

arbitrary or unreasonable hardship. Accordingly, we grant the variance relief as requested by Amoco and do so with certain, standard conditions as are set forth in the attached order.

PROCEDURAL AND FACTUAL BACKGROUND

For the past two years, Amoco has been in the process of installing Stage II vapor recovery systems in approximately 280 Amoco-operated gas stations in the Chicago nonattainment area in order to bring them into compliance with 35 Ill. Adm. Code Section 218.586. Section 218.586 requires that gas stations located in Chicago's ozone nonattainment area must install gasoline vehicle refueling vapor recovery systems. These systems, which are also known as "Stage II systems" were to have been installed and operational by November 1, 1993 at stations that dispense over 100,000 gallons per month and November 1, 1994 for stations dispensing between 10,000 and 100,000 per month. With the exception of one gas station which was covered by a Board-granted provisional variance, Amoco brought 180 of the 100,000-gallon gas stations on-line by November 1, 1993. (Pet. at 3.)

After meeting the November 1, 1993 date, Amoco then began planning for the next wave of Stage II system installations at the 10,000 to 100,000-gallon stations. (Affidavit of Michael P. Kocon at 1.) This second wave would bring approximately 120 Amoco-operated gas into compliance by November 1, 1994. Thus far, approximately 100 have been equipped with Stage II systems and the variance relief requested in this case would cover 16 of the stations.

In early 1994, Amoco opened discussions with the station operators for the Stage II systems installation. In late summer it became obvious that not all systems could be installed by November 1, 1994 at all the stations. Some stations would close permanently; some planned to renovate their stations; and other stations were subject to condemnation and eminent domain actions by the State of Illinois. Amoco accordingly contacted the Illinois Environmental Protection Agency (Agency) in mid-August to begin discussions for the instant variance request. The variance petition was then filed on September 20, 1994 accompanied by a motion for an expedited hearing. (Aff. of Michael P. Kocon at 3; Pet. at 12.)

Pursuant to the Board's statutory responsibility to grant variance relief whenever it finds that compliance with the regulations would impose an arbitrary or unreasonable hardship, the Board held a hearing on November 22, 1994 on Amoco's petition for variance. (415 ILCS 5/35(a).) At that hearing both Amoco and the Agency appeared, each submitting documentary evidence in support of the Board granting Amoco the requested variance relief. Amoco submitted affidavits of the gas station owners and

operators, and additionally offered various affidavits concerning the stations' ability to comply with the November 1, 1994 compliance date. From the Agency, Terry Sweitzer, Manager of the Air Section, offered written testimony supporting the Agency's recommendation.

As part of its statutory responsibilities in this matter, the Agency conducted an investigation of the facts as alleged in the petition, placed public notice of Amoco's variance petition in local newspapers, and notified the units of local government which may be affected by the requested variance. (415 ILCS 5/4(f) and 37(a); Agency Rec. at 1-5.) The Agency also filed a recommendation in this matter on October 27, 1994, and subsequently amended the recommendation on November 22, 1994. Originally, the Agency had recommended that the Board deny variance relief for seven of the Amoco gas stations and did so based upon the Agency's concern that the petition for variance had not demonstrated sufficient compliance plans for these seven stations. The Agency stated that if adequate information were provided prior to the hearing, then the recommendation may be subject to change. At the hearing, the Agency did amend its recommendation requesting that the Board grant the variance relief sought by Amoco. The Agency also requested that certain conditions be attached to any variance relief we may grant concerning the termination date of the variance for each gas station and future communications with the Agency. (Agency Rec. at 11-12 and Res. Exh. #3.)

HARDSHIP

Amoco is requesting variance relief from the State II requirements for 16 gas stations and with the exception of one station located at 6000 W. Roosevelt, Oak Park (the "Nunley" facility), Amoco requests that the other 15 be granted a temporary variance from the November 1, 1994 compliance date, or until March 31, 1995.³ In seeking this group variance, Amoco cites three different bases in support of its argument that the November 1, 1994 compliance date would cause an unreasonable hardship on all 16 gas stations: Four of the gas stations are impacted by condemnation actions by the State of Illinois which will result in on-site construction; two gas stations have plans for renovation and are awaiting zoning variance approval; and 10 gas stations are renegotiating their contracts with Amoco which could result, among other things, in possible closure of the gas stations altogether. Amoco, and the Agency, agree that each of these three situations creates an unreasonable hardship for Amoco, the gas stations owner and operators, and their employees

³The Nunley facility is scheduled for closure by December 31, 1994, and a variance to this date rather than March 31, 1995 is necessary according to both Amoco and the Agency.

because if the Stage II systems are installed by November 1, 1994, they would only be removed if the site were closed or if the site were under construction. Each of the bases for the variance relief is discussed below.

