

ILLINOIS POLLUTION CONTROL BOARD
July 20, 1995

THOMAS BROWN)	
(TOM'S CORNER FACILITY),)	
)	
Petitioner,)	
)	
v.)	PCB 95-111
)	(Variance-Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

THOMAS E. WILLIAMS, APPEARED ON BEHALF OF PETITIONER;

RACHEL L. DOCTORS, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Yi):

On March 27, 1995, Thomas Brown d/b/a Tom's Corner Facility (Tom's Facility) filed a petition for variance regarding its facility located at 1343 South Lewis Avenue, Waukegan, Lake County, Illinois. The petition for variance seeks relief from 35 Ill. Adm. Code 218.586 of the Board's air regulations relating to Stage II gasoline vapor recovery. On April 27, 1995, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board grant the requested variance with conditions. On June 6, 1995, a hearing was held in Waukegan, Illinois before Board hearing officer June C. Edvenson. There were members of the public present at the hearing.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act). (415 ILCS 5/1 et seq. (1994).) The Board is charged there 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) (1994).) The Agency is required to appear in hearings on variance petitions. (415 ILCS 5/4(f) (1994).) 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) (1994).)

As presented below, the Board finds that petitioner has met its burden of demonstrating that immediate compliance with the Act or Board regulations at issue would result in an arbitrary or unreasonable hardship upon petitioner. Accordingly, the variance request will be granted with conditions.

REGULATORY FRAMEWORK

The Clean Air Act Amendments of 1990 required that owners or operators of gasoline dispensing facilities located in moderate or above nonattainment areas install and operate gasoline vehicle refueling vapor recovery systems (Stage II systems). The Board acted to adopt regulations which required installation of Stage II systems on August 13, 1992. (See, In the Matter of: Stage II Gasoline Vapor Recovery Rules Amendments to 35 Ill. Adm. Code 215, 218, and 219, R91-30, 135 PCB 415 (August 13, 1992).)

Section 218.586 requires the installation of Stage II systems for "any gasoline dispensing operation which dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month". (35 Ill. Adm. Code 218.586(b).) Operations subject to the requirements of Section 218.586 shall demonstrate compliance according to the schedule set forth in Section 218.586(d). Section 218.586(d)(3) provides:

Operations that commenced construction before November 1, 1990, and dispense an average monthly volume of less than 100,000 gallons of motor fuel per month must comply by November 1, 1994.

REQUESTED RELIEF AND HARDSHIP

Petitioner owns and operates a gasoline dispensing station at 1343 S. Lewis Avenue, Waukegan, Illinois and has held a lease, which expires October 31, 1995, with the Amoco Oil Company (Amoco) for its occupancy for ten years. (Pet. at 1-2.)¹ Tom's Facility dispenses an average monthly volume of less than 75,000 gallons of motor fuel per month. (Pet. at 1.) Therefore, petitioner was required to demonstrate compliance by November 1, 1994.

Amoco requested a variance from the Board on September 23, 1994, for eighteen gasoline dispensing operations that it either owns or supplies the gasoline. (Pet. at 2.) In its petition Amoco also stated that it was renegotiating the leases with several facilities, including Tom's Facility, and that it would either pay for the installation of the Stage II equipment or cease dispensing gasoline at these facilities by March 31, 1995. (Pet. at 2.) Amoco was granted a variance on January 11, 1995, from November 1, 1994 through March 31, 1995. (Pet. at 2.)

¹ The petition will be cited as "Pet. at ___"; the Agency's recommendation will be cited as "Rec. at ___"; and the transcript will be cited as "Tr. at ___".

Mr. Brown suffered a heart attack on March 9, 1994 and was unable to complete the negotiations with Amoco. (Pet. at 2.) As a result Amoco withdraw its lease leaving Mr. Brown responsible to install the Stage II equipment. (Pet. at 2.) Petitioner is requesting a seven-month variance starting March 31, 1995, and ending October 31, 1995, from the Board's Stage II vapor recovery regulations for its facility in Waukegan, Illinois in order for it to install the Stage II equipment. (Pet. at 4.)

Mr. Brown first learned that the lease with Amoco would not be extended in December of 1992 and states that he did not have sufficient time to secure the necessary financing in order to install the Stage II equipment prior to the ending of the current variance, March 31, 1995. (Pet. at 3.) Mr. Brown alleges that if Tom's Facility is closed down it would represent a substantial hardship to the community and has provided affidavits of 177 community members indicating such hardship. (Pet. at 3.)

