

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

KEAN OIL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 95-96
) (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)), Kean Oil Company (Kean) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow several of Kean'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 February 1, 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. 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 Kean a forty-three (43)-day provisional variance for five (5) of its facilities located in three (3) 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 17, 1995 and continuing for forty-three (43)-days or until the required vapor recovery equipment is installed, whichever comes first.

The Board previously granted a provisional variance to Kean that expired February 1, 1995. The docket number of the previous provisional variance was PCB 95-29, granted on January 11, 1995.

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

<u>County</u>	<u>Number of Stations</u>
Cook	3
DuPage	1
McHenry	1

The addresses of those stations are listed as follows:

<u>County</u>	<u>City or Village</u>	<u>Street Address</u>
Cook	Justice	8359 S. Roberts Road
Cook	Justice	8801 W. 84th Place
Cook	Posen	3118 W. 147th St.
DuPage	Addison	17W532 Lake St.
McHenry	Alogonquin	1001 S. Main St.

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 Kean facilities was not possible by the February 1, 1995 deadline for compliance because Kean 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.

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 duration of the provisional variance is for forty-three (43) days, commencing February 17, 1995, the date the Agency received an acceptable petition for the provisional variance, or until Stage II gasoline vapor recovery equipment can be installed, which ever 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, Clerk
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Illinois Pollution Control Board