Condemnation

In two separate road projects, four gas stations will lose a portion or all of the property on which the stations are located through condemnation actions and eminent domain. In one project, Arlington Heights is widening Arlington Heights Road and this construction will impact three gas stations located in Arlington Heights.⁴ (Pet. at 4.) In the other project, the City of Elgin has filed an eminent domain proceeding to take the entire gas station located on Dundee Avenue in order to also widen that street.⁵ (Id.) As a result of both road projects, construction will occur at all four stations requiring the USTs to be dismantled and relocated, and in the case of the Dundee gas station, the entire station will be relocated. Amoco is waiting for the State to take possession of the properties, and then it will close the businesses. During this interim period, Amoco is seeking the temporary variance from the Stage II system installation requirement to avoid the approximately \$500,000 in capital expenditures necessary to bring all four stations into compliance. When the relocation/construction occurs, the gas stations will be shut down and will not dispense gasoline, and each station will be brought back on-line with the Stage II systems in place and operational. (Pet. at 4-5.)

The Agency asks that the relief be granted for these stations until March 31, 1995 or until the date that construction requires temporary shut down.

Zoning

Two of the gas stations have plans to renovate the buildings and update the fuel dispensing systems.⁶ In order to do so, these stations are seeking zoning variance so that the Woodridge station can be demolished entirely and rebuilt, and the Naperville gas station may receive a new canopy. The City of Woodridge is expected to decide the zoning variance in the spring of 1995 and Naperville is expected to rule in the fall/winter of

⁴The three gas stations are located at: 3 E Golf, Arlington Heights; 1000 S. Arlington, Arlington Heights; and 2250 S. Arlington, Arlington Heights.

⁵This gas station is located at 470 Dundee Avenue, Elgin.

⁶The gas stations undergoing renovation are: Rt. 53 and Hobson Road, Woodridge and the corner of Washington and Hillside, Naperville.

1994. (Pet. at 9.) Amoco is seeking a variance for these stations so that they need only undergo one construction project to simultaneously install the Stage II systems and make the improvements. (Id.)

For the gas stations affected by zoning, the Agency requests that the variance be granted to March 31, 1995, or until construction is completed, whichever is sooner.

Contract Negotiations

As to the last basis for variance relief, Amoco argues that it is in the midst of renewal negotiations for the operation of the remaining ten gas stations.⁷ Amoco is seeking variance relief on behalf of these stations until March 31, 1995 because all of the operating contracts are due to be terminated or to expire prior to April 1, 1995. Both Amoco and the stations need a temporary reprieve so that it can be determined which stations will continue to operate as Amoco stations and which leases will be terminated. Without the variance from the November 1, 1994 compliance date, Amoco argues it would have to immediately shut down all ten stations while the parties continue negotiations.

One of the difficulties that Amoco and the stations face, and which they are trying to resolve in negotiations, is that the installation of the Stage II systems will cost each station approximately \$150,000. While the leasing contracts now provide that Amoco will make the initial capital expenditures, the costs may be passed on to the gas station owner, and this is a point of discussion in the contract renewals. Thus far, between the filing of the variance petition, and the hearing, at least two contract issues have been resolved resulting in Amoco's withdrawal of the variance request for two stations.⁸ (Aff. of Michael P. Kocon at 2.)

If Amoco receives the variance, the company hopes to resolve the outstanding contract negotiations prior to March 31, 1995. Amoco assures the Board, and the Agency, that if agreements are not reached by the end of the variance term, Amoco will cease

⁷The gas stations involved in contract renegotiations are: 6000 N. Cicero, Chicago; 8359 Crawford, Skokie; 2100 Sheridan, Zion, Operator; 1343 S. Lewis, Waukegan, IL; 3402 S. Archer, Chicago; 1001 N. Cicero, Chicago; 219 S. Nelton, West Chicago; 401 W. Chicago, Oak Park; 610 W. Randolph, Chicago; 6000 W. Roosevelt, Oak Park; Rt. 53 and Hobson Road, Woodridge; Washington and Hillside, Naperville; and 6000 W. Roosevelt, Oak Park.

