

ILLINOIS POLLUTION CONTROL BOARD
February 16, 1995

MAJOR & SANDHU PETROLEUM, INC.,)
)
 Petitioner,)
)
 v.)
)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB 94-313
(Variance - Air)

WALTER ZARNECKI APPEARED ON BEHALF OF PETITIONER;

BONNIE R. SAWYER APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon a petition for variance filed by Major and Sandhu Petroleum, Inc., (Sandhu) on October 31, 1994. Sandhu seeks variance from the Stage II vapor recovery (Stage II) compliance date of November 1, 1994 found at 35 Ill. Adm. Code 218.586(d)(3). The term of the requested variance is from November 1, 1994 to March 31, 1995.

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 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).) 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 December 20 1994¹. The Agency recommends grant of the variance.

Hearing was held on December 21, 1994 in Chicago, Illinois, before hearing officer June C. Edvenson. The Agency presented testimony of Terry A. Sweitzer, Manager of the Agency's Air Monitoring Section and Administrator of the Illinois Stage II Vapor Recovery Program.

¹ The Agency was granted an extension of time to file the recommendation by Board order of December 14, 1994.

As presented below, the Board finds that Sandhu has met its burden of demonstrating that immediate compliance with 35 Ill. Adm. Code 218.586(d)(3) would impose an arbitrary or unreasonable hardship. Accordingly, the variance request will be granted.

BACKGROUND

The facility at issue is located at 1337 S. Harlem, Berwyn, Illinois. Sandhu, which is an Illinois Corporation formed on August 23, 1994, has leased the facility and taken over the business operations as of November 1, 1994. (Pet. at ¶10.)

35 Ill. Adm. Code 218.586 establishes air emission control requirements applicable to motor vehicle fueling operations (MVFO) located in the Chicago ozone nonattainment area. The purpose of the requirements is to limit emissions of gasoline vapors into the air. Gasoline vapors are volatile organic materials (VOM) that contribute to the formation of ozone in the lower atmosphere. Limiting emissions of VOM is one of the methods for controlling unwanted ozone formation.

Among the MVFO regulations is a requirement that certain MVFOs install Stage II vapor recovery equipment no later than November 1, 1994. (Section 218.586(d)(3).) It is uncontested that this provision applies to Emro's Romeoville facility.

Stage II vapor recovery equipment is designed to capture VOM emissions during the fueling of vehicle tanks. The emissions consist of gasoline vapors displaced from the motor vehicle tank by dispensed liquid gasoline as the tank is filled. The Stage II equipment captures vapors that exit the vehicle's fuel fillpipe, thereby preventing the escape of the vapors into the atmosphere. The captured vapors flow through a vapor passage in the fuel pump nozzle into a vapor hose and then through vapor lines to the underground storage tank.

HARDSHIP AND ENVIRONMENTAL IMPACT

Sandhu's contends that requiring immediate installation of the Stage II equipment would cause a financial hardship. Sandhu contends that it has been unable to obtain the financing for Stage II installation in the short time during which it has been in business. (Pet. at ¶10.) Sandhu further contends that by the time financing is obtained, winter weather will inhibit immediate installation. (Id.)

There are no control measures that could be temporarily imposed that would achieve immediate compliance. The Agency notes its "awareness of the difficulties associated with obtaining financing for construction projects at small gasoline facilities" (Rec. at ¶13).

Sandhu contends that the environmental harm that would be occasioned by delaying installation of the Stage II equipment would be negligible. (Pet. at ¶11.) In support of this position, Sandhu presents estimates of vapor emissions likely to occur from the Sandhu facility, and concludes that the emissions would constitute approximately .00007 percent of the total Chicago area emissions. (Id.)

The Agency believes that, while Sandhu significantly underestimates its emissions (Rec. at ¶18), the emissions are indeed small relative to the total emissions in the Chicago area. (Rec. at ¶19.) On this basis the Agency concedes that granting the variance would be appropriate, but only so long as Sandhu commits to coming into compliance within a short time period. (Rec. at ¶20.)

CONCLUSION

The Board agrees with the Agency that Sandhu has demonstrated that immediate installation of the Stage II equipment would constitute a hardship for Sandhu. The Board also finds that, so long as the installation is undertaken expeditiously, the accumulated environmental harm will be small and that the hardship thereby rises to the level of arbitrary or unreasonable hardship. On this basis, the Board will grant the requested relief with conditions.

The principal condition is that Sandhu must have the necessary Stage II equipment installed and operational by March 31, 1995, which is the date upon which this variance will terminate. Sandhu had originally requested that the variance extend an additional month. (Pet. at ¶1.) However, at hearing Sandhu modified the request to accord with the Agency's recommendation of a March 31, 1995 termination. (Tr. at p. 12; Rec. at ¶26.) As the Agency observes, installation by March 31, 1995 will allow Sandhu to be in compliance at the onset of the 1995 ozone season². (Rec. at ¶20.) The environmental harm that would otherwise occur if the variance extended into the 1995 ozone season is thereby lessened.

The Board also accepts as a necessary condition the Agency's recommendation (Rec. at ¶26) that Sandhu not dispense gasoline any time after March 31, 1995 during which Stage II equipment has not yet been installed.

As regards the beginning date for the variance, the Board notes that it is well established practice that the term of a

² The ozone season is defined by the United States Environmental Protection Agency as the annual period from April 1 through October 31.

variance begins on the date the Board renders its decision, unless unusual or extraordinary circumstances are shown. (See, e.g., DMI, Inc. v. IEPA, PCB 90-227, 128 PCB 245-249, December 19, 1991.) Here Sandhu requests that start of the variance be retroactive to November 1, 1994. In view of Sandhu's recent entry into the petroleum marketing business and the Board's knowledge of contractor and equipment shortages associated with installation of Stage II equipment, the Board finds that the instant circumstances are sufficiently unusual to warrant the short retroactive start of the variance requested by Sandhu.

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 of this date. (See The 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

Major & Sandhu Petroleum, Inc., is hereby granted variance from 35 Ill. Adm. Code 218.586 for its facility located at 1337 S. Harlem, Berwyn, Illinois, subject to the following conditions:

- 1) The term of the variance is for the five-month period from November 1, 1994 through March 31, 1995.
- 2) If Stage II vapor recovery equipment is not installed and operational by March 31, 1995, petitioner shall cease dispensing operations at its facility until such time as Stage II equipment is installed and operational.
- 3) Petitioner shall notify the Illinois Environmental Protection Agency of the installation of any Stage II vapor recovery with 14 days of the installation. Notice must include the address of the facility and be by letter posted to:

Mr. Terry Sweitzer, P.E.
Manager, Air Monitoring Section
Division of Air Pollution Control
Illinois Environmental Protection Agency
P.O. Box 19726
Springfield, Illinois 62794-9276;

IT IS SO ORDERED.

If petitioner chooses to accept this variance subject to the above order, within 45 days of the date of this order petitioner shall execute and forward to:

Bonnie R. Sawyer
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 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 94-313, February 16, 1995.

Petitioner

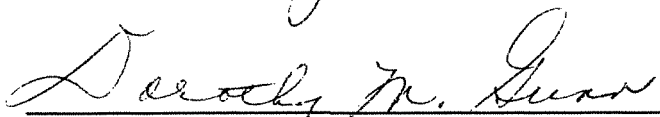
Authorized Agent

Title

Date

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 16th day of February, 1995 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board