

ILLINOIS POLLUTION CONTROL BOARD

March 7, 1974

MOBIL OIL CORPORATION )  
PETITIONER )  
 )  
 )  
v. ) PCB 73-562  
 )  
 )  
ENVIRONMENTAL PROTECTION AGENCY )  
RESPONDENT )  
 )

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This case comes to the Board on petition of Mobil Oil Corporation filed December 28, 1973, for a variance from Rule 205 (b) (2) of the Board's Air Pollution Regulations (Chapter 2), for 580 gasoline storage tanks, located at 223 locations, all of which have a greater than 250 gallon capacity.

The Agency recommendation, filed February 13, 1974, recommends the variance be denied.

No hearing was held.

This variance is requested by Mobil for gasoline tanks located at automobile service stations it owns throughout the state. Mobil owns these stations, but they are leased and operated by independent businessmen. The tanks in question fall under Rule 205 (b) (2), which requires permanent submerged loading pipes on its tanks. At the present time, these tanks are filled by use of the splash loading method.

Petitioner alleges it placed orders for loading tubes to bring the tanks into compliance with the rule from Weil Service Product Corporation, Chicago, Illinois, a distributor for A. Y. McDonald Corporation, a manufacturer of the tubes needed. However, no date for the placement of the order was given.

Mobil has been told that the tubes will be delivered no later than 90 days after the order. We do not know when the order was placed, but are told it would be placed no later than January 1, 1974, the date compliance is required. After delivery, Mobil alleges the work on all the tanks will be completed in 90 days. Mobil requests a six-months variance from the rule.

Mobil alleges that should the variance not be granted, Mobil would not deliver gas to the tanks which are not in compliance. Mobil fur-

ther alleges great hardship to their lessees who operate the property, and to the public in general who would not be able to receive gasoline from their closed stations.

Petitioner does not allege any data as to the environmental impact that these continued emissions will have. The Agency has estimated that the emissions from the tanks will total 480 tons per year, while with submerged pipe loading, the total will be reduced to 280 tons per year.

The Agency feels that Mobil's compliance plan will bring its tanks into compliance and that the time schedule for it is reasonable.

Rule 205 (b) (2) became law on April 13, 1972. The Board finds it incredible that Mobil could not comply with the regulation within 19 1/2 months, when the proposed compliance schedule now is for only six months. Petitioner has given no reason for its delay in its petition. The Agency recommendation states that the reason Mobil expressed to it for the delay is that Mobil considered this project a part of their program for submerged pipe loading of tank trucks. Since this rule change did not come about until December of 1973, Mobil did not proceed with installing the pipes at service stations. The Board does not understand the connection between these two projects. It is true that in Texaco, Inc., v. Environmental Protection Agency, PCB 73-262, the Board allowed two projects to be treated as one, extending the compliance date, but these projects were for the same operational unit, and involved significant engineering and work related to both projects. The Board fails to see the logic here. The submerged pipe loading of trucks was a change from the rule, which made compliance easier for the company. No matter what the outcome would be for the regulation concerning submerged pipe loading of trucks, there was never a proposal to change Rule 205 (b) (2) for fixed storage tanks.

Petitioner does not have an unreasonable and arbitrary hardship. The hardship is self-imposed. Denial of a variance is not an order requiring Petitioner to halt delivery to these tanks. A variance is merely a shield from enforcement (48 Insulations, Inc., v. Environmental Protection Agency, PCB 73-478, E. I. du Pont de Nemours and Company v. Environmental Protection Agency, PCB 73-533). By this decision the Board is not ordering Mobil to cease delivery of gasoline to its stations. The Board notes that an action of this type is separate and distinct from an enforcement action. The sole determination in this proceeding is that Rule 205 (b) (2) does not pose an arbitrary and unreasonable hardship on Petitioner. The Board realizes the effects on the public and to Petitioner's operators, if Mobil were forced to cease delivery of gas to the stations. Mobil is in no way restrained by Board Order from delivery of gasoline to these stations. Petitioner is merely deprived of the protection from enforcement which is afforded by the grant of a variance.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

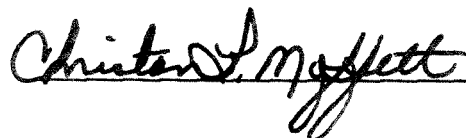
IT IS THE ORDER of the Pollution Control Board that Petitioner's re-

quest for a variance from Rule 205 (b) (2) for six months for 580 gasoline storage tanks is denied.

IT IS SO ORDERED.

Mr. Henss and Mr. Seaman dissent.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 7th day of March, 1974, by a vote of 3 to 2.

A handwritten signature in cursive script, reading "Christan L. Moffett", is written over a horizontal line.