and disadvantages to the residents and the occupation and activity affected.

III. DISCUSSION

Husky is in effect requesting this Commission to adopt that portion of Missouri's regulations exempting charcoal kilns from compliance with the process weight/particulate emission limits until 50% of the existing facilities' replacement costs have been expended on building new or replacement kilns. Mr. Harvey Shell, Husky's engineer, indicated that under Husky's variance request none of the existing forty-one Missouri type charcoal kilns would be permitted or have pollution control equipment installed upon them. Further, no replacement kilns would be permitted or have pollution control equipment installed until after 50% of the existing facilities' replacement costs have been expended on building the replacement kilns. The replacement kilns built before the 50% figure is arrived at would not be permitted or

have pollution control equipment installed on them until they are rebuilt.

According to ADPC&E Exhibit 22, pages 2-3, a charcoal kiln has an average life span of fifteen to twenty-five years. Mr. Leon Gideon testified on behalf of Husky that the seventeen kilns at Omaha and the twenty four kilns at Huntsville have a useful remaining life of ten years. (Gideon TR-8). It could be ten years before the forty-one existing kilns are replaced. The existing kilns which are then rebuilt or replaced before the 50% figure is reached would, under Husky's variance request, be allowed to operate another fifteen to twenty-five years without a permit or pollution control equipment. In other words, it could be more than thirty-five years before all of Husky's kilns are operating with permits and pollution controls. These time frames are wholly unreasonable even absent the knowledge that the Omaha facility has already operated twenty-five years and the Huntsville facility nineteen years without permits or pollution control equipment. (Gideon, TR-6).

Section 82-1938(b) of the Arkansas Statutes provides that it shall be unlawful "to construct, install, use or operate any source capable of emitting air contaminants without having first obtained a permit to do so, if required by the regulations of the Commission,...." Section 3(b) of the Code provides that "after July 30, 1969, no person shall cause or permit the installation, alteration or replacement of equipment or control apparatus...without first obtaining a permit from the Department." Section 3(f) provides that "no permit shall be

granted unless the applicant shows to the reasonable satisfaction of the Director" that the equipment shall be operated without causing a violation of the provisions of the Code or violations of the National Ambient Air Quality Standards (NAAQS). Any violation of the NAAQS should not be allowed to continue. (Mitchell, T-113). Husky argues that air monitoring data has not shown the NAAQS to be violated by charcoal kiln emissions and Husky relies on the monitoring data from Harrison, Arkansas and the fact that the "attainment area" designation (that is, an area designated as in compliance with the NAAQS), has not been changed. However, John Mitchell, Chemist Supervisor of the Air Program and Technical Services Branch, was personally involved in the designation of the entire state as an attainment area for particulate matter and has considerable experience in the Air program and with air monitoring. Mr. Mitchell testified that there could be localized violations of the NAAQS without having to change the area's classification as an attainment area. (Mitchell, T-97). Mr. Mitchell also testified that a charcoal kiln with no pollution control equipment could only be monitored for compliance with the NAAQS by a high volume air sampler located downwind of the plant near the plant property line. (Mitchell, T-100). He further testified that the high volume air sampler at Harrison would not provide data that could be used to determine the compliance of Husky's Omaha facility with the NAAQS because it is too far away and in the wrong direction (i.e. upwind). (Mitchell, T-101). It was Mr. Mitchell's opinion that when more than one Missouri type charcoal kiln is in operation it would cause violations of the NAAQS. (Mitchell, T-99). Because

Husky has not submitted any monitoring data to verify the status of compliance of the charcoal facilities with the NAAQS, dispersion modeling was done by ADPC&E to predict violations of the NAAQS. (Porta, T-117, 124). Husky's witness, Mr. Harvey Shell, points out that the modeling is a mathematical way of calculating the impact that emissions from the stack are going to have at a ground level. (Shell, T-22). Mr. Shell stated that Husky doesn't disagree that much with the modeling and the methodology ADPC&E used but does disagree with the input to the modeling. (Shell, T-27). Mr. Shell then discussed two points of disagreement with the input in the last modeling conducted by ADPC&E. The first point "which is a minor disagreement," with regard to the meteorological data, is that a screening process that disallows the impact from wind calms was not run. (Shell, T-21). Mr. Porta, ADPC&E's engineer, testified that a review of the meteorological data on days with high values showed that there were one or two days over the entire five year set that had calms, but there were many others without calms which still showed violations. In essence, there were not enough days with wind calms where the high values were predicted to invalidate the data. (Porta T-130).

