

ILLINOIS POLLUTION CONTROL BOARD
September 13, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
) PCB 73-150
 BRESLER ICE CREAM COMPANY, an)
 Illinois corporation,)
)
 Respondent.)

Mr. James Jenks, Assistant Attorney General, on behalf of
the Complainant;
Mr. Barry Kroll, on behalf of the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Seaman)

On April 12, 1973, the Agency filed complaint against
Respondent, Bresler Ice Cream Company, the owner and operator
of an ice cream production facility located in Chicago, County
of Cook, Illinois.

This cause comes before the Board with a Stipulation of
Facts entered into between the respective parties. According
to said Stipulation, Respondent operated an incinerator
at its facility during the period between July 1, 1970 and
January 20, 1973. Articles incinerated were primarily wastes
and by-products from Respondent's operation.

By paragraph 10 of the Stipulation, Respondent admits
that the emission of contaminants from the subject incinerator
constituted air pollution as defined in Section 3 (b) of the
Environmental Protection Act. The said contaminants were
emitted in sufficient quantities and were of such characteristics
and duration as to unreasonably interfere with the enjoyment
of life or property. Numerous complaints to this effect were
received by the Agency from persons residing in the vicinity.
The substance of the complaints related primarily to the escape
of fly ash and odors from the incinerator. It is noted that
nowhere in the record before this Board is there any indication
of the magnitude of pollutants emitted from Respondent's incinerator.
We are merely informed that such emissions were in violation
of the Act.

During the three years in question, it is stipulated (paragraph 9) that Respondent was attempting to remedy the situation and, pursuant thereto, consulted with experts and expended sums of money in an effort to eliminate or reduce emissions. Here, again, the Board has no further information regarding the experts involved or the amount of money expended.

According to the Stipulation (paragraph 11), Respondent realized that its efforts to modify its incinerator were unavailing and terminated the use of said incinerator on January 20, 1973. It is noted that operation of the incinerator was terminated prior to the filing of the complaint herein. The incinerator has been rendered inoperable and Respondent states (paragraph 11) that it will not be operated in the future.

From the above, this Board is satisfied that Respondent has, for a period of approximately three years, been in violation of the Act, and a penalty will be assessed.

Respondent stresses, in mitigation, that it unilaterally terminated the use of the subject incinerator prior to the date of the Agency complaint (R.6). This fact would carry more weight if Respondent had not waited approximately three years to take remedial action. Further, it would have been well for Respondent to have introduced evidence regarding the amount of money expended, rather than content itself with the bare stipulation that sums were expended.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that Respondent, Bresler Ice Cream Company, shall:

1. Cease and desist from the violations found herein.
2. Refrain from operating the subject incinerator without prior Agency approval.
3. Respondent shall pay to the State of Illinois the sum of \$1,500.00 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 13th day of September, 1973 by a vote of 4 to 0.

Christan L. Moffett