The Agency agrees that immediate compliance with Section 218.586 imposes an arbitrary or unreasonable hardship on the petitioner. (Rec. at 3.) Further, the Agency states that the petitioner has demonstrated that the petitioner would suffer a hardship if required to install a Stage II System by the required date of March 31, 1995. (Rec. at 3.) At hearing testimony was presented by the petitioner and Agency of the importance of Tom's Facility to local community. (Tr. at 7, 9-11 and 14-20.)

COMPLIANCE PLAN

Tom's Facility is proposing to install the Stage II equipment and replace the underground storage tanks at the site. (Pet. at 3.) Petitioner states that it has recieved a bid from A.B.D Tank & Pump Co. to do the work for approximately \$200,000. (Pet. at 3.) Petitioner states that the construction is to begin on September 1, 1995 and be completed in four weeks. (Pet. at 3.) The Agency supports the compliance plan with the condition that if the Stage II equipment is not installed by October 31, 1995 Tom's Facility will cease dispensing gasoline until the equipment is installed. (Rec. at 4.)

ENVIRONMENTAL IMPACT

The Agency states that it agrees that the impact from Tom's Facility is low. (Rec. at 3.) The Agency estimates that the petitioner's monthly VOM emissions will be .47 tons/mo. and agrees that the hardship outweighs the environmental impact. (Rec. at 3.) At hearing the Agency stated that "...the facility in question emits approximately 862 pounds per month..." and that "[t]his will not significantly impact the Agency's 15 percent rate of progress plans for the Chicago ozone." (Tr. at 8-9.)

CONSISTENCY WITH FEDERAL LAW

The Board finds that the requested relief is consistent with the Clean Air Act. The Agency states that the grant of the variance should not significantly impact the State's efforts of complying with federal law. (Tr. at 8-9.)

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 or 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 for the 1995 ozone season that would result from grant of variance, the Board finds that petitioner has presented adequate proof that immediate compliance with the regulations at issue would result in an arbitrary and unreasonable hardship. The Board agrees with the Agency statements that the emissions will have a negligible environmental impact on the 1995 ozone season if the variance is allowed. Petitioner has requested that the variance commence March 31, 1995 and end October 31, 1995. The Board notes that it is 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 DMI, Inc. v. IEPA, PCB 90-227, 128 PCB 245-249, December 19, 1991.) In view of the facts of this case including the Board's knowledge of contractor and equipment shortages associated with installation of Stage II equipment, and the Agency's recommendation of no significant environmental impact, the Board finds that the instant circumstances warrant the short retroactive start of the variance. The requested variance accordingly will be granted, subject to conditions consistent with this opinion.

Lastly, the Board notes that the Agency requests that the Board use a form of the certificate of acceptance that is different from the traditional certificate. The Board declines this request for reasons addressed in a separate order. (See UNO-VEN Company v. IEPA, PCB 94-282, slip op. February 16, 1995.)

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

ORDER

The Board hereby grants the petitioner, Mr. Thomas Brown, d/b/a Tom's Corner Facility, a variance from 35 Ill. Adm. Code 218.586, Gasoline Dispensing Operating-Motor Vehicle Fueling Operations, subject to the following conditions:

1. The term of the variance begins on March 31, 1995 and terminates on October 31, 1995 or when the Stage II equipment is installed, whichever comes first.
2. Petitioner shall notify Terry Sweitzer of the Illinois Environmental Protection Agency when the Stage II equipment has been installed. Such notice shall be sent to:

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

3. If the petitioner fails to install the Stage II equipment by October 31, 1995, the petitioner shall cease dispensing gasoline until the equipment is installed.

If the petitioner chooses to accept this variance subject to the above order, within forty-five days of the grant of the variance, the petitioner must execute and forward the attached certificate of acceptance and agreement to:

Rachel Doctors
Division of Legal Counsel
Illinois Environmental Protection Agency
P. O. Box 19276
2200 Churchill Road
Springfield, IL 62794-9276

Once executed and received, that certificate of acceptance and agreement shall bind the petitioner to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45-days renders this variance void. The form of certificate is 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 95-111, July 20, 1995.

Petitioner _____

Authorized Agent _____

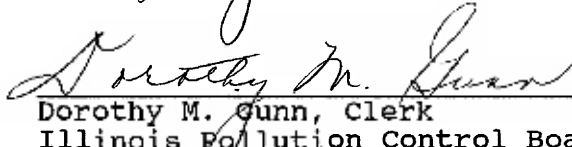
Title _____

Date _____

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of July, 1995, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board