

ILLINOIS POLLUTION CONTROL BOARD

February 14, 1975

SMITH OIL CORPORATION, Peru Terminal, )	
Cunningham Terminal, Rockford Bulk )	
Plant, )	
	Petitioner, )
	)
v. )	PCB 74-456
	)
ENVIRONMENTAL PROTECTION AGENCY, )	
Respondent. )	

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On December 5, 1974, Smith Oil Corporation (Smith) filed with the Pollution Control Board (Board) its request for a variance from the Operating Permit requirement of Rule 103(b) of the Air Pollution Regulations (Chapter Two) and the storage limitations of Rule 205(a) of Chapter Two. The variance was sought from February 1, 1973, until March 1, 1975, for three of its facilities where gasoline and distillate fuel oil are stored and distributed. Petitioner applied for Operating Permits for the three facilities in April, 1973; the applications were denied by the Environmental Protection Agency (Agency) in May. On December 27, 1974, the Petitioner reapplied for Operating Permits for all three storage facilities.

The facilities are used to store and distribute gasoline and distillate fuel oil to an area including the northern half of Illinois, southern Wisconsin, and parts of eastern Iowa. Smith also supplies and services rural areas, agricultural bulk plants, farm communities, service stations, and residential areas. No refining occurs at the facilities. The product is received at the terminals, either by pipeline or truck transport, stored in above-ground tanks, and distributed in various size tank cars. The three terminals have a total combined throughput of approximately 195,000 barrels per month; 60% is gasoline and 40% is fuel oil.

The Agency filed its Recommendation on January 29, 1975. The Agency stated that since Petitioner's facilities are only storage and distribution sites, they are subject to the storage and loading limitations in Rules 205(a) and (b), which became effective on December 31, 1973. Furthermore, the Agency alleged that Rule 103(b)(2)(A) for Petroleum and Coal Products Industry Operations required Petitioner to have permits by January 1, 1973.

The Agency recommended denial of the variance for several reasons. First, Petitioner failed to supply the necessary information pursuant to Rule 401 of our Procedural Rules. Petitioner failed to indicate the nature and extent of the present failure to meet the regulations at each facility and failed to sufficiently indicate past and present efforts to achieve compliance. Second, the Agency investigated each facility and indicated additional reasons for each facility why the variance should be denied:

Peru Terminal: Although compliance has recently been achieved with Rule 205(a) (and presumably Petitioner is now entitled to a permit at this facility), Petitioner was dilatory in its efforts to achieve compliance. The Agency cites the letter of November 26, 1974 from Smith, which was included in its variance petition, which states in pertinent part:

"Almost a year has elapsed since the initial order until the shipment and more than a year since we entered into negotiations with Mayflower Vaporseal. I am sure that most of the delay has been because of the demand that EPA Requirements have placed on manufacturers such as Mayflower. We were originally promised delivery in March, then June, then August, and the equipment finally arrived in November. The decks are currently being installed at our Peru Terminal by North Michigan Pump Company with tank #7 almost complete, and 3 and 5 to follow without further delay. Installation should be completed during the month of December."

The Agency argues that since Petitioner states in its variance request that it has been in compliance at Peru since April, 1973, this quoted admission of lack of compliance shows that Smith has been dilatory. We agree that the seeming inconsistency in Petitioner's statement underscores the need for further clarification by Smith.

Cunningham Terminal: The Agency investigation revealed that tank No. 5 at the facility is the only tank currently not in compliance with Rule 205(a). Agency investigators were advised that this tank was taken out of operation in early January, 1975 and that a floating roof will be installed by the end of January. The Agency argued that the following language in the November 26, 1974, letter referred to above amounted to an admission by Petitioner of "dilatory compliance efforts at this location".

"The second floating deck for our Rockford Cunningham Road Terminal has been received on the site and will be installed at Peru. The first deck was installed in Rockford and completed on July 5, 1974."

Rockford Bulk Plant: The Agency investigation of the site revealed three tanks which each store in excess of 40,000 gallons of gasoline. The three tanks are vented to a vapor sphere which, under Rule 205(a), must collect 85% or more of the uncontrolled volatile material which would otherwise be emitted to the atmosphere. Although there was no evidence in the Petition for Variance to indicate whether the vapor sphere achieves the 85% efficiency under Rule 205(a), the Agency was of the opinion, on the basis of a recently submitted permit application, that this efficiency has been achieved.

In summary, while it appears that Smith's facilities located at Peru and Rockford were in compliance under 205(a) by the date of permit submission, Cunningham's Terminal Tank No. 5 was not in compliance on that date. The Agency indicated that Petitioner was entitled to a permit at Peru and Rockford and once Tank No. 5 is properly fitted with the floating roof, the requisite permit can be issued for the Cunningham Terminal.


We agree with the Agency that the issue is whether the Board should grant a variance to Smith for its past violations of Rule 103(b) and Rule 205(a). First, it is not specified whether a variance is sought from Rule 103(b)(1) or 103(b)(2). While the Agency assumes that Rule 103(b)(2) is the applicable Rule, Petitioner does not indicate and there is some question whether code 29 of the Standards Industrial Classification Manual (1972) requires a permit for facilities like those of Petitioner. Petition for Variance from Rule 103(b) of Chapter Two is dismissed without prejudice for lack of specificity. Second, we rule that insufficient facts have been supplied under Procedural Rule 401 to enable us to decide whether the Petitioner has met the test of arbitrary or unreasonable hardship under Section 35 of the Environmental Protection Act for its variance request from Rule 205(a) of Chapter Two.

Petition for Variance is hereby dismissed without prejudice because of insufficient information.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 14<sup>th</sup> day of February, 1975, by a vote of 4 to

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Christan L. Moffett