ILLINOIS POLLUTION CONTROL BOARD

April 5, 1973

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
vs.	)	PCB 72-286
CITY OF EVANSTON, a municipal corporation, Respondent.	)	

Mr. Richard W. Cosby, Assistant Attorney General for the EPA
Mr. Jack M. Siegel, Corporation Counsel for Respondent

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

Respondent City of Evanston, since 1955, has operated a municipal incinerator with a designed capacity of 180 tons per day. In July 1972 the Environmental Protection Agency filed a Complaint alleging that Respondent, through its operation of the incinerator, caused air pollution in violation of Sec. 9(a) Environmental Protection Act, emitted excessive particulate matter in violation of Rule 3-3.232 of the Rules and Regulations governing the control of air pollution promulgated by the Air Pollution Control Board, and that the City failed to file with the Technical Secretary of the Air Pollution Control Board or with the Environmental Protection Agency a Letter of Intent to file an Air Contaminant Emission Reduction Program.

The City stipulated that it never sent the Technical Secretary of the Air Pollution Control Board or the EPA a Letter of Intent, but denies that it is guilty of the various charges. For affirmative defense the City asserts that as a home rule unit it has the "power to operate its municipal incinerator in the manner in which it sees fit" without regard to the EPA; that the Complaint is vague, indefinite and uncertain; that the Environmental Protection Act is unconstitutional; and that the Attorney General cannot prosecute a case before the Pollution Control Board since he represents the Pollution Control Board.

We deny all of the affirmative defenses raised by Respondent. The claim that a home rule unit can pollute at will without

intereference from governmental agencies is a gross misconception of the law. See: EPA v. McHugh Construction Co., PCB 71-291. Home rule should benefit those citizens who live in the larger and better financed and presumably better run communities and was never intended to be used to their detriment. The Complaint advises the Respondent with sufficient clarity of the nature of the charge. We have repeatedly held the Act valid and constitutional as has the Illinois Appellate Court in EPA vs. Ford __ Ill. App. 2d__ (Feb. 1973). The Attorney General's right and his duty to represent the Environmental Protection Agency in these prosecutions is clear. The Illinois Supreme Court has held that the Attorney General is the sole official adviser of all State agencies and it is his duty to conduct the law business of the State both in and out of court. Fergus vs. Russell 270 Ill. 304; Department of Mental Health vs. Coty 38 Ill. 2nd 602.

Three short public hearings were held. The only public testimony came from the League of Women Voters which recommended that the incinerator be closed and that the City use a landfill system of waste disposal temporarily. The League also recommended that no fine be imposed since the money could be used to finance a new solid waste treatment system.

The EPA and City of Evanston have filed a Stipulation of Facts but disagree whether those facts prove a violation. We find from the Stipulation and Exhibits that Respondent has committed all of the violations charged during the past four years.

Testimony of individuals residing near the incinerator clearly shows that operation of the incinerator has unreasonably interfered with the enjoyment of life and property for that period of time. Smoke, particulate matter and odors prevented nearby residents from using their yards, caused irritation of sinus, and caused headaches. Smoke ranged from light grey to dark grey or black. There was precipitation of a black tar-like residue and charred paper; strong acrid odor of burning garbage; soiling of automobiles and home interiors; and uncovered trucks dropped burned garbage material on the streets near the incinerator. Agency calculations reveal particulate emission of .945 grains per standard cubic foot, more than 4 times the allowable rate.

Evanston hired a consulting firm in 1968 and again in 1970 and 1972 to make recommendations for the improvement of the waste disposal system. The 1972 effort is resulting in a joint venture with Skokie and Niles for a regional solid waste program. As a result of this regional plan, the City of Evanston has agreed to terminate the operation of its municipal incinerator by April 15, 1973. Volume of the incinerator operation has been

reduced for the past four months. The City further agrees that any landfill utilized by the City as an alternate disposal site will be a landfill permitted by the EPA.

We approve of these recent agreements by the City of Evanston which will improve the environment for its citizens. We agree with the League of Women Voters that municipal funds are better spent on a waste treatment system than in monetary penalties in this case. However, this Board believes that serious violations of this type cannot go entirely unpenalized and we will impose a relatively small penalty in the amount of $500. Our Order will assure that the incinerator is closed down on schedule and that it shall not operate again in violation of the Regulations.

ORDER

It is ordered that:

1. City of Evanston shall cease operations of its municipal incinerator located at 1016 Clark Street, Evanston by April 15, 1973. Operations of the incinerator shall not resume until such time as the Environmental Protection Agency is satisfied that the incinerator can be operated in compliance with Regulations.

2. City of Evanston shall pay to the State of Illinois by May 31, 1973 the sum of $500 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 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 5th day of April, 1973 by a vote of 4 to 0.