

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 J.M. SWEENEY CO.,)
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Record of proceedings before
JUNE C. EDVENSON, Hearing Officer, reported by
LISA H. BREITER, CSR, commencing at 10:15 o'clock
a.m., on the 18th day of October 1996, at the Lake
Zurich Village Hall, Lower Board Room, 70 East
Main Street, Lake Zurich, Lake County, Illinois,
upon the hearing of the above-entitled cause.

1 There were present during the
2 taking of this hearing the following counsel:

3
4 THE JEFF DIVER GROUP, by
5 MR. STEVEN P. KAISER,
6 45 South Park Boulevard
7 Suite 270
8 Glen Ellyn, IL 60137
9 (630) 790-0001

10 On behalf of the Petitioner;

11
12 ILLINOIS ENVIRONMENTAL PROTECTION
13 AGENCY, by
14 MS. SHEILA G. KOLBE,
15 Assistant Counsel
16 Bureau of Air
17 Division of Legal Counsel
18 2200 Churchill Road
19 P.O. Box 19276
20 Springfield, IL 62794-9276
21 (217) 524-3333

22 On behalf of the Respondent;

23
24 ILLINOIS ENVIRONMENTAL PROTECTION
25 AGENCY, by
26 MR. TERRY A. SWEITZER,
27 Manager
28 Air Monitoring System
29 Bureau of Air
30 2200 Churchill Road
31 P.O. Box 19276
32 Springfield, IL 62794-9276
33 (217) 785-1733

34 On behalf of the Respondent.

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I N D E X

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E X H I B I T S:

IN EVIDENCE

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1 HEARING OFFICER EDVENSON: Good morning
2 and welcome. We are here for the continuation of
3 the hearing of the case entitled J.M. Sweeney
4 Company vs. IEPA, case number PCB 96-184, an air
5 variance petition. First, we will take care of
6 some preliminary matters. I have received from
7 Agency's Counsel this morning a filing entitled
8 motion to modify agency recommendation instanter.

9 That filing is -- the notice of the
10 filing covers the filing itself, and the filing
11 itself shows an indirect PCB case number, PCB
12 94-297. However, we will note for the clerk's
13 information that the document is correct and does
14 apply to case PCB 96-184. It is simply an error
15 in the caption to the actual motion document.
16 That would be considered as being filed with the
17 Board today, October 18th.

18 We have also been discussing
19 exhibits preliminarily, and we had anticipated
20 seeing an original of Exhibit No. 4. I believe
21 that the parties have agreed to stipulate that a
22 copy of Exhibit 4 will be sufficient, is that
23 correct, Counsel?

24 MR. KAISER: That's correct.

1 MS. KOLBE: That's correct.

2 HEARING OFFICER EDVENSON: Thank you
3 very much. The order of the hearing today will
4 include first the wrap up of the complainant's
5 case in chief, and next we will hear the
6 respondent's case in chief which will include an
7 opening and the testimony of the witness.

8 We will then discuss the closing of
9 the case and identify a schedule for the closing.
10 Okay, at this time, Counsel, would you like to
11 continue with complainant's case.

12 MR. KAISER: Yes, we would, your Honor.

13 HEARING OFFICER EDVENSON: Proceed.

14 MR. KAISER: Thank you. We would like
15 to offer into evidence at this time a document
16 which I would ask be marked as Petitioner's
17 Exhibit 23. It's a notice of proposed rules filed
18 with the Illinois Pollution Control Board, and it
19 contains proposed rules in connection with the
20 remediation of soil contamination at sites located
21 within the State of Illinois.

22 As you'll recall, Madame Hearing
23 Officer, and for the Board's benefit, there was
24 considerable testimony from Michael Younger, the

1 environmental consultant retained by petitioners,
2 J.M. Sweeney Company, about the difficulty he had
3 in finalizing the corrective action plan because
4 some of the guidance documents issued by the
5 Illinois Environmental Protection Agency known as
6 the tiered approach to cleanup objectives or the
7 TACO guidance was in state of evolution beginning
8 in roughly of October of 1995.

