

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1979

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 77-341
)	
ORDMAN'S PARK & SHOP, INC.,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

The People of the State of Illinois (People) filed an amended Complaint against Ordman's Park & Shop, Inc., (Ordman's) on January 30, 1978. The Board struck all counts of the amended complaint except for Count I, which alleged that Ordman's caused or allowed the emission of contaminants from an incinerator so as to cause air pollution in Illinois, in violation of Section 9(a) of the Act. A hearing was held in this matter on February 15, 1979, in Chicago. No citizen witnesses testified. At the hearing the parties submitted a Stipulation and Proposal for Settlement (Stipulation).

Ordman's owns and operates a supermarket on or near Wolf Road in the town of Mokena, Will County, Illinois. Ordman's uses an incinerator at its facility to dispose of paper waste and small amounts of wood from crates. The incinerator, which has a rated capacity of 600 pounds per hour, is a vertical multichamber incinerator with an auxiliary burner located in the secondary chamber. It has been used to incinerate approximately 2,500 pounds of waste per week.

The People contend that on certain specified dates Ordman's operated its incinerator while the auxiliary burner failed to function properly. The People furthermore contend that on certain dates Ordman's caused or allowed the emission of smoke, particulate matter, fly ash, sparks and odors into the atmosphere from its incinerator so as to cause air pollution by unreasonably interfering with the enjoyment of life and property of the residents in the vicinity of the emission source.

Ordman's determined that it was possible to terminate usage of the incinerator and to install a baler or compactor for the paper waste generated by the supermarket's operation and to have the paper waste hauled by a scavenger. Because

in the past Ordman's was unable to install a baler at the supermarket, it spent \$3,000 to upgrade the incinerator. Recently, however, Ordman's learned of a new and smaller baler which could be installed at the supermarket. Ordman's agreed in the Proposal for Settlement contained in the Stipulation to cease operation of its incinerator by September 1, 1978, to not operate the incinerator at any time in the future, and to surrender its operating permit to the Agency by September 1, 1978. The parties stipulate that installing the baler and dismantling the incinerator would cost \$5,850.00 plus an estimated electrical and wiring cost of \$400.00.

Although the parties to this proceeding agree upon the Proposal for Settlement, they generally disagree about whether indeed a violation occurred. For instance, in the Stipulation Ordman's denies having operated its incinerator on all of the dates on which a violation was alleged to have occurred and alleges that during the specified periods of time the incinerator was operating properly. The parties also disagree as to whether it was technically feasible to reduce the emissions. The People contend that certain modifications to the incinerator could have reduced the emissions involved in this case; Ordman's contends, however, that there was no rational method of improving the incinerator as it was constituted on the premises.

The Board finds that it cannot weigh contradicting facts presented solely in a Stipulation. Without actual proof in the form of testimony and cross-examination, the Board has no basis for determining which set of facts and which allegations are more accurate. The Board, therefore, cannot determine in this case whether a violation occurred and must dismiss the Complaint.

However, because the parties have agreed to a compliance plan, the Board will construe the Stipulation as a settlement agreement. The Board finds that the Proposal for Settlement in the Stipulation will ensure that the public is protected. Furthermore, Ordman's has agreed in the Proposal for Settlement to pay \$100.00, which the Board construes as payment in settlement of this action rather than as a penalty. The Board will base its dismissal of the Complaint upon the Proposal for Settlement and will order Ordman's to comply with it.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Ordman's Park & Shop, Inc., shall comply with all the provisions of the Proposal for Settlement contained in the Stipulation submitted by the parties herein, which is incorporated by reference as if fully set forth herein.
2. Ordman's shall, within 35 days of the date of this Order, pay \$100.00 in settlement of this matter by certified check or money order made payable to the State of Illinois to: Mr. Thomas Pigati, Fiscal Officer, Attorney General of Illinois, 500 South Second Street, Springfield, Illinois 62706.
3. Based upon the Stipulation and Proposal for Settlement, the Board hereby dismisses the Complaint filed herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of May, 1979 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board