

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1994

T.M.L. ASSOCIATES, INC.,)
)
Petitioner,)
)
v.) PCB 94-63
) (Provisional Variance)
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)), T.M.L. Associates, Inc. has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow several of T.M.L. Associates, Inc.'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, February 15, 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 T.M.L. Associates, Inc. a forty-five (45)-day provisional variance for its facilities located in Kane County 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 January 30, 1994, and continuing for forty-five (45) 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 January 29, 1994. The docket number of the previous provisional variance was PCB 93-254, granted on December 16, 1993. That prior provisional variance was itself an extension of the forty-five (45)-day provisional variance granted on November 18, 1993 in PCB 93-224.¹

¹ 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

The Agency's provisional variance recommendation states that T.M.L. Associates, Inc. has requested a provisional variance on behalf of its service stations in the Chicago area, located as follows:

<u>County</u>	<u>City or Village</u>	<u>Street Address</u>
Kane	Elburn	Routes 47 & 38

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. The Agency recommendation states that installation of Stage II vapor recovery equipment at the T.M.L. Associates, Inc. facilities is not possible by the November 1, 1993 deadline for compliance because T.M.L. Associates, Inc. has contracted for the purchase and installation of Hasstech vapor recovery equipment, but 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 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

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 93-224 expired January 29, 1994, and fewer than ninety (90) days elapsed in this calendar year, the Board interprets Section 36(c) as allowing T.M.L. Associates, Inc. the Agency-recommended forty-five (45)-day extension.

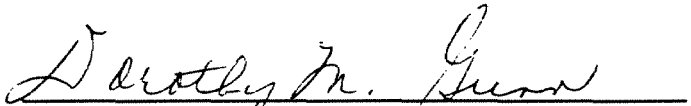
January 30, 1994, and it shall expire on the date the petitioner completes the required installation of vacuum assist Stage II vapor recovery equipment, or after forty-five (45) days have elapsed, whichever comes first;

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 17th day of February, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board