9 Mr. Younger described how the draft
10 document was issued as a final guidance document
11 in January of 1996, and to in some ways complete
12 that evolution, we now have a notice of proposed
13 rules, rules submitted to the Illinois Pollution
14 Control Board by the Illinois Environmental
15 Protection Agency seeking to codify many of these
16 principles in the new rules.

17 I am not certain of the date in
18 which these were submitted, but I'm certain that
19 the Board can take judicial notice of that date as
20 necessary, and we would move for the admission of
21 that document as Petitioner's Exhibit 23.

22 MS. KOLBE: No objection.

23 HEARING OFFICER EDVENSON: All right,
24 the rules regarding remediation of soil

1 contamination will be entered as Exhibit No. 23.

2 (Petitioner's Exhibit No. 23
3 was received in evidence.)

4 MR. KAISER: Finally we will seek to
5 have admitted as Exhibit 24, an affidavit of Keith
6 Kondrot. This would more appropriately be
7 described as a supplemental affidavit. I note
8 that Exhibit 3, which has been offered and
9 received into evidence, was also an affidavit of a
10 Mr. Keith Kondrot.

11 Mr. Kondrot is an architect
12 licensed by the State of Illinois who has been
13 retained by the petitioners to develop design
14 drawings and construction drawings in connection
15 with the demolition and reconstruction of the
16 facility. Mr. Kondrot has stated in his affidavit
17 that the attached drawings, which are three in
18 number, are drawings that he made for the
19 petitioners and truly and accurately reflect the
20 changes that Sweeney, the petitioner, proposes to
21 construct at the facility during the coming
22 months, and we would ask again by agreement that
23 the supplemental affidavit of Keith Kondrot be
24 admitted as Petitioner's Exhibit 24.

1 MS. KOLBE: No objection.

2 HEARING OFFICER EDVENSON: Exhibit 24 is
3 entered into evidence.

4 (Petitioner's No. 24 was
5 received in evidence.)

6 MR. KAISER: With that, Madame Hearing
7 Officer, petitioners would close their proofs and
8 -- close their proofs and reserve closing
9 argument. Thank you.

10 HEARING OFFICER EDVENSON: Thank you,
11 Counsel. Then at this time we will turn to
12 respondent's case in chief, and we'll have opening
13 statement.

14 MS. KOLBE: Hearing Officer, Counsel, I
15 am Sheila Kolbe, assistant Counsel for the
16 Illinois Environmental Protection Agency, and I am
17 representing the agency in this matter for a
18 variance for J.M. Sweeney Company's Lake Zurich
19 facility. Also with me today is Terry Sweitzer,
20 the manager of air monitoring section of the
21 bureau of air, who has been assisting me in this
22 matter and will be testifying later today on the
23 Agency's behalf.

24 The Agency has investigated into

1 this matter as required by 35 Ill. Adm. Code
2 104.180. During its investigation, the Agency has
3 discussed this matter with the petitioner's
4 attorney as well as soliciting comments from the
5 general public. J.M. Sweeney operates a gasoline
6 dispensing facility (i.e. gas station) located in
7 Lake Zurich, Cook County, Illinois. It is
8 requesting an extension of a prior variance from
9 35 Ill. Adm. Code 218.586 (gasoline dispensing
10 operations - motor vehicle fueling operations) as
11 it applies to the installation of vapor collection
12 and control systems, (i.e. Stage II vapor recovery
13 systems) at its facility.

14 Petitioner's facility dispenses an
15 average of 95,000 gallons of gasoline per month.
16 Thus, it is subject to the requirements of Section
17 2 18.586(d)(3), which required compliance by
18 November 1st, 1994. On September 21st, 1995, the
19 Board granted J.M. Sweeney's variance petition for
20 an extension of the compliance date until March
21 31st, 1996. This variance request is for an
22 extension of the prior variance until March 31st,
23 1997.

