ILLINOIS POLLUTION CONTROL BOARD
January 6, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	PCB 71-329
	)	
	)	
AMERICAN GENERATOR AND ARMATURE CO.	)	

James I. Rubin, Assistant Attorney General, for the Environmental Protection Agency

Raymond I. Suekoff,for the American Generator and Armature Co.

Opinion and Order of the Board (by Mr. Currie):

American Generator and Armature Co. was charged with causing air pollution from an incinerator at its Chicago factory and with installing an afterburner on the Incinerator without a permit from the Agency. The company denied that it was causing air pollution but conceded that it had installed the afterburner without a state permit, believing that only a city permit was required.

The Agency presented one witness, a neighbor who testified to considerable smoke and odor problems in past years, to an improvement sometime in 1971, and to the apparent cessation of the problem since September. The company's witnesses testified that the incinerator problem had been brought to its attention by the city, that it had promptly purchased and installed the afterburner in February 1971 to cure the problem, and that a city permit was obtained, both the company and its contractor believing no state permit necessary. Upon receipt of the present complaint in October, the company immediately shut down and locked the incinerator, and it has not been used since. At the same time the company applied for a state permit, which has been issued and was introduced at the hearing.

That there was air pollution before the afterburner was installed is clear under the doctrine of Moody v. Flintkote Co., # 70-36 (Sept. 2, 1971), for the incinerator emissions interfered with at least one neighbor's enjoyment of life, and reasonable control measures, namely the afterburner, were available. That a state permit was not obtained before installation is admitted. That one was required is clear from an examination of the applicable law.

Section 9(b) of the Environmental Protection Act, effective July 1, 1970, forbids the installation of any equipment designed to prevent air pollution, of any type designated by Board regulations, without a permit from the state Environmental Protection Agency. The Rules and Regulations Governing the Control of Air Pollution, adopted in 1967 and preserved as Board regulations by section 49(c) of the Act, provide in Rule 3-2.110 that a permit is required for installation or construction of "any new equipment intended for eliminating, reducing or controlling emission of air contaminants," with exceptions not here material.

Nothing in the above regulations themselves limited their geographical scope; on their face they applied to all facilities in the State. The old Air Pollution Control Act, under which the regulations were adopted, contained a provision authorizing the old Board to exempt from the Act and regulations those municipalities or other local governments with control programs of their own meeting certain stated conditions. Pursuant to that authorization, the old Board adopted regulations providing for such exemptions, and the City of Chicago, among others, was granted a certificate of exemption. At that time, prior to the adoption of the Environmental Protection Act, facilities in the City did not require state permits.

All this was changed by the new statute in July 1970. Section 2 of the Act plainly states, in contrast to the earlier law, the legislative intention to create a state-wide program:

> (a) The General Assembly finds; . . .
>
> > (ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection . . .
>
> (b) It is the purpose of this Act . . . to establish a unified, state-wide program . . . .

Conspicuous is the omission of any provision for exemption of municipalities or counties with their own control programs, for such would have been wholly inconsistent with the express statutory finding and policy quoted above. The Governor's message to the General Assembly explaining the bill that became the Environmental Protection Act stressed that the bill would do away with all local exemptions. Indeed the emphasis on a state-wide program was increased during the bill's journey through the General Assembly by omission of the original provision that would have allowed the state to grant "primary jurisdiction" to qualified local agencies. In short, it was one of the major purposes of the Environmental Protection Act, clearly and publicly expressed all during the bill's progress, to abolish local exemptions.

Since the exemption regulations were inconsistent with the new statute, they were not preserved by section 49(c) but expired immediately upon the effective date of the statute. To remove any doubt, and to alert affected persons once again to the necessity for complying with state law in formerly exempted communities, we adopted a regulation (#R 70-1, Oct. 8, 1970), explicitly repealing the old exemption regulations. See the Board's opinion in that proceeding Oct. 8, 1970. Outstanding exemption certificates were voided by expiration of the regulations and statute that were their sole authorization.

Since the only geographic limit on the applicability of the permit regulations was the existence of the exemption regulation, the repeal of the latter made the permit rules applicable to formerly exempted areas such as Chicago. Cf. EPA v. Bath, Inc., #71-52 (Sept. 16, 1971), reaching the same conclusion with regard to the scope of the solid waste regulations.

State permits have thus been required for new Chicago facilities since July 1, 1970. The installation of the afterburner in this case without such a permit was a violation of the state law and regulations.

Because of the company's professed ignorance that a state permit had become necessary and because of its prompt cooperation in closing the source and applying for a permit when the violation became known, the Agency dropped its request for money penalties. The issuance of the state permit on the day of the hearing removes the necessity for any order against operation without a permit. And, since the installation of the afterburner is expected by both the City and the State to cure the pollution problem (else no permit should have been issued), we have no reason to believe there is a continuing danger of future pollution and no reason to enter a cease-and-desist order against further violations.

In sum the Board's finding is that air pollution was caused in the past and that the permit provisions were violated; our order is that the proceedings are hereby closed with no remedial or penalty provisions. This opinion should serve as a final notice that state permits are required for new installations in formerly exempted areas such as Chicago, and that we shall not take kindly to pleas of ignorance in the future.

Mr. Dumelle would impose a penalty of $500.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 6th day of January, 1972 by a vote of 4-0.

Christan Moffett