

ILLINOIS POLLUTION CONTROL BOARD  
March 16, 1995

MARCLEY'S,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 95-93
	)	(Provisional Variance-Air)
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 the expiration of a prior provisional variance on February 2, 1995. 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, March 14, 1995. 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-three (43)-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 February 17, 1995 and continuing for forty-three (43)-days or until the required vapor recovery equipment is installed, whichever comes first.

This recommendation is essentially that the Board extend a previously-granted forty-five (45)-day provisional variance that expired February 2, 1995. The docket number of the previous provisional variance was PCB 95-30, granted on January 11, 1995. That prior provisional variance was itself an extension of the forty-five (45)-day provisional variance granted on December 1,

1994 in PCB 94-357.<sup>1</sup>

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 February 17, 1995 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:

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<sup>1</sup> Section 36(c) of the Act imposes limitations on the Board's ability to extend a provisional variance:

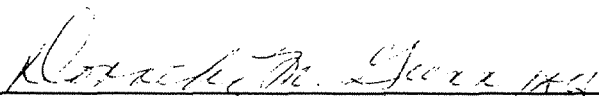
Any provisional variance granted by the Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year.

Since the variance granted in PCB 95-30 expired February 2, 1995, and fewer than ninety (90) days will have elapsed in this calendar year by the expiration of the variance requested in the present petition, the Board interprets Section 36(c) as allowing Marclay's the Agency-recommended forty-three (43)-day extension.

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 16<sup>th</sup> day of March, 1995, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board