24 The Agency concurs in the extension

1 to the March 31st, 1997, date. However,
2 regardless of whether or not J.M. Sweeney can
3 reach closure on the corrective action plan issues
4 with the bureau of land by March 31st, 1997, the
5 bureau of air recommends that the facility be shut
6 down on April 1st, 1997 and not be reopened until
7 the Stage II vapor recovery systems are installed
8 and operational and that no further variance
9 relief be granted beyond that date.

10 Since the final Board order of the
11 prior variance petition, PCB 94-297, was issued on
12 September 21st, 1995, progress has been made in
13 that the Agency and Sweeney have agreed that the
14 site is classified as high priority for
15 remediation. Pursuant to the petroleum
16 underground storage tanks regulations (35 Ill.
17 Adm. Code, part 732) underground storage tanks or
18 USTs that are classified as high priority require
19 remediation. J.M. Sweeney has indicated that it
20 intends to perform construction to correct this
21 problem and will install the Stage II vapor
22 recovery equipment at that time.

23 Once such construction begins, the
24 facility will need to be shut down in order to do

1 remediation and install the Stage II vapor
2 recovery equipment. As stated in petitioner's
3 petition, Sweeney estimates the cost of Stage II
4 vapor recovery equipment at \$80,000. However, if
5 Sweeney were required to install the Stage II
6 system only to dismantle it for implementing its
7 CAP, corrective action plan, it would incur
8 estimated additional cost at \$50,000 to \$60,000
9 minus the salvage value of the components of a
10 dismantled Stage II system, which is between
11 \$20,000 and \$30,000. Thus, since much of the
12 Stage II equipment could not be reused requiring
13 petitioner to install equipment twice would be
14 even more costly.

15 Petitioner's amended petition also
16 states that if Sweeney would have to install the
17 Stage II system during the middle of winter, it
18 would require an added cost between 20,000 and
19 30,000 dollars for excavation due to frozen soil
20 conditions. However, offsetting these costs is
21 the fact that Sweeney has emitted or will emit
22 uncontrolled VOM emissions through the 1995 and
23 1996 ozone seasons and has received an economic
24 benefit for the facility over other gasoline

1 dispensing facilities that have installed Stage II
2 vapor recovery equipment.

3 Petitioner alleges it will continue
4 to emit 40 pounds of VOM, volatile organic
5 material, per month during that variance period.
6 During cold weather, especially during the --
7 especially during the winter months, emissions of
8 VOM have a minimal impact on ozone air quality.
9 It is only during the ozone season, April through
10 October, that the environmental impact of
11 emissions from gasoline fueling have a significant
12 impact on ozone air quality.

13 The Agency believes that the
14 hardship resulting from denial of the recommended
15 variance until March 31st, 1997, would outweigh
16 the environmental impact from the granting of the
17 variance. The Agency recommends that the
18 petitioner's variance relief be extended until
19 March 31st, 1997. However, after March 31st,
20 1997, whether or not a corrective action plan has
21 been approved or modified by the bureau of land,
22 no further variance relief should be granted.

23 Respectfully, if and upon granting
24 the petitioner's request for a variance, the

1 Agency urges the Board to follow the Agency's
2 recommended conditions and compliance plan as
3 amended in the Agency's motion to modify filed
4 instanter this morning, thank you.

5 Now, at this time, Madame Hearing
6 Officer, I'd like to call Terry Sweitzer to
7 testify on behalf of the Agency.

8 HEARING OFFICER EDVENSON: Will the
9 witness please be sworn.

10 (Witness sworn.)

11 TERRY A. SWEITZER,
12 called as a witness herein, having been first duly
13 sworn, testified in the narrative as
14 follows:

15 MR. SWEITZER : My name is Terry A.
16 Sweitzer. I am currently employed by the Illinois
17 EPA as manager of the air monitoring section and
18 serve as the administrator of the Illinois Stage
19 II vapor recovery program. I have graduated
20 with a Bachelor of Science in chemical engineering
21 from the University of Dayton in 1971 and a master
22 of science in environmental engineering from
23 Southern Illinois University at Carbondale in
24 1978. I am a registered professional engineer in

1 Illinois.

2 After the Clean Air Act amendments
3 of 1990 which required Stage II vapor recovery in
4 the Chicago ozone non-attainment area, I was
5 assigned as the lead technical person responsible
6 for the development of Stage II rules for
7 consideration by the Pollution Control Board and
8 for the submittal of a state implementation plan
9 to US-EPA. As a result, I am very familiar with
10 Stage II systems, their costs and operational
11 considerations.

