

ILLINOIS POLLUTION CONTROL BOARD  
September 30, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Complainant, )  
)  
)  
v. ) PCB 73-285  
) PCB 73-286  
) PCB 73-457  
)  
CITY OF CHICAGO, a municipal )  
corporation, )  
)  
Respondent. )

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

This Opinion and Order deals with three enforcement actions filed by the Environmental Protection Agency against the City of Chicago. PCB 73-285 concerns the City of Chicago Southwest Incinerator. PCB 73-286 concerns the City of Chicago's Calumet Incinerator. PCB 73-457 concerns the City of Chicago's Northwest Incinerator. On March 26, 1975 the Board ordered these cases, along with PCB 73-216, consolidated. On February 19, 1976 the Board granted the Agency's Motion to Dismiss PCB 73-216 without prejudice. This Opinion and Order of the Board deals with the three remaining cases.

PCB 73-285 (Southwest Incinerator)

This matter comes before the Board on a Complaint filed by the Environmental Protection Agency (Agency) against the City of Chicago on July 13, 1973. The subject of the Complaint is the City of Chicago's Southwest Incinerator, located at 1500 Pershing Road, Chicago, Cook County, Illinois. A hearing was held on April 2, 1976 at which the parties, pursuant to Rule 333 of the Board's Procedural Rules, read into the record a Stipulation (R. 36-46) and a partial Settlement Proposal (R. 47-53) leaving the issues of penalty and performance bond to the Board (R. 46, 54).

The Complaint consists of three Counts. Count I alleges that emissions from the Incinerator constitute "air pollution" under Section 3(b) of the Act and therefore violated Section 9(a) of the Act from on or about July 1, 1970 to the filing of the Complaint. Count II alleges that particulates were emitted in violation of Rule 3-3.232 of the old Air Rules from November 3, 1971 to the filing of the Complaint, and thus also Section 9(a) of the Act. Count III alleges that since April 1, 1973 the City of Chicago operated the Southwest Incinerator without the required permit and therefore in violation of Rule 103(b)(2) of the Air Pollution Control Regulations and Section 9(b) of the Act.

The City of Chicago stipulates to the violations alleged in Counts II and III (R. 41, 42). However, at R. 42 the Agency moves, as part of the Stipulation, to dismiss Count I without prejudice. The proposed Settlement provides for the construction of a Supplemental Fuel Processing Plant to be operated in conjunction with the Commonwealth Edison facility located adjacent to it. The plant will process all refuse currently incinerated at Southwest Incinerator for combustion as a source of fuel for the Commonwealth Edison Crawford Power Plant. The City of Chicago states that contracts for construction of the facilities, conveyor intercomingling, and acceptance of all burnable shredded combustible refuse for ten years have already been signed (R. 55). The following completion schedule is proposed:

- A. Construction of the City's building by September 1, 1976;
- B. Installation of component equipment by January 1, 1977;
- C. Facility completed and in operation by March 31, 1977;

The City of Chicago explicitly agrees at R. 53 to cease operation of Southwest Incinerator on or before March 31, 1977.

The Board must determine whether the interests of the citizens of this State will be best served by the acceptance of this Settlement. The City of Chicago conducted stack tests which indicate that the emissions are up to five times the particulate standard of old Rule 3-3.232 and up to 35 times the particulate limits of new Rule 203(e)(1)(R. 41). These are gross violations indeed, especially considering the 270,000 tons of refuse incinerated yearly at this facility (R. 36, Exhibit No. 2, p. 23).

Further, Exhibit 1 indicates that Southwest Incinerator is located in an area which is in violation of United States and Illinois Ambient Air Quality Standards for Particulates of  $75 \text{ ug/m}^3$  (annual average). These standards were set as being a minimum necessary to protect the public health. In spite of the progress made over the years toward meeting the air standards, there can be no doubt that Southwest's emissions contributed to their violation. The Incinerator, according to Exhibit 2, Fig. 4, emits 19.41 lbs. of particulate per ton of refuse burned. In one year, some 5,241,000 lbs. of particulates (2,620 tons) were emitted.

This Complaint was filed more than 3 years ago. During that time these substantial violations were allowed to continue. Now a compliance plan is proposed. Yet the violations still exist and will continue to exist until March 31, 1977 under the proposed settlement. A slight reduction in total amount of emissions has been made because of a reduction in refuse throughput in September 1975.

The Board has taken note of the delays caused by the concrete strike which made it impossible to complete the City's fuel processing facility in the fall of 1975. However, even the loss of one entire construction season due to a strike and other delays does not offset gross violations which have contributed to violations of ambient air quality standards from at least November 3, 1971 to the present date.

The Board has considered the factors which bear upon the reasonableness of these emissions. The Board recognizes the social and economic value of the incinerator and the economic difficulties related to compliance with the applicable standards. However, on balance, the Board finds that the environmental damage caused, especially the danger to human health, outweighs the factors of mitigation very substantially.

The maximum penalty allowed by the Act for the continuing violations found herein would total many thousands of dollars. The Board is further empowered to order the immediate cessation of these violations. The Board believes that such actions would not best serve the interests of the people of Illinois in this case. However, a substantial penalty is nonetheless warranted to aid in the enforcement of the Act in this case.