Mr. Shell's second point for disagreement was the use of the emission factor contained in USEPA Publication, AP-42. The emission factor is used to calculate the emission rate. (ADPC&E Exhibit 12, Shell T-26). The emission factor and emission rate used in the modeling were taken from the emission inventories submitted by Husky to ADPC&E (Porta T- 120, 121, 131). Those

emission inventories were submitted by Husky as support for their variance request. ADPC&E Exhibit 15 contains copies of the cover letter and emission inventories submitted by Husky to ADPC&E. The cover letter from Shell Engineering dated March 8, 1984 states, "All emissions were calculated using the most recent emission factor figures presented in the publication "Compilation of Air Pollutant Emission factors, "published by the United States Environmental Agency, May 1983 Edition Supplement Number 14, page 5. 4-3 (AP-42)." A footnote on the emission inventories cites the AP-42 emission factors and a production rate of 6600 tons. The emission inventories show that Husky reported an estimated emission rate of 200 lb/hr for particulates. Based on this data, the computer modeling predicted with no background, 13 violations of the NAAQ Primary Standards and 67 violations of the Secondary Standards. With a background of 90 mg/m³, the modeling predicted 25 violations of the Secondary Standards (Porta, T-123-124; ADPC&E Exhibit 8). The primary standards are designed to protect the public health and the Secondary Standards are designed to protect the public welfare. (Porta T-125). Husky, through Mr. Shell, objected at the hearing to the use in the computer modeling of the very emission factors and emission rates they provided ADPC&E in the emission inventories submitted in support of their variance request. After the modeling predicted violations of the NAAQS, Husky decided that the information they submitted is not reliable. Husky argued at the hearing that a smaller emission factor should be used. Mr. Shell stated, when discussing the emission factor Husky proposes, "so we picked a number out of the air, and said 20, which is as good a guess as

EPA made when they said 260." (Shell T-48). However, Husky's own Exhibit 6, at page 7 which discusses mass emission factors developed during source testing states "these methods yield total emission factors ranging from 126.4 to 160.5 lb. of emissions per ton of charcoal produced." This statement supports the AP-42 emission factor figures used by Husky in its emission inventories and by ADPC&E in its modeling. Testimony was presented by ADPC&E that Husky's proposed emission factor of 20 was not reasonable and no data has been seen to support dropping the emission factor by an entire order of magnitude. (Porta TR-134). According to Husky, one of the bases for using a lower emission factor is that other types of operations, such as open burning of wood, have lower emission factors. (Shell T-22-23). However, Mr. Mitchell testified that there is a difference in the proportion of combustion products resulting from open burning as opposed to burning wood in a charcoal kiln under starved air conditions. (Mitchell, T-98). Mr. Porta also testified that there is a difference between open burning and burning wood in a charcoal kiln and that extrapolating the emission factor from one to the other is not valid. (Porta T-140).

The modeling conducted by ADPC&E predicts violations of the NAAQS as a result of Husky's operations. These standards are designed to protect the public health and welfare. The prediction of multiple violations of the NAAQS as a result of Husky's operations must be given serious consideration by the Commission because Ark. Stat. Ann. Section 82-1939 provides that the Commission may grant a variance upon such conditions as it deems

necessary to protect the public health and welfare. Husky's variance request contemplates a variance from the regulations that would extend over many years. The granting of such a variance, in light of the evidence concerning the NAAQS, would not be in the public's best interests.

Two problems for Arkansas' industries arise as a result of the prediction of violations of the NAAQS by Husky's operations. First, Section 3(f) of the Code states that no permit shall be granted unless the applicant shows that the equipment will be operated without causing the NAAQS to be exceeded. The evidence indicates that Husky's operations will cause localized violations of the NAAQS. This means that any new industry interested in locating in the same area which would impact that area could not obtain a permit from ADPC&E because Husky's operations already exceed the NAAQS. Therefore, granting Husky's variance request would not only have an adverse impact on the public health and welfare but on any future industries interested in settling in that area as well.

Secondly, Mr. Wilson Tolefree, Chief of the Air Division, also pointed out that the Code was a mechanism used to demonstrate to the EPA that the State of Arkansas had authority to enforce the federal regulations which was the basis for approving the State Implementation Plan (SIP). If a variance is granted from the provisions of the Code requiring the demonstration of compliance with the NAAQS to sources which are regulated by the SIP, as charcoal kilns are, where violations of the NAAQS have been demonstrated, the EPA could revoke the SIP and begin enforcing

their own program in this State. Such action would impact almost every industry in this State. (Tolefree T-156).

