

ILLINOIS POLLUTION CONTROL BOARD  
September 1, 1994

J.M. SWEENEY CO., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 93-257  
 ) (Variance)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ROBERT C. OSMUNDSEN APPEARED ON BEHALF OF PETITIONER;

RACHEL L. DOCTORS APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon a petition for variance filed by J.M. Sweeney Co. (Sweeney) on December 17, 1993. Sweeney seeks variance from the requirement of 35 Ill. Adm. Code 218.586 that Stage II vapor recovery equipment be installed by November 1, 1993. The facility in question is located at 1557 S. Central Avenue, Cicero, Illinois.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1992).) The Board is charged there 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 Illinois Environmental Protection Agency (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).)

The Agency filed its variance recommendation (Rec.) on January 20, 1994. The Agency recommended grant of the variance as requested by Sweeney, but with a shorter term than proposed by Sweeney.

Hearing was held on July 14, 1994 in Chicago, Illinois, before hearing officer Richard T. Sikes. No witnesses were called, although the prepared testimony of Terry A. Sweitzer, Manager of the Agency's Air Monitoring Section and Administrator of the Illinois Stage II Vapor Recovery Program, was admitted into the record as respondent's exhibit #1 (Resp. Exh. 1). No members of the public attended the hearing.

On August 11, 1994 the parties filed a joint stipulation of agreement (Stip.) as to the timing and conditions of termination of the requested variance<sup>1</sup>.

As presented below, the Board finds that Sweeney has met its burden of demonstrating that immediate compliance with the regulation at issue would impose an arbitrary or unreasonable hardship. Accordingly, the variance request will be granted.

#### BACKGROUND

35 Ill. Adm. Code 218.586 establishes air emission control requirements applicable to motor vehicle fueling operations (MVFO) located in the Chicago ozone nonattainment area. Among these is a requirement that certain MVFOs install Stage II vapor recovery equipment no later than November 1, 1993. (Section 218.586(d)(2).) It is uncontested that this provision applies to Sweeney's facility at 1557 S. Central Avenue in Cicero.

Stage II vapor recovery equipment is designed to capture hydrocarbon vapors during the fueling of vehicle tanks. Vehicle fuel emissions consist of gasoline vapors displaced from the motor vehicle tank by dispensed liquid gasoline as the tank is filled. The Stage II equipment captures vapors that exit the vehicle's fuel fillpipe, thereby preventing the escape of the vapors into the atmosphere. The captured vapors flow through a vapor passage in the fuel pump nozzle into a vapor hose and then through vapor lines to the underground storage tank.

As such, Stage II vapor recovery equipment is part of both the dispensing and tanking systems of an MVFO.

Sweeney contends that it had initiated efforts to achieve compliance by the November 1, 1993 compliance date. (Pet. at ¶10; Tr. at p. 5.) Among these efforts was a site evaluation conducted by a geophysical consulting firm. (Pet. at ¶11.) On August 30, 1993 the consulting firm informed Sweeney that petroleum contamination likely occurred at the site. (Pet. at ¶12.) On August 31, 1993 Sweeney notified the Illinois Emergency Management Agency (IEMA) of the suspected contamination and of the likely need for remediation. (Pet. at ¶13.) Subsequent on-site soil sampling confirmed that remediation is necessary and that it will require removal of both soil and some of the tanks. (Pet. at ¶14-16; Tr. at p. 7-10.) As of the July 14, 1994 hearing, the full areal extent of the contamination was yet to be

---

<sup>1</sup> The stipulation was characterized by the parties as a "joint motion to extend recommendation time of the variance". To the extent that this filing constitutes a motion to file an amended recommendation and stipulation, the motion is hereby granted.

identified, pending Sweeney's ability to gain access to off-site sampling locations. (Tr. at p. 8-9.)

The Agency agrees that significant underground contamination exists at the site and remediation of this contamination is a prime concern. (Resp. Exh. 1 at p. 2.)

Grant of the instant variance request would allow Sweeney to progress with the remediation prior to installation of the Stage II equipment.

#### HARDSHIP AND ENVIRONMENTAL IMPACT

Sweeney's contends that requiring installation of the Stage II equipment prior to remediation would cause a financial hardship. Sweeney estimates that the Stage II equipment will cost \$80,000. (Pet. at ¶19; Tr. at p. 10-11.) If installed prior to remediation, some of the Stage II equipment will have to be dismantled and removed during the remediation. Sweeney estimates the cost of the work and materials thus "wasted" during this short-term installation period to be \$50,000 to \$60,000. (Id.)

