

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

MARCLEY'S,)
)
) Petitioner,)
)
) v.) PCB 94-357
) (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)), Marcley's has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow Marcley's gasoline dispensing operation (service station) to continue operating even though it did not install operational vapor recovery equipment by November 1, 1994. This provisional variance is being requested because petitioner's contractor was not available to perform the installation at the facility before the compliance deadline. This request for a provisional variance and the Notification of Recommendation was filed with the Board by the Agency on Tuesday, November 29, 1994. On November 30, 1994, the Agency filed an amended recommendation accompanied by a motion for leave to file instanter which is hereby granted. 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 Marcley's a forty-five (45)-day provisional variance for its facility located at 611 Ashland Street, Aurora, Kane County, Illinois 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 November 4, 1994, and continuing for forty-five (45)-days or until the required vapor recovery equipment is installed, whichever comes first.

Upon receipt of the request, the Agency issued its recommendation, notifying the Board that the failure to grant the requested forty-five (45)-day provisional variance would impose an arbitrary or unreasonable hardship on the petitioner.

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.

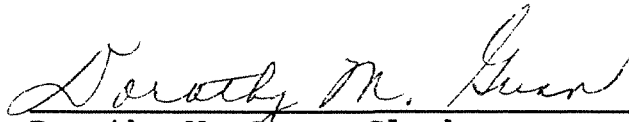
Having received the Agency recommendation notifying the Board that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 218.586, subject to the following conditions:

1. The term of this provisional variance shall commence on November 4, 1994, and continue for forty-five (45)-days or until the required vapor recovery equipment is installed, whichever comes first.
2. The petitioner shall notify the Agency upon installation of the Stage II gasoline 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 12th day of December, 1994, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board