Husky is seeking a variance from Section 4 of the Code which establishes the visible emission limits of 40% opacity for existing equipment (Section 4(a)(1)) and 20% opacity for new equipment (Section 4(a)(2)). Inspections of Husky's facilities have shown that its kilns, operating without pollution control equipment, have visible emissions ranging anywhere from 60% opacity to 100% opacity (ADPC&E Exhibit 2, 3, 4, 10). Section 4 of the Code provides that an emission limit less stringent than that provided in Section 4(a) may be granted where a petition is filed prior to March 1, 1974 or within six months after commencement of operation of equipment for which a permit has been issued and where the equipment is in compliance with all other provisions of the Code. Granting such a variance requires the Commission to first affirmatively find: 1) full compliance with all other provisions of the Air Code; and 2) full compliance is technically or economically infeasible. Husky is seeking a variance from Section 3 of the Code which requires a permit to be obtained for the installation or modification of equipment after July 30, 1969. Husky has not submitted permit applications for the installation or modification after July 30, 1969 of any of the charcoal kilns at its facilities in Omaha or Huntsville. The facility in Omaha has been in operation twenty-five years and the Huntsville facility has been in operation about nineteen years. Therefore, Husky has failed to petition for a variance from the visible emission limits in accordance with the requirements of

Section 4(e). Mr. John Mitchell testified that, in his opinion, the operation of a single charcoal kiln without pollution control equipment is likely to violate Section 10 of the Code (prohibiting the emission into the atmosphere of contaminants that may deny enjoyment of life or use of property), Section 11 of the Code (fugitive emissions) and Section 7 of the Code (the particulate emission limits) as well as Section 4 of the Code. (Mitchell T-98-99, 103-104). Husky has failed to submit any data evidencing the status of its operations' compliance with the other provisions of the Code. Therefore, Husky has failed to demonstrate, such that the Commission can affirmatively find, that Husky is in full compliance with all other provisions of the Code.

Husky is undoubtedly seeking a variance under Section 82-1939 of the Arkansas Statutes from all the provisions of Section 4 of the Code because Husky cannot meet the requirements specified in Section 4(e) of the Code for obtaining a variance from the visible emission limits. Additionally, the inspection reports previously referred to, reveal that Husky could not operate with only "less stringent opacity limits" as its operations without pollution controls requires a variance constituting an exemption from all opacity limits.

Husky argues that its operations have a direct economic impact in the community. Husky originally stated a figure for the economic impact in the area of \$3 million. Husky Exhibit 6 quotes a figure for the "direct economic input" in the area of \$2 million which appears to correspond to the "Total Expenses" contained in

the "Statement of Earnings" in Husky Exhibit 6. However, the Statement of Earnings does not appear to be an audited statement and its reliability was not established by Husky. That \$2 million figure includes such things as depreciation and payroll taxes. These are questionable items for use in the calculation of the "direct economic input "into the area. Sworn affidavits were also submitted by Husky as evidence of the approximate monetary volume of business transacted between Husky and businesses in Northwest Arkansas. (Husky Exhibit 3). However, of the five witnesses who testified and submitted affidavits, three of the witnesses contradicted their own sworn affidavit concerning the amount of money transacted with Husky. Although the extent of Husky's contribution to the economic well-being of the community has not been substantiated by reliable evidence, it is nonetheless a significant employer in the area.

Considerable evidence was presented by Husky in support of their argument that the installation of pollution controls would result in economic hardship. Various self serving statements made by Husky employees indicated that without the variance, Husky may go out of business. The record reflects that Husky did in fact submit evidence regarding the company's financial position. Most of the testimony regarding the company's financial position was based on the information contained in Husky Exhibit 6 as prepared by their Engineer, Mr. Shell. Husky Exhibit 1 contains a "Statement of Earnings" covering 10 months in 1983 for the Omaha facility. Husky Exhibit 6 contains a "Statement of Earnings" for 1983 and 1984 for both facilities. These "Statements of

Earnings" do not appear to be audited statements. The figures contained in the Statements of Earnings appear to have been provided by Husky's Atlanta office and incorporated by Husky's engineer into Exhibit 6. Again, the reliability of these figures were not established by Husky. The Statement of Earnings in Exhibit No. 6 gave the profits for 1983 and 1984 for both facilities in Arkansas. Exhibit No. 6 also states the losses (based on the earnings for 1983 and 1984) that would have been incurred if pollution control equipment had been installed and operated on the kilns (assuming a seven year life for the afterburners). Although, there is no doubt that the installation and operation of pollution controls will increase the cost of operations, Husky again failed to reliably establish the extent of the impact of the increased costs on its operations. For example, no evidence indicates that Husky took into consideration the tax credits available for the installation of pollution controls into whatever equation was used to calculate the losses, despite testimony that Husky is aware of potential tax credits available for the installation of pollution control equipment. (Sperry TR-19).

