

ILLINOIS POLLUTION CONTROL BOARD  
July 20, 1995

TOWN & COUNTRY GAS & FOOD	)	
MART, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 95-97
	)	(Variance - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

STEVEN KAISER, THE JEFF DIVER GROUP, APPEARED ON BEHALF OF PETITIONER;

CHRISTINA L. ARCHER APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by E. Dunham):

On March 14, 1995, Town & Country Gas & Food Mart, Inc. (Town & Country) filed a petition (Pet.) for variance from 35 Ill. Adm. Code 218.586(d)(3), for its facility located at 10007 S. Michigan Ave., Chicago, Cook County, Illinois. Section 218.586(d) is the Board's regulation requiring the installation of Stage II gasoline vapor recovery equipment.

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 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 June 13, 1995. The Agency contends that an unreasonable hardship would be imposed on petitioner in the absence of the requested relief. (Rec. at 8.) Accordingly, the Agency recommends granting the variance, subject to conditions.

Hearing was held on June 22, 1995 before hearing officer June Edvenson in Chicago, Illinois. No members of the public attended the hearing. No briefs were filed.

As presented below, the Board finds that Town & Country has met its burden of demonstrating that immediate compliance with

the Board regulation at issue would result in an arbitrary or unreasonable hardship upon petitioner. Accordingly, the variance request will be granted with conditions.

#### REQUESTED RELIEF AND HARDSHIP

Gas stations located in the Chicago ozone nonattainment area are required to be equipped with gasoline refueling vapor recovery systems (Stage II vapor recovery) in compliance with 35 Ill. Adm. Code 218.586. These systems were to have been installed and operational by November 1, 1993 for stations that dispense over 100,000 gallons per month and by November 1, 1994 at stations dispensing between 10,000 and 100,000 gallons per month.

Petitioner dispenses a monthly average of more than 10,000 gallons of gasoline per month but less than 100,000 gallons per month. (Pet. at 2.) Therefore, petitioner was required to install Stage II vapor recovery by the November 1, 1994 deadline.

Petitioner has determined that petroleum is present in the soils at the facility. (Pet. at 2.) Petitioner became aware of the contamination while making preparations for the installation of the Stage II equipment. (Tr. at 7.) Petitioner informed Illinois Emergency Management Agency of the petroleum contamination on November 14, 1994. (Pet. at 3.) Petitioner has concluded that corrective action may be necessary to address the contamination. (Pet. at 3.) Petitioner estimates that it will cost \$80,000 to install the required Stage II System. (Pet. at 4.) Town & Country may be required to completely dismantle the Stage II system to perform corrective action. (Pet. at 4.)

Petitioner has requested a variance until March 31, 1996. Petitioner was granted a variance until March 31, 1995 as part of the variance granted in Illinois Petroleum Manufacturer's v. IEPA PCB 95-3 (May 4, 1995). (Tr. at 6.)

Petitioner anticipated submitting its Site Classification Plan and Budget to the Agency before the end of June. (Tr. at 18.) The Agency related that the site was not selected for full review, and therefore a letter of approval would be sent out two to three weeks after the receipt of the Site Classification Plan and Budget. (Tr. at 23.) Upon receipt of the letter of approval, petitioner can proceed with the necessary remediation. (Tr. at 23.) Petitioner plans to have the required personnel available to proceed with the remediation once the letter of approval is received. (Tr. at 25.) Upon the completion of the necessary remediation at the site, petitioner will proceed with the installation of the Stage II equipment. (Tr. at 14.)

#### ENVIRONMENTAL IMPACT

During the dispensing of gasoline, volatile organic compounds (VOC, also known as volatile organic material or VOM) are emitted into the atmosphere. American Petroleum Institute (API) estimates that uncontrolled emissions due to vehicle refueling equals approximately 11.7 pounds of VOC per 1,000 gallons of fuel dispensed. (Pet. at 4.) The Agency has estimated in its 1990 Chicago Ozone SIP Inventory Summary that on a weekday during the ozone season total VOM emissions are 1453.69 tons. (Pet. at 4.)

Petitioner estimates that it dispenses an average of 45,000 gallons a gasoline per month. (Pet. at 4.) The Agency estimates the uncontrolled VOM emissions from this source at .0086 tons per day. (Rec. at 4.) The Agency estimates this figure at .00059% of the Chicago area daily total. (Rec. at 5.)

