

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

CLARK OIL REFINING AND MARKETING,)	
)	
Petitioner,)	
)	
v.)	PCB 95-95
)	(Provisional Variance-Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C. A. Manning):

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), Clark Oil Refining and Marketing (Clark) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow several of Clark's gasoline dispensing operations (service stations) to continue operating even though it did not install operational vapor recovery equipment by the expiration of a prior provisional variance on January 29, 1995.

Such request for a provisional variance and the Notification of Recommendation was filed with the Board by the Agency on Tuesday, March 14, 1995. On March 15, 1995, Clark filed a response requesting that variance commence January 30, 1995, rather than February 15, 1995 as recommended by the Agency. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

Specifically, the Agency recommends that we grant Clark a forty-five (45)-day provisional variance for thirty-six (36) of its facilities located in six (6) counties in the Chicago metropolitan statistical area from the Stage II vapor recovery requirements, as set forth in 35 Ill. Adm. Code 218.586, for the period beginning February 15, 1995 and continuing for forty-five (45)-days or until the required vapor recovery equipment is installed, whichever comes first.

This recommendation is essentially that the Board extend a previously-granted forty-five (45)-day provisional variance that expired January 29, 1995. The docket number of the previous provisional variance was PCB 95-19, granted on January 11, 1995. That prior provisional variance was itself an extension of the forty-five (45)-day provisional variance granted on December 1,

1994 in PCB 94-350.¹

The Agency's provisional variance recommendation states that Mobil has requested a provisional variance on behalf of numerous of its service stations in the Chicago area, located as follows:

<u>County</u>	<u>Number of Stations</u>
Cook	24
DuPage	2
Kane	2
Lake	5
McHenry	1
Will	2

The addresses of those stations are listed as follows:

<u>County</u>	<u>City or Village</u>	<u>Street Address</u>
Cook	Chicago	5955 W. Higgins Road
Cook	Chicago Heights	2035 S. Western Ave.
Cook	Harvey	16600 S. Halsted
Cook	Oak Forest	15100 S. Cicero
Cook	Calumet City	1210 Burnham Ave.
Cook	South Holland	15 E. Sibley Blvd.
Cook	Lansing	177 Place & Torrance
Cook	Chicago	2954 W. Irving Park Road
Cook	Oak Lawn	6800 W. 95th Street
Cook	Midlothian	14400 S. Crawford
Cook	Hanover Park	6600 Barrington/Maple
Cook	Chicago	2924 E. 87th Street

¹ Section 36(c) of the Act imposes limitations on the Board's ability to extend a provisional variance:

Any provisional variance granted by the Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year.

Since the variance granted in PCB 95-19 expired January 29, 1995, and fewer than ninety (90) days will have elapsed in this calendar year by the expiration of the variance requested in the present petition, the Board interprets Section 36(c) as allowing Clark Refining and Marketing the Agency-recommended forty-five (45)-day extension.

Cook	Country Club Hills	4015 W. 183rd Street
Cook	Burbank	5706 W. 79th Street
Cook	Schiller Park	9999 W. Irving Park Road
Cook	Tinley Park	16836 S. Oak Park
Cook	Chicago	3947 S. Kedzie
Cook	Justice	7901 87th Ct.
Cook	Riverdale	632 W. 138th Street
Cook	Glenwood	1750 Glenwood-Dyer Road
Cook	Posen	3033 W. 147th Street
Cook	South Holland	15555 S. Park
Cook	Schaumburg	1730 Wise Road
Cook	Franklin Park	2441 N. Mannheim
DuPage	Woodridge	3004 Hobson
DuPage	Lombard	833 E. St. Charles Road
Kane	Aurora	407 S. Lake Street
Kane	Aurora	1180 Farnsworth
Lake	Libertyville	704 N. Milwaukee Ave.
Lake	Waukegan	2107 Grand Avenue
Lake	Barrington	North West Hwy. 14
Lake	Wauconda	399 Liberty Street
Lake	Fox Lake	95 E. Grand
McHenry	Woodstock	830 E. Lake Ave.
Will	Plainfield	23200 W. Lincoln Hwy.
Will	Joliet	3224 S. Larkin Street

Upon receipt of the request, the Agency issued its recommendation, notifying the Board that the failure to grant the requested forty-five (45)-day provisional variance would impose an arbitrary or unreasonable hardship on the petitioner. The Agency recommendation states that installation of Stage II vapor recovery equipment at the Clark facilities was not possible by the January 29, 1995 deadline for compliance because Clark has contracted for the purchase and installation of vacuum assist vapor recovery equipment, but that equipment and the crews necessary to install it were not available before the compliance deadline.

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. (See 415 ILCS 5/35(b) & 36(c)). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Clark's March 15, 1995 response to the Agency's recommendation requests that the Board grant a variance commencing on January 30, 1995 and ending March 15, 1995, rather one commencing on February 15, 1995 and expiring no later than 45

days later as recommended by the Agency. Clark details the procedural history of this and predecessor requests in support of its request.

The Board has consistently interpreted Section 35(b) of the Act as eliminating Board discretion in the granting of provisional variance requests, assuming the provisional variance recommended comports with the requirements and limitations of the Act. While Clark's response is the sort of pleading to which the Board routinely gives weight in "regular" variances, the Board believes it has no discretion to grant a provisional variance which significantly differs, as does this one, from the Agency's provisional variance request. If the parties should reach agreement on a different start date, the Board will of course entertain a proper Agency motion for modification. See Amoco Oil Co. and City of Wood River v. IEPA, PCB 94-384 (order of March 9, 1995).

Having received the Agency recommendation notifying the Board that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 218.586, subject to the following conditions:

1. The term of this provisional variance shall commence on February 15, 1995 and it shall expire on the date the petitioner completes the required installation of vacuum assist Stage II vapor recovery equipment, or after forty-five (45)-days have elapsed, whichever comes first;
2. The petitioner shall notify the Agency of the installation of the vapor recovery equipment, by sending notification addressed as follows:

Mr. Terry Sweitzer, P.E.
Manager, Air Monitoring Section
Illinois Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 19276
Springfield, Illinois 62794-9276

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 16th day of March, 1995, by a vote of 7-0.

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

1