Another important matter the Commission should consider when reviewing Husky's argument that the installation of pollution controls would create an economic hardship for the company, concerns the recent and proposed capital outlay for new kilns. Husky has seventeen kilns at its Omaha facility. Inspections revealed that only eight are in operating condition, two of which are only three years old. (ADPC&E Exhibit 3). Husky is requesting

a variance for seventeen kilns at Omaha which would include the nine inoperable kilns. Husky has twenty four kilns at Huntsville. A recent inspection revealed that only thirteen of the kilns are in operating condition, four of which were rebuilt two years ago. (ADPC&E Exhibit 2). Husky's variance request also includes the eleven inoperable kilns at the Huntsville facility. In summary, Husky has recently built or replaced six kilns and obviously intends to rebuild the inoperable kilns. This activity requires a capital outlay. Husky however contends that it has insufficient funds to install and operate pollution control equipment. Based on that contention, Husky requests the Commission on Pollution Control and Ecology to grant a variance from the permitting and visible emission requirements of the Code. It appears that Husky is arguing to this Commission that it only has capital for building new kilns and not any for complying with the regulations.

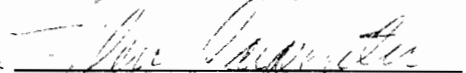
In weighing the relative advantages and disadvantages to the occupation and activity affected, the Commission must consider the distinct economic advantage Husky would obtain if its variance is granted, over the charcoal companies in Arkansas which have installed and are operating with pollution control equipment. ADPC&E Exhibit 19 shows that four other companies in Arkansas are currently operating charcoal kilns with pollution control equipment (afterburners). Husky has failed to provide ADPC&E or the Commission with any evidence which would distinguish it from the facilities which are apparently successfully operating with pollution control equipment.

Section 82-1939 of Arkansas Statutes also directs the Commission to weigh the relative advantages and disadvantages to the residents. The record contains evidence that there are local citizens in support of Husky's variance request and local citizens concerned with the smoke and particulates emitted from the charcoal kilns. Husky Exhibit 2 contains petitions as prepared and provided by Husky's law firm to one of Husky's witnesses for circulation in the community. (Roberts T-61). The record reflects that 150 to 200 names were obtained and although some of the people do not like the smoke, they consider Husky's operations to be an asset to the community (Roberts T-58). ADPC&E Exhibit 1 contains petitions drafted and circulated by Mr. McKinney, a resident of Madison County. Fifty signatures were obtained in a very short time from people expressing a concern for the smoke and particles emitted from the charcoal kilns. Here again the Commission should consider the computer modeling which predicted multiple violations of the NAAQS. The NAAQS are designed to protect the public health and welfare. Also, the inspection reports submitted by ADPC&E indicate that the opacity of the smoke from the charcoal kilns range from 60 to 100 percent. There is evidence in the record reflecting undoubtedly an adverse impact on the local residents resulting from the operation of Husky's forty-one unpermitted and uncontrolled charcoal kilns. This must be taken into consideration by the Commission when reviewing Husky's variance request.

IV. CONCLUSION

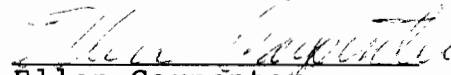
Husky has failed to present sufficient evidence at the hearing to warrant reversing the Director's decision. Husky has failed to present to the Commission sufficient reliable evidence showing that the installation and operation of pollution control equipment would result in substantial curtailment or closing down of a business. The evidence shows that Husky's operation of forty-one kilns at its two facilities in Omaha and Huntsville present a threat to the public health and welfare. Additionally, the granting of Husky's variance would adversely affect other industries interested in settling in the community and other competing charcoal companies currently operating with pollution control equipment. It is not in the public's best interest for the Commission to grant Husky's variance request which proposes a schedule for the installation of pollution control equipment over so many years. Any variance granted to Husky by the Commission should be limited in time and incorporate a reasonable time schedule for the installation of pollution controls thereby allowing Husky to continue operations. The Order proposed by ADPC&E contains a reasonable variance and schedule for the installation of pollution controls on Husky's kilns.

ARKANSAS DEPARTMENT OF
POLLUTION CONTROL & ECOLOGY

BY: 
Ellen Carpenter
P. O. Box 9583
Little Rock, AR 72219
(501) 562-7444

CERTIFICATE OF SERVICE

I, Ellen Carpenter, of Arkansas Department of Pollution Control and Ecology, hereby certify that I have served a copy of the foregoing document by mailing a true and correct copy to Ms. Gail Campbell, Walker & Campbell, P. O. Box 729, Harrison, Arkansas 72602, on the date of filing of this document, this 13th day of September, 1985.


Ellen Carpenter