⁸Originally, Amoco requested variance relief for 12 facilities renegotiating contracts. Since the petition's filing, two gas station contracts have been resolved, and therefore, at the hearing, Amoco amended the request from 12 stations to 10. These are the same 10 gas stations requesting a variance during the period of contract renegotiation.

allowing the stations to dispense Amoco gas before the ozone season commences or April 1, 1995; Amoco will remove the gasoline dispenser hoses and nozzles.⁹

For the gas stations with contractual issues, the Agency requests that the variance relief be granted to March 31, 1995, or until operations cease, whichever is earlier.

ENVIRONMENTAL IMPACT

When gasoline is dispensed at gas station fuel pump, volatile organic compounds (VOCs or volatile organic material, VOM) are emitted into the atmosphere. The U.S. EPA estimates that uncontrolled emissions due to vehicle refueling equals approximately 11.7 pounds of VOC per 1000 gallons of dispensed fuel. (Pet. at 5; Mobil v. IEPA (May 5, 1994) PCB 94-60, slip op. at 5.) Using the information provided by Amoco in its petition for variance, we calculate that the 16 gas stations together, dispense approximately 38,689.07 gallons per day and as such, approximately 452.66 pounds of VOCs per day. (See Pet. at 5, 7, and Pet. Exhs. 1, 4, 6 and 7.) This amount of VOCs would equal 0.0124% of the total VOCs emitted in the Chicago nonattainment area, if the total daily emissions from all sources is 3,660,000 pounds per day. (See Pet. at. 5, citing, 1990 Emissions Inventory: VOM NOx, CO for Chicago Area.)¹⁰

Amoco believes that the environmental impact of granting the variance will be negligible because the uncontrolled VOC emissions would occur during the winter months. Both parties agree that uncontrolled VOC emissions have a minimal impact if they occur in winter months rather than during the ozone season. The ozone season begins on April 1, 1995 in the Chicago nonattainment area and Amoco is seeking a variance up until March 31, 1995. (See Mobil v. IEPA, slip op. at 6.) Amoco intends to control the VOC emissions at all 16 gas stations by the start ozone session either by having the Stage II systems installed, or shutting down the gas stations. Once the Stage II Systems are installed and operational by April 1, 1995, VOC emissions will be

⁹Alternatively, Amoco requests variance relief for these ten stations on the basis that at least eight will require new USTs altogether and the remaining two will require new UST upgrades. Without the variance relief, Amoco would have had to installed the Stage II systems by November, 1994, and when the USTs are upgraded, remove the Stage II systems and install them a second time. Amoco believes it is more efficient, and less of a hardship to install the new USTs and the Stage II systems simultaneously.

¹⁰Amoco only provided total emission figures for the stations with contract and condemnation issues as a basis for seeking the variance relief. (See Pet. at 5 and 7.) However, Amoco also provided the annual volume of dispensed fuel (see Pet. Exhibits 1, 4, 6, and 7) and for the purpose of illustration, we have calculated the daily emissions figures for all 16 gas stations at issue.

controlled at 95% during the ozone session in compliance with 35 Ill. Adm. code 218.586.

The Agency agrees that the uncontrolled emissions at issue here are of less concern than if the uncontrolled emissions were released during ozone season. The Agency also emphasizes that it is important that no variance relief be granted for a period that extends into the ozone season.

CONSISTENCY WITH FEDERAL LAW

There is no issue in this case concerning consistency with federal law. In its recommendation, the Agency notes that Stage II controls are a part of the Agency's 15% rate of progress plan and that it is important that Amoco operations come into compliance prior to the start of the ozone session. (Agency Rec. at 9.) (See also Mobil v. IEPA slip op. at 6 (granting Mobil a group variance would not impede the State's efforts at achieving 15% reduction in mass emissions of VOC as required by the federal Clean Air Act Amendments.))