There are no control measures that could be temporarily imposed that would achieve immediate compliance in a manner less costly than Stage II implementation. (Pet. at ¶22.) Nevertheless, the parties stipulate that, unless the Stage II equipment is installed by March 31, 1995, the agreed upon date of termination of the variance, Sweeney will not dispense gasoline until the installation is complete. (Stip. at ¶4.)

The Agency agrees that Sweeney would experience a hardship if it were required to install a Stage II system only to subsequently have it dismantled to allow for soil remediation. (Resp. Exh. 1 at p. 3.) The Agency adds that in particular it is likely that the underground vapor return lines to the gasoline storage tanks would have to be substantially redone, and that the costs of these lines are in agreement with the figures presented by Sweeney. (Id.)

Sweeney contends that the environmental harm that would be occasioned by delaying installation of the Stage II equipment would be negligible. In support of this position, Sweeney observes that according to the American Petroleum Institute emissions from a facility like Sweeney's are estimated to be 11.7 pounds of volatile organic material (VOM) per 1,000 gallons of fuel dispensed. (Pet. at ¶8; Pet. Exh. 1.) Sweeney dispenses an average of 108,000 gallons per month, and thus is estimated to produce VOM emissions of 1,264 pounds per month or 0.2 tons per day. (Pet. at ¶8, ¶21.) Conversely, the total 1990 Chicago area VOM emissions were estimated to be 1453.69 tons per day;

Sweeney's emissions are approximately .0014 percent of this total. (Pet. at ¶21.)

The Agency agrees that the impact of delayed compliance would be small. (Resp. Exh. 1 at p. 2.) The Agency adds, however, that the Chicago area is still experiencing exceedences of the ozone ambient air quality standard, and that VOM emissions are a precursor to ozone formation; even small VOM emissions contributed to the ozone exceedences. (Id.)

#### CONCLUSION

The Board agrees with the Agency that Sweeney has demonstrated that installation of the Stage II equipment without allowing for a reasonable time to complete remediation would constitute a hardship for Sweeney. The Board also finds that, so long as the remediation is undertaken expeditiously, the accumulated environmental harm will be small and that the hardship thereby rises to the level of arbitrary or unreasonable hardship. On this basis, the Board will grant the requested relief with conditions.

The principal condition is that Sweeney must have the necessary Stage II equipment installed by March 31, 1995. As the parties observe in their August 11, 1994 stipulation, if installed by March 31, 1995, Sweeney will be in compliance at the onset of the 1995 ozone season<sup>2</sup>. (Stip. at ¶4.) This will lessen the environmental harm that would otherwise occur if the variance extended into the 1995 ozone season.

The Board also accepts as a necessary condition Sweeney's commitment to suspend dispensing gasoline after March 31, 1995 for any time during which "completion of installation" of Stage II equipment has not yet been achieved. "Completion of installation" is defined at 35 Ill. Adm. Code 218.586(a)(3) as the successful passing of at least one of several specified Stage II installation tests.

#### ORDER

J.M. Sweeney Co. is hereby granted variance from 35 Ill. Adm. Code 218.586 for its facility located at 1557 S. Central Avenue, Cicero, Illinois, subject to the following conditions:

- 1) Variance expires on March 31, 1995;

---

<sup>2</sup> The ozone season is defined by the United States Environmental Protection Agency as the period from April 1 through October 31.

- 2) Petitioner shall notify the Illinois Environmental Protection Agency of the installation of Stage II equipment by letter posted to:

Mr. Terry Sweitzer, P.E.  
 Manager, Air Monitoring Section  
 Division of Air Pollution Control  
 P.O. Box 19726  
 Springfield, Illinois 62794-9276;

- 3) Should petitioner have failed to achieve completion of installation of Stage II vapor collection and control equipment, as defined at 35 Ill. Adm. Code 218.586(a)(3), by April 1, 1995, petitioner shall cease to dispense gasoline from all affected dispensing lines until such time as completion of installation is achieved.

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

Rachel L. Doctors  
 Division of Legal Counsel  
 Illinois Environmental Protection Agency  
 2200 Churchill Road  
 Post Office Box 19276  
 Springfield, Illinois 62794-9276

a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being 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 rules from which variance was granted. The form of said Certification is as follows:

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 93-257, September 1, 1994.

\_\_\_\_\_  
 Petitioner

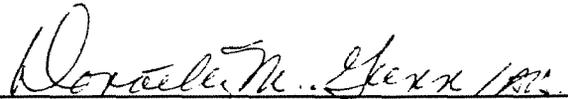
\_\_\_\_\_  
 Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) 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 opinion and order was adopted on the 13<sup>th</sup> day of September, 1994 by a vote of 6-0.

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