

ILLINOIS POLLUTION CONTROL BOARD  
March 31, 1994

STATE OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 94-100
	)	(Provisional Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), State Oil Company has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow State Oil Company's gasoline dispensing operations (service station) to continue operating even though it did not install operational vapor recovery equipment by November 1, 1993. Such request for a provisional variance and the Notification of Recommendation was filed with the Board by the Agency on Tuesday, March 29, 1994. 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 State Oil Company a sixteen (16)-day provisional variance for one (1) of its facilities located in Cook County at 9340 Irving Park Road, Schiller Park, 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 March 16, 1994, and continuing for sixteen (16)-days or until the required vapor recovery equipment is installed, whichever comes first.<sup>1</sup>

This recommendation is essentially that the Board extend a previously-granted forty-five (45)-day provisional variance that expired March 15, 1994. The docket number of the previous provisional variance was PCB 94-66, granted on February 17, 1994. That prior provisional variance was itself an extension of the forty-five (45)-day provisional variance granted on January 6, 1994 in PCB 94-6. That prior provisional variance was itself an

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<sup>1</sup>Petitioner originally requested provisional variances for thirteen (13) of its facilities, but the Agency without explanation recommended that the Board grant Petitioner's request for a provisional variance only for its facility located in Cook County at 9340 Irving Park Road, Schiller Park, Illinois 60176. (Agency Recommendation at 4.)

extension of the forty-five (45)-day granted on October 27, in PCB 93-198.<sup>2</sup>

The Agency's provisional variance recommendation states that State Oil Company has requested a provisional variance on behalf of one of its service stations in the Chicago area, located as follows:

<u>County</u>	<u>City or Village</u>	<u>Street Address</u>
Cook	Schiller Park	9340 Irving Park Road

Upon receipt of the request, the Agency issued its recommendation, notifying the Board that the failure to grant the requested sixteen (16)-day provisional variance would impose an arbitrary or unreasonable hardship on the petitioner. The Agency recommendation states that installation of Stage II vapor recovery equipment at the State Oil Company facilities is not possible by the November 1, 1993 deadline for compliance because severe weather conditions have made it impossible to complete the outdoor activities necessary for the installation of vapor recovery equipment for its gasoline dispensers, and that equipment and the crews necessary to install it were not available before the compliance deadline.

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

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<sup>2</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 variances granted in PCB 94-6 expired January 29, 1994 and PCB 94-66 expired March 15, 1994, and fewer than ninety (90) days elapsed in this calendar year, the Board interprets Section 36(c) as allowing State Oil Company the Agency-recommended sixteen (16)-day extension.

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.

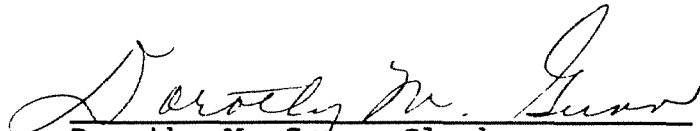
Having received the Agency recommendation notifying the Board that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 218.586, subject to the following conditions:

1. The term of this provisional variance shall commence on March 16, 1994, and it shall expire on the date the petitioner completes the required installation of vacuum assist Stage II vapor recovery equipment, or after sixteen (16) days have elapsed, whichever comes first;
2. The petitioner shall notify the Agency of the installation of the 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 31<sup>st</sup> day of March, 1994, by a vote of 5-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board