DECISION

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary and unreasonable hardship upon the petitioner. (415 ILCS 5/35 9(a) (1992).) Furthermore, the burden is on the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v IPCB (1985), 135 Ill. App. 3d 343, 481 N.E. 2d 1032.) Only with such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

Based on the record, the Agency's recommendation, and our review of the hardship which would be imposed on Amoco and the gas stations, the Board finds that Amoco has presented adequate proof that immediate compliance with the 35 Ill. Adm. Code 218.566 could result in an arbitrary and unreasonable hardship. (Mobil v. IEPA (May 5, 1994) PCB 94-60.)

The requested variance accordingly, is granted, subject to conditions consistent with this opinion. The relief shall be retroactive to November 1, 1994.

This opinion constitutes the Boards' findings of fact and conclusions of law in this matter.

ORDER

A. Amoco Oil Company and the Amoco 16 facilities are hereby

granted variance from 35 Ill Adm. Code 218.586(d) as it pertains to the requirement that Stage II gasoline vapor recovery equipment be installed by November 1, 1994, subject to certain conditions.

B. The variance shall apply to the following facilities:

1. 3 E Golf
Arlington Heights
Operator: Ryan Lasky
Basis: Condemnation
2. 1000 S. Arlington
Arlington Heights
Operator: Ronald F. Black
Basis: Condemnation
3. 2250 S. Arlington
Arlington Heights
Operator: Arsal Ahmed
Basis: Condemnation
4. 470 Dundee Avenue
Elgin
Operator: John Bertrand
Basis: Condemnation
5. 6000 N. Cicero
Chicago
Operator: Jim Stratigakis
Basis: Contract
6. 8359 Crawford
Skokie
Operator: Gary Svacina
Basis: Contract
7. 2100 Sheridan
Zion
Operator: Tim Athans
Basis: Contract
8. 1343 S. Lewis
Waukegan, IL
Operator: Thomas Brown
Basis: Contract
9. 3402 S. Archer
Chicago
Operator: David Goldberg
Basis: Contract

10. 1001 N. Cicero
Chicago
Operator: Hahlid Iqbal
Basis: Contract
 11. 219 S. Nelton
West Chicago
Operator: Norb Janisch
Basis: Contract
 12. 401 W. Chicago
Oak Park
Operator: Francisco Gill
Basis: Contract
 13. 610 W. Randolph
Chicago
Operator: Drew Passaglia
Basis: Contract
 14. 6000 W. Roosevelt
Oak Park
Operator: M.S. Nunley
Basis: Contract
 15. Rt. 53 and Hobson Road
Woodridge
Operator: Bill Stockhausen
Basis: Zoning
 16. Washington and Hillside
Naperville
Operator: Ruth Ann Epperson
Basis: Zoning
- C. The variance shall be subject to the following conditions:
- A. For the Lasky, Black, Ahmed, and Bertrand facilities, from November 1, 1994 to either March 31, 1995 or the date on which road construction requires temporary shutdown of the stations, whichever is earlier;
 - B. For the Nunley facility, until December 31, 1994;
 - C. For the Stockhausen and Epperson facilities, from November 1, 1994 until either March 31, 1995 or when construction is complete, whichever is earlier;
 - D. For the Stratigakis, Svacina, Athans, Brown, Goldberg, Iqbal, Janisch, Gill, and Passaglia facilities, from November 1, 1994 until March 31, 1995;

- E. Petitioner shall notify Mr. Terry Sweitzer, P.E. , Manager - Air Monitoring Section, Division of Air Pollution Control, P.O. Box 19276, Springfield, Illinois 62794-9276 upon expiration of the variance (as described above), when operations cease, or when Stage II controls are installed.

IT IS 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:

Rachel L. Doctors
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 P.O. Box 19276
 2200 Churchill Road
 Springfield, Illinois 62794-9276

a certificate of Acceptance and Agreement to be bound to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is 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 this variance is 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 94-263, January 12, 1995.

Petitioner

Authorized Agent

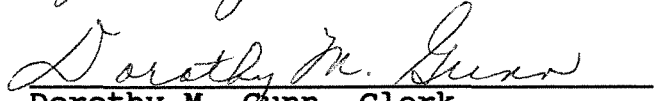
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Date

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 11th day of January, 1995, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board