12 I have reviewed the petition and
13 supporting documents submitted by J.M. Sweeney
14 Company in request for a variance for their
15 facility located at 24545 West Miller Road in Lake
16 Zurich, Illinois. These documents clearly
17 demonstrate that significant underground
18 contamination exists at the facility. The
19 remediation of this contamination is a prime
20 concern. I would agree that an unreasonable
21 hardship would exist if the facility was required
22 to install a Stage II system only to subsequently
23 have it dismantled to allow for soil remediation.

24 It is likely that the underground

1 vapor return lines to the gasoline storage tanks
2 would have to be substantially redone. The costs
3 associated with the reinstallation of these vapor
4 return lines would be significant and may, as the
5 petitioner has estimated, exceed 20 to 30 thousand
6 dollars. The environmental impact of the delayed
7 compliance would be small, as indicated in the
8 petition, only 1755 pounds of volatile organic
9 compounds (VOC) per month.

10 However, the Chicago area is still
11 experiencing exceedances (sic) of the ozone ambient
12 air quality standard, and VOC emissions are a
13 precursor to ozone formation. Even small
14 emissions of VOC contribute to ozone
15 concentrations within the urban area. As a
16 result, VOC emissions should be minimized to the
17 greatest extent possible during the ozone season.
18 The ozone season is that time of year when ozone
19 exceedances (sic) can be expected to occur and for
20 Illinois is defined by US-EPA to be April 1st
21 through October 31st.

22 J.M. Sweeney Company has requested
23 a variance which would extend through March 31st,
24 1997. I believe that the request is reasonable

1 based upon the amount of time which would be
2 required to implement the site's corrective action
3 plan designed to mitigate the soil contamination
4 problem, the difficulty and additional costs
5 associated with construction during the winter
6 months in Chicago, and that the facility will
7 cease operation with uncontrolled VOC emissions
8 prior to the 1997 ozone season. Thank you.

9 MS. KOLBE: I have no further witnesses,
10 Madame Hearing Officer.

11 HEARING OFFICER EDVENSON: All right.
12 Well, we have the cross-examination of
13 respondent's witness.

14 MR. KAISER: I have no questions.

15 MS. KOLBE: I have no further witnesses
16 at this time, Madame Hearing Officer.

17 HEARING OFFICER EDVENSON: Then let's go
18 off the record to discuss the closing schedule of
19 the case.

20 (Discussion off the record.)

21 HEARING OFFICER EDVENSON: We're back on
22 the record, and we will have a briefing schedule,
23 and the schedule will be as follows:

24 Petitioner's brief shall be received by the

1 respondent's counsel by October 25th. The
2 Agency's response brief shall be filed by October
3 30th, and I probably should add and also received
4 by petitioner's counsel on October 30th, and the
5 petitioner's reply filing, if any, shall be
6 received by the Board as a filing by no later than
7 November 6th.

8 The record will therefore be closed
9 on November 6th. Thank you very much, and thank
10 you for your cooperation in our process. The
11 Board will be reviewing the entire record and
12 making their decision.

13 (Which were all the proceedings
14 had in the above-entitled case.)

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1 ILLINOIS POLLUTION CONTROL BOARD

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3 LISA H. BREITER, CSR, being first duly
4 sworn, on oath says that she is a court reporter
5 doing business in the City of Chicago; that she
6 reported in shorthand the proceedings at the
7 taking of said hearing and that the foregoing is a
8 true and correct transcript of her shorthand notes
9 so taken as aforesaid, and contains all of the
10 proceedings had at said hearing.

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