

ILLINOIS POLLUTION CONTROL BOARD
February 16, 1995

P & S, INC.,)
)
 Petitioner,)
)
 v.) PCB 94-299
) (Variance - Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

LOUIS G. APOSTOL, GRABOWSKI, APOSTOL & ASSOCIATES, LTD, APPEARED ON BEHALF OF PETITIONER;

SHEILA G. KOLBE, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by E. Dunham):

On October 29, 1994, P & S Inc. filed a petition for variance from 35 Ill. Adm. Code 218.586(d)(3), the Board's regulations for Stage II gasoline vapor recovery, for its oasis facility located in Wood Dale, DuPage County, Illinois.

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 therein 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 12, 1994. The Agency contends that an unreasonable hardship would be imposed on P & S Inc. in the absence of the requested relief. (Rec. at 5.) Accordingly, the Agency recommends grant of variance, subject to conditions.

Hearing was held on December 20, 1994 before hearing officer June Edvenson. No members of the public attended the hearing. No briefs were filed.

As presented below, the Board finds that P & S Inc. has met its burden of demonstrating that immediate compliance with the Board regulations at issue would result in an arbitrary or unreasonable hardship upon P & S Inc. Accordingly, the variance request will be granted.

REQUESTED RELIEF AND HARDSHIP

Gas stations located in the Chicago ozone nonattainment area are required to be equipped with gasoline refueling vapor recovery systems (Stage II vapor recovery) in compliance with 35 Ill. Adm. Code 218.586. These systems were to have been installed and operational by November 1, 1993 for stations that dispense over 100,000 gallons per month and by November 1, 1994 at stations dispensing between 10,000 and 100,000 gallons per month.

Petitioner dispenses an average of 40,000 gallons of gasoline per month. (Pet. at 4.) Therefore, petitioner was required to install Stage II vapor recovery by the November 1, 1994 deadline.

The Illinois Department of Transportation is currently upgrading the roads surrounding the station. (Pet. at 6.) The change in the roadway is in response to the development of a shopping center in the area. (Pet. at 6.) It is anticipated that the construction in the roadway will require petitioner to relocate its underground storage tanks. (Rec. at 3.) Completion of the construction of the roadway is anticipated in early 1996. (Rec at. 3.) Without a variance petitioner would be required to install the vapor recovery equipment twice; both before and after moving the tanks. Petitioner contends that installation of the Stage II vapor equipment is estimated at \$60,000. (Pet. at 5.)

Petitioner has requested a variance for a period of 18 months. This period is requested to allow time for the completion of the upgrading of the roadway, the relocation of the tanks and the installation of the Stage II equipment.

The Agency recommends that the variance be granted for a period of 17 months beginning with the November 1, 1994 compliance date. This period is recommended so that the expiration of the variance coincides with the beginning of the ozone season in April. The Agency also recommends certain conditions of the variance which the Board has incorporated into the variance.

ENVIRONMENTAL IMPACT

During the dispensing of gasoline, volatile organic compounds (VOC, also known as volatile organic material or VOM) are emitted into the atmosphere. American Petroleum Institute (API) estimates that uncontrolled emissions due to vehicle refueling equals approximately 11.7 pounds of VOC per 1,000 gallons of fuel dispensed. (Pet. at 4.) Petitioner contends that it will continue to emit approximately 468 pounds of VOM per month during the variance period. (Pet. at 4.)

The Agency states that emissions of VOM during the cold weather have minimal impact on the ozone air quality. (Rec. at 5.) It is only during the ozone season (April - October) that emissions from gasoline fueling have a significant impact on the ozone air quality. (Pet. at 5.) The Agency observes that a majority of the variance period is not during the ozone period. (Pet. at 5.)

CONSISTENCY WITH FEDERAL LAW

P & S Inc. and the Agency agree that grant of variance would be consistent with federal law. (Pet. at 6 and Rec. at 5.) The Agency contends that the granting of the variance will not impede the State's efforts at achieving the 15% reduction in VOM emissions because Stage II equipment will be installed at the end of the variance period. (Rec. at 6.) With the granting of this variance, the Agency will submit necessary information to the United States Environmental Protection Agency as a State Implementation Plan amendment. (Rec. at 6.)

CONCLUSION

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(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 upon the record before it and upon review of the hardship P & S Inc. would encounter, and the environmental impact that would result from grant of variance, the Board finds that P & S Inc. has presented adequate proof that immediate compliance with the regulations at issue would result in an arbitrary and unreasonable hardship on P & S Inc. P & S requests that the variance commence on November 1, 1994. The Board notes that it is a well established practice that the term of a variance begins on the date the Board renders its decision unless unusual or extraordinary circumstances are shown. (See, e.g. DMI, Inc. v. IEPA (December 19, 1991), PCB 90-277, 128 PCB 245-249.) In view of the facts of this case the Board finds that the instant circumstances warrant the short retroactive start of the variance. The requested variance accordingly will be granted, subject to conditions consistent with this opinion.

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

ORDER

- A. P & S Inc. is hereby granted a variance from 35 Ill. Adm. Code 218.586(d)(3) as it pertains to the requirement for Stage II gasoline vapor recovery equipment at its oasis facility located at Irving Park and Addison Roads in Wood Dale, Du Page County, Illinois subject to the following conditions:
1. Variance begins on November 1, 1994 and expires on April 1, 1996, or 60 days after notification to P & S Inc. from the Illinois Department of Transportation (IDOT), or the developer of the shopping center that the widening of the roadway will be abandoned for any reason, whichever is sooner.
 2. Petitioner shall send monthly status reports to the Agency on the progress of the construction of the Irving Park Road and Addison Road improvement with the following information:
 - a. Dates when construction begins and ends;
 - b. If widening of the roadways has begun;
 - c. When Petitioner moves its USTs and
 - d. Any correspondence from IDOT or the developer of the shopping center on the status of construction of the roadway of the shopping center (i.e., as in Exhibit 1).
 3. If construction is completed on the road improvement before April 1, 1996, Petitioner shall install Stage II Vapor recovery system within 60 days from the event of completion of the road improvements.
 4. Petitioner shall notify the Agency upon completion of the installation of Stage II equipment.

Notification of the above shall be sent to:

Mr. Terry Sweitzer, P.E.
Manager, Air Monitoring Section
Division of Air Pollution Control
P. O. Box 19276
Springfield, IL 62794-9276

- B. Within 45 days of the date of this order, Petitioner shall execute and forward to Sheila Kolbe, 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 shall be 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 94-299, February 16, 1995.

Petitioner

Authorized Agent

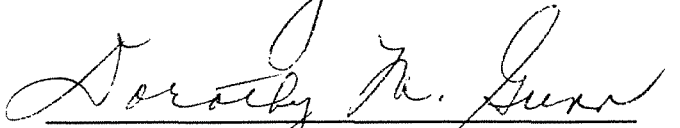
Title

Date

IT IS SO ORDERED.

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