

ILLINOIS POLLUTION CONTROL BOARD  
February 16, 1995

EMRO MARKETING COMPANY )  
(Monee Facility), )  
 )  
Petitioner, )  
 )  
v. ) PCB 94-322  
 ) (Variance - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

JOSE L. GONZALEZ APPEARED ON BEHALF OF PETITIONER;

BONNIE R. SAWYER APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flema1):

This matter comes before the Board upon a petition for variance filed by Emro Marketing Company (Emro) on November 4, 1994. Emro seeks variance from the Stage II vapor recovery (Stage II) compliance date of November 1, 1994 found at 35 Ill. Adm. Code 218.586(d)(3). The facility at issue is located at 6002 Monee/Manhattan Road, Monee, Illinois. The term of the requested variance is from November 1, 1994 to April 1, 1995<sup>1</sup>.

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 9, 1995. The Agency recommends grant of the variance with conditions. Emro agrees to accept the conditions recommended by the Agency. (Tr. at p. 6.)

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<sup>1</sup> Emro originally requested that the variance extend until August 1, 1995. (Pet. at ¶1.) At hearing Emro acceded to the Agency's recommendation that the variance extend only until April 1, 1995. (Tr. at p. 6.)

Hearing was held on January 23, 1995 in Monee, Illinois, before hearing officer Deborah L. Frank. Emro presented the testimony of Ronald G. Schumann, Manager of Environmental and Maintenance for Emro's Western Area. The Agency presented the testimony of Terry A. Sweitzer, Manager of the Agency's Air Monitoring Section and Administrator of the Illinois Stage II Vapor Recovery Program. No members of the public attended the hearing.

As presented below, the Board finds that Emro 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, subject to conditions as discussed below.

#### 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. 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 in the lower atmosphere. Limiting emissions of VOM is one of the methods for controlling unwanted ozone formation.

Among the MVFO regulations is a requirement that certain MVFOs install Stage II vapor recovery equipment no later than November 1, 1994. (Section 218.586(d)(3).) It is uncontested that this provision applies to Emro's Monee facility.

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.

Emro operates 176 retail MVFOs in Illinois. One of these is the existing Monee facility. (Pet. at ¶7.) However, Emro intends to close this existing facility and reconstruct a new facility at the same site. (Tr. at p. 13.) The reconstruction has begun, and is anticipated to continue into the 1995 construction season. (Id.) Emro contends that requiring installation of Stage II equipment prior to the reconstruction would constitute an arbitrary or unreasonable hardship, and hence that variance should be granted.

HARDSHIP AND ENVIRONMENTAL IMPACT

Emro contends that requiring installation of the Stage II equipment prior to reconstruction of the Monee facility would lead to a financial hardship. The reconstruction will include removal and replacement some of the existing storage and dispensing equipment, including Stage II equipment. (Tr. at p. 16-17.) Emro estimates that the cost of Stage II equipment for the Monee facility is approximately \$35,000. (Pet. at ¶10.) If installed prior to reconstruction, some of this Stage II equipment will have to be dismantled and removed during the reconstruction. Emro estimates the cost of the work and materials thus "wasted" during this short-term installation period to be \$30,000. (Id.; Tr. at p. 15.) The Agency agrees with this analysis. (Tr. at p. 25.)

Emro contends that 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 ¶13; Tr. at p. 17.)

Emro contends that the environmental harm that would be occasioned by delaying installation of the Stage II equipment would not be significant. (Petition at ¶8, 12.) Emro also agrees to cease dispensing gasoline at the Monee facility on or before April 1, 1995, (Tr. at p. 14); therefore Emro would not be operating the facility during any of the 1995 ozone season<sup>2</sup>.

The Agency observes that if the Monee facility is closed on or before April 1, 1995 and only reopened after Stage II equipment is installed, the environmental impact resulting from granting this variance should be minimal. (Rec. at ¶14.) The Agency also observes that because there would be no uncontrolled VOM emissions during the ozone season, attainment of the National Ambient Air Quality Standard for ozone in the Chicago area should not be notably hampered by grant of the variance. (Rec. at ¶17.)

The Agency, in sum, believes that Emro has demonstrated arbitrary or unreasonable hardship, and that the variance should therefore be granted subject to conditions that limit uncontrolled emissions during the ozone season. (Tr. at p. 25.)

CONCLUSION

The Board agrees with the Agency that Emro has demonstrated that immediate installation of the Stage II equipment would constitute a hardship for Emro. The Board also finds that, so

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

long as the installation 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 conditions are that Emro will close its Monee facility on or before April 1, 1995, and that it will not reopen the station to dispense gasoline until Stage II vapor recovery equipment is operational. These conditions have been requested by the Agency (Rec. at ¶19), and agreed to by Emro (Tr. at 6). The Board finds that these conditions are necessary.

As regards the beginning date for the variance, the Board notes that it is well established practice that the term of a variance begins on the date the Board renders its decision, unless unusual or extraordinary circumstances are shown. (See, e.g., DMI, Inc. v. IEPA, PCB 90-227, 128 PCB 245-249, December 19, 1991.) Here Emro requests that start of the variance be retroactive to November 1, 1994. 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 Emro and recommended by the Agency.

Lastly, the Board notes that the Agency requests that the Board use a form of the certificate of acceptance that is different from the traditional certificate. The Board declines this request for reasons addressed in a separate order of this date. (See The UNO-VEN Company v. IEPA, PCB 94-282, slip op. February 16, 1995.)

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

#### ORDER

Emro Marketing Company is hereby granted variance from 35 Ill. Adm. Code 218.586 for its facility located at 6002 Monee/Manhattan Road, Monee, Illinois, subject to the following conditions:

- 1) The term of the variance is for the five-month period from November 1, 1994 to April 1, 1995.
- 2) Emro shall close the facility at issue on or before April 1, 1995. Emro may not reopen the facility for the purposes of dispensing gasoline until Stage II vapor recovery equipment is installed and operational.

- 3) In the event that Emro is unable to pursue the reconstruction plans outlined in its petition in this matter, Emro shall install Stage II vapor recovery equipment at the facility in question within 30 days of the abandonment of the reconstruction plans, and in no case may Emro dispense gasoline after April 1, 1995 unless the Stage II vapor recovery equipment has been installed and is operational.
- 4) Petitioner shall notify the Illinois Environmental Protection Agency of the installation of any Stage II vapor recovery with 14 days of the installation. Notice must include the address of the facility and be by letter posted to:

Mr. Terry Sweitzer, P.E.  
Manager, Air Monitoring Section  
Division of Air Pollution Control  
Illinois Environmental Protection Agency  
P.O. Box 19726  
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 petitioner shall execute and forward to:

Bonnie R. Sawyer  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19726  
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 94-322,  
February 16, 1995.

\_\_\_\_\_  
Petitioner

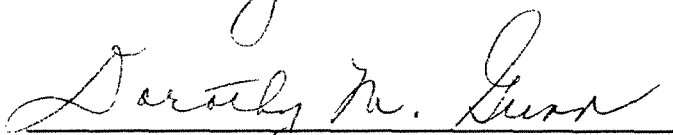
\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
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 16<sup>th</sup> day of February, 1995 by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board