

ILLINOIS POLLUTION CONTROL BOARD
February 16, 1995

DOROTHY B. KINDY, d/b/a)	
REX'S SERVICE STATION, INC.,)	
)	
Petitioner,)	PCB 94-320
)	(Variance - Air)
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

DOROTHY KINDY APPEARED ON BEHALF OF PETITIONER;

BONNIE SAWYER APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a petition for variance (Pet.) filed by petitioner Dorothy B. Kindy, d/b/a Rex's Service Station, Inc. (Kindy), on November 1, 1994. Kindy seeks a 9-month variance from the Stage II gasoline vapor recovery requirements, set forth in 35 Ill. Adm. Code 218.586, for its service station located at 469 Sunset Ridge Road, Northfield, Illinois. The term of the requested variance is from November 1, 1994 to July 1, 1995.

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 therein 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 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 December 12, 1994. The Agency agrees that an unreasonable hardship would be imposed on petitioner in the absence of the requested relief, and recommends that the variance be granted, subject to certain conditions.

A hearing was held in this matter on December 22, 1994 before hearing officer David Krause. Linda C. Kindy testified on behalf of petitioner, and Terry A. Sweitzer, Manager of the Air Monitoring Section, testified on behalf of the Agency. By agreement of the parties, no briefs were filed.

As presented below, the Board finds that petitioner has met its burden of demonstrating that immediate compliance with 35 Ill. Adm. Code 218.586(d)(3) would impose an arbitrary or unreasonable hardship upon petitioner. The variance request is therefore granted, subject to certain conditions recommended by the Agency.

BACKGROUND

35 Ill. Adm. Code 218.586 establishes air emission control requirements applicable to motor vehicle fueling operations located in the Chicago ozone non-attainment area. The purpose of the requirements is to limit emissions of gasoline vapors into the air. Gasoline vapors are volatile organic materials (VOM) that contribute to the formation of ozone. Among the regulations is a requirement that fueling operations dispensing between 10,000 and 100,000 gallons per month install Stage II vapor recovery equipment no later than November 1, 1994. (Section 218.586(d)(3).) Petitioner dispenses 15,500 gallons per month, and it is uncontested that this provision applies to petitioner's facility. (See Rec. at 4, and Rec. Ex. 2.)

Stage II vapor recovery equipment is designed to capture VOM emissions during the fueling of vehicle tanks. The 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.

REQUESTED RELIEF AND HARDSHIP

Kindy contends that requiring immediate installation of the Stage II equipment would cause it an arbitrary and unreasonable hardship. Kindy is planning to completely rebuild its facility. (Pet. at 3.) Kindy alleges that it originally planned to begin reconstruction in September, 1994, but, due to circumstances beyond its control, construction was delayed and will begin in March, 1995. (*Id.*) Kindy contends that requiring it to install a Stage II vapor recovery system prior to its rebuild of the site would impose an arbitrary or unreasonable hardship, since the system would have to be completely dismantled in order to complete the rebuilding project, with a large portion of the work and material wasted. (*Id.*) Petitioner alleges that the station will be closed for construction beginning in March 1995 (Tr. at 4), and will only be reopened in July 1995 (Pet. at 3), after Stage II equipment is installed and operational.

In its recommendation, the Agency estimates that, based on petitioner's stated average monthly throughput of 15,500 gallons

of gasoline, the VOM emissions from the facility are 181.35 pounds per month. (Agency Rec. at 4.) The Agency states that, because the station will be closed for construction in March 1995, and reopened in July 1995 when the Stage II vapor recovery system is operational, there will be no VOM emissions during the ozone season. (Id.) The Agency has proposed several conditions to be imposed on the variance to insure that petitioner complies with the above-stated timeframes, and to insure that petitioner does not begin dispensing gasoline after reconstruction until Stage II equipment is operational. (Rec. at 5.)

Furthermore, since petitioner will only be dispensing gasoline without Stage II equipment during cold weather, the Agency states that emissions will have a lesser impact on the environment. (Rec. at 4.) The Agency therefore believes that the environmental impact of granting the requested relief will be minimal. (Id.) The Agency also agrees that requiring petitioner to comply with the November 1, 1994 date will impose an arbitrary and unreasonable hardship on petitioner, since the Stage II equipment would need to be completely dismantled, only to be reinstalled at the same location shortly thereafter. (Id.)

CONSISTENCY WITH FEDERAL LAW

The Agency believes the variance will not interfere with attainment of the National Ambient Air Quality Standard for ozone in the Chicago area, and will not be inconsistent with the Clean Air Act. (Rec. at 5.) The Agency therefore believes that the variance will be consistent with federal law.

CONCLUSION

In determining whether any variance is to be granted, the Act requires the Board to determine whether the petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or reasonable hardship upon the petitioner (415 ILCS 5/35(a) (1992)). The burden is on the petitioner to demonstrate that the claimed hardship outweighs the public interest in attaining compliance with regulations designed to preserve the environment and protect human health (Willowbrook Motel v. IPCB (1985), 135 Ill.App.3d 343, 481 N.E.2d 1032).

The Board finds that petitioner has made such demonstration, and therefore the immediate installation of the Stage II equipment would constitute an arbitrary and unreasonable hardship for petitioner. The Board therefore grants the requested variance, subject to the conditions contained in the order below.

Kindy has requested that the term of the variance begin November 1, 1994. It is well established practice that the term of a variance begins on the date Board renders its decision,

unless unusual or extraordinary circumstances are shown. (See, e.g. DMI, Incl v. IEPA, PCB 90-227, 128 PCB 245 - 249, December 19, 1991.) Given the fact that Kindy is totally rebuilding the site, and given the absence of uncontrolled emissions during the ozone season, the Board finds that the instant circumstances are sufficiently unusual to warrant the short retroactive start of the variance requested by Kindy and recommended by the Agency.

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

ORDER

- A. Dorothy Kindy d/b/a Rex's Service Station, Inc. is hereby granted a variance from 35 Ill. Adm. Code 218.586(d)(3) as it pertains to the requirement for Stage II gasoline vapor recovery equipment at its facility located at 469 Sunset Ridge Road, Northfield, Illinois, subject to the following conditions:
1. The variance begins on November 1, 1994 and expires on July 1, 1995.
 2. The station will cease dispensing gasoline by April 1, 1995.
 3. The station will not resume dispensing gasoline until Stage II equipment is operational.
 4. If the station completes reconstruction prior to the end of the variance period, the station will only resume gasoline dispensing operations when the Stage II equipment is operational.
 5. Dorothy Kindy d/b/a Rex's Service Station, Inc. shall notify the Agency of the installation of any Stage II equipment within 14 days after its installation. Notification shall include the address of the facility. Such notice shall be sent to:

Mr. Terry Sweitzer
 Illinois Environmental Protection Agency
 Bureau of Air
 P.O. Box 19276
 Springfield, Illinois 62794-9276

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, Dorothy Kindy d/b/a Rex's Service Station, Inc. shall execute and forward the attached Certificate of Acceptance and Agreement to:

Bonnie Sawyer
Division of Legal Counsel
Illinois Environmental Protection Agency
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

Once executed and received, the Certificate of Acceptance and Agreement shall bind petitioner to all the 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 the 45 days renders this variance void. The form of said Certification shall be 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 94-320, February 16, 1995.

Petitioner

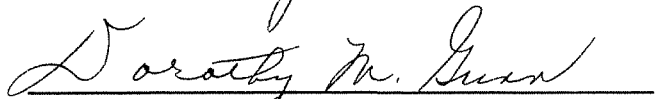
Authorized Agent

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 16th day of February, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board