The Agency is very concerned with the reduction of emissions of VOM in the Chicago area and is engaged in a massive effort to develop methods to reduce emissions. (Rec. at 4.) The requested variance would allow petitioner to emit uncontrolled VOM emissions throughout the 1995 ozone season (April - October). (Rec. at 5.) The Agency notes that the requested variance would not extend into the 1996 ozone season. (Rec. at 5.)

The Agency contends that the emissions from petitioner's station are not that significant compared to the total Chicago area VOM. (Rec. at 5.) However, the Agency maintains that the ozone problem in Chicago is largely attributable to numerous small sources that when aggregated, create significant emissions. (Rec. at 5.)

The Agency believes that the hardship incurred by the petitioner in installing Stage II equipment only to dismantle and reinstall the equipment if remediation proves necessary outweighs the environmental impact from allowing the facility to emit uncontrolled VOMs through the 1995 ozone season. (Rec. at 5.) The Agency also notes that petitioner is seeking relief to mitigate potential environmental damage from the soil contamination. (Rec. at 5.) The Agency maintains that petitioner should be able to complete any necessary remediation prior to the 1996 ozone season. (Rec. at 5.)

#### CONSISTENCY WITH FEDERAL LAW

The Agency contends that granting the requested variance would be consistent with federal law. (Rec. at 6.) The Agency asserts that the Stage II requirements are an important component of the State's plan to achieve reductions of 15%. (Rec. at 6.) The Agency contends that the granting of the variance will not impede the State's efforts at achieving the 15% reduction in VOM emissions because petitioner dispenses a lower volume of gasoline. (Rec. at 6.)

### CONCLUSION

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary and unreasonable hardship upon the petitioner. (415 ILCS 5/35(a) (1992).) Furthermore, the burden is on the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v. IPCB (1985), 135 Ill.App.3d 343, 481 N.E.2d 1032.) Only with such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

Based upon the record before it and upon review of the hardship petitioner would encounter, and the environmental impact that would result from grant of variance, the Board finds that Town & Country has presented adequate proof that immediate compliance with the regulations at issue would result in an arbitrary and unreasonable hardship on petitioner.

The Board notes that it is a 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 (December 19, 1991), PCB 90-277, 128 PCB 245-249.) Petitioner first became aware of the contamination and the possible need of remediation during the preparation for installation of the Stage II equipment. Upon discovering the contamination at the site, petitioner took action to determine the extent of contamination and the need for remediation. Petitioner is seeking this variance until the completion of the remediation process. In view of the facts of this case, the Board finds that the instant circumstances warrant a retroactive start of the variance. The requested variance accordingly will be granted, subject to conditions consistent with this opinion.

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

### ORDER

- A. Town & Country 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 10007 S. Michigan Ave., Chicago, Cook County, Illinois commencing on April 1, 1995 subject to the following conditions:
1. If the site classification concludes that no further remediation is necessary, petitioner will complete installation of Stage II equipment within 45 days of

the Agency's concurrence with this conclusion, but in no case later than March 31, 1996.

2. If the site is classified as low priority, petitioner will complete installation of Stage II equipment within 45 days of the Agency's concurrence with the classification, but in no case later than March 31, 1996.
3. If remediation is required but the method of remediation selected will not interfere with Stage II equipment, petitioner shall install Stage II equipment within 45 days of approval of the method of remediation, but in no case later than March 31, 1996.
4. If the site is classified, and requires further remediation, petitioner will install Stage II equipment within 45 days of completion of remediation, but in no case later than March 31, 1996.
5. Petitioner shall notify Terry Sweitzer of the Agency as to the classification of the site within 14 days of receipt of site classification approval. Such notice shall be sent to:

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

6. Petitioner 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 and shall be sent to Terry Sweitzer at the address above.

Within 45 days of the date of this order, petitioner shall execute and forward to Christina Archer, Division of Legal Counsel, Illinois Environmental Protection Agency, 2200 Churchill Road, Post Office Box 19276, 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 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 95-97, July  
20, 1995.

\_\_\_\_\_  
Petitioner

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

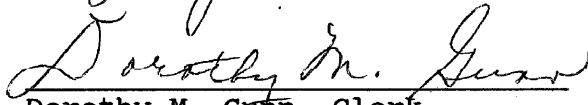
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

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 20<sup>th</sup> day of July, 1995, by a vote  
of 6-0.

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