

ILLINOIS POLLUTION CONTROL BOARD
March 3, 1994

EMRO MARKETING COMPANY,)
)
 Petitioner,)
)
 v.) PCB 94-77
) (Provisional Variance)
 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)), Emro Marketing Company has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow several of Emro Marketing Company's gasoline dispensing operations (service stations) to continue operating even though they did not install operational vapor recovery equipment by November 1, 1993. Such request for a provisional variance and the Notification of Recommendation was filed with the Board by the Agency on Tuesday, March 1, 1994. 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 Emro Marketing Company a thirty-seven (37)-day provisional variance for 30 of its facilities located in five (5) 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 23, 1994, and continuing for thirty-seven (37) 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, 1994. The docket number of the previous provisional variance was PCB 94-13, granted on January 6, 1994. That prior provisional variance was itself an extension of the forty-five (45)-day provisional variance granted on October 27, 1993 in PCB 93-201.¹

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

The Agency's provisional variance recommendation states that Emro Marketing Company 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	10
Will	10
DuPage	6
Lake	2
Kane	2

The addresses of those stations are listed as follows:

<u>County</u>	<u>City or Village</u>	<u>Street Address</u>
Cook	Alsip	127th & Pulaski
Cook	Countryside	5555 Brainerd
Cook	Evergreen Park	3040 West 95th Street
Cook	Homewood	18002 Halsted Street
Cook	Olympia Fields	3602 West 211th Street
Cook	Olympia Fields	19880 Crawford
Cook	Palatine	402 East Dundee
Cook	Palos Hills	10300 South Roberts Road
Cook	Schaumburg	421 West Wise
Cook	Schaumburg	800 West Golf Road
DuPage	Bloomington	436 West Army Trail Road
DuPage	Hinsdale	9059 Route 83
DuPage	Lisle	6490 College Drive
DuPage	Lombard	21 West 400 North Avenue
DuPage	Westmont	6241 South Cass Street
DuPage	Naperville	631 North Route 59

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 94-13 expired January 29, 1994, and fewer than ninety (90) days elapsed in this calendar year, the Board interprets Section 36(c) as allowing Emro Marketing Company the Agency-recommended thirty-seven (37)-day extension.

The Board notes that the Agency's recommendation indicates that the Lombard and Westmont facilities were not involved in the prior provisional variance granted Emro Marketing Company in PCB 94-13.

Kane	Elgin	1570 Big Timber
Kane	West Dundee	115 North 8th Street
Lake	Gurnee	3688 West Grand
Lake	North Chicago	2850 Skokie Highway
Will	Bolingbrook	352 State Route 53
Will	Bolingbrook	499 West Broughton
Will	Channahon	2812 Eames Street
Will	Crete	1120 Dixie Highway
Will	Frankfort	7218 West Lincoln Highway
Will	Joliet	310 Manhattan Road
Will	Lockport	314 South State Street
Will	New Lenox	301 West Maple Street
Will	New Lenox	800 West Maple
Will	Shorewood	800 Brook Forest Avenue

Upon receipt of the request, the Agency issued its recommendation, notifying the Board that the failure to grant the requested thirty-seven (37)-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 Emro Marketing Company facilities is not possible by the November 1, 1993 deadline for compliance because Emro Marketing Company has contracted for the purchase and installation of Hasstech vapor recovery equipment, but that equipment and the crews necessary to install it was 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 term of this provisional variance shall commence on February 23, 1994, and it shall expire on the date the petitioner completes the required installation of vacuum assist Stage II vapor recovery equipment, or after thirty-seven (37) 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 3rd day of March, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board