The parties have submitted their Settlement proposal to this Board pursuant to Rule 333 of the Board's Procedural Rules. That proposal left the imposition of any penalty to the Board's discretion. The Board finds a penalty of \$10,000 to be necessary. The Board does not find a performance bond necessary.

The Board finds this penalty to be necessary to aid in the enforcement of the Act; to protect the integrity of the permit system and to demonstrate and ensure that the purposes of the Act will be carried out. Section 2(b) of the Act states as the purpose of the Act, "to restore, protect, and enhance the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them". The City of Chicago should bear some small cost for the adverse effects upon the environment which it has caused. Further, the imposition of the penalty will serve to aid in the enforcement of the Act by working to secure voluntary compliance with the Act in other cases, especially by the City of Chicago and this and its other facilities. Aluminum Coil Anodizing Corp. v. Pollution Control Board, \_\_\_ Ill. App. 3d \_\_\_ (1976).

The Board will accept the proposed Stipulation and Settlement entered into and submitted to this Board at the April 12, 1976 hearing. The Board will find the violations as enumerated, assess the above-stated penalty, and order the proposed compliance program.

PCB 73-286 (Calumet Incinerator)

This matter comes before the Board on a Complaint filed by the Environmental Protection Agency (Agency) against the City of Chicago on July 13, 1973. The subject of the two-count Complaint is the City's Calumet Incinerator, located at 103rd Street and Stony Island Avenue, Chicago, Cook County, Illinois. A hearing was held on June 11, 1976, at which a Stipulation was submitted by the parties.

The Calumet Incinerator facility includes six furnaces, and provides a disposal method for residential household refuse collected from 10 of the City's 50 wards (R. 4). Count I alleges violation of Rule 3-3.232 of the old Air Rules. Count II alleges violation of the requirement of obtaining an operating permit, Rule 103(b)(2) of the Board's Air Pollution Control Regulations.

The City of Chicago admits to violating Rule 3-3.232 during the time period from November 1, 1971 to July 13, 1973 (R. 5). The admitted violations vary in length from furnace to furnace. However, it is not admitted that any furnace is currently in violation of any applicable standard. The City also admits to operating without a permit as alleged in Count II (R. 7).

Aside from these admissions, the record in this matter is quite barren. The Board is nowhere apprised of the severity of the admitted violations or their effect on the environment.

Exhibit No. 1 shows that the Calumet Incinerator is in an area which has been in violation of the United States and Illinois Ambient Air Quality Standards for Particulates. However, the record does not provide facts necessary to assess the nature of the Calumet Incinerator's contribution to the violation of those public health standards.

The City states that Furnace No. 1 is presently shut down and sealed, and will not be operated until it obtains the necessary equipment and state permits (R. 3, 5). The City of Chicago installed venturi scrubbers on Furnaces Nos. 2-6 between April 11, 1971 and March 22, 1973 (R. 5, 6) at a total cost of \$2,015,000 (R. 4). There is no evidence that any of these furnaces are currently operated in violation of any emission standards. However, permits for these furnaces have not been obtained as of yet. The City is currently in the process of running stack tests to determine whether pending permit applications sufficiently show compliance with applicable standards (R. 7, 8). A new hearing should examine these stack test results.

The Board thus finds itself in a peculiar situation. It is asked to resolve a case in which past violations are only vaguely admitted and the present status of the emissions is, for one reason or another, not shown. When the Board hears an enforcement action it properly has before it the entire subject matter of the Complaint. Instead, the parties have stated that only "narrow issues" are presented here (R. 11).

The Board is thus asked to fashion a remedy without important information which bears upon the reasonableness of the emissions. Section 31(c) of the Act states that Complainant has the burden of proving a violation and Respondent then has the burden of showing mitigation, See Processing and Books v. PCB, \_\_\_ Ill. 2d \_\_\_ (1976). Complainant should address Section 3 of the Act in a future hearing.

Since it is Respondent's burden to present such evidence, the lack of 33(c) evidence could not be held to prevent the Board from resolving the cause. Further, the failure to secure a permit interferes very substantially with the Act's method of protecting the health and welfare of the People of Illinois: namely, the permit system. The social and economic value of the Calumet Incinerator is great, but greatly diminished by unlawful operation. The City has an investment of \$5,820,000 in the Calumet Incinerator (R. 4). However, it has not been shown that an alternative to operating in violation of the law was not feasible and economically reasonable.

While the Calumet Incinerator is located in an industrial area, it is located adjacent to residential areas and further is in an area in violation of primary (health-related) ambient air quality standards. No contributing source can be called suitable if it is dispersing pollutants in an area violating such public health standards.

The Board finds the record inadequate to fully and comprehensively resolve this case. The fashioning of a remedy designed to protect the health and welfare of the people of Illinois is no "narrow" matter. This cause must be remanded to the Hearing Officer.

PCB 73-457 (Northwest Incinerator)

This matter comes before the Board on a Complaint filed by the Illinois Environmental Protection Agency (Agency) against the City of Chicago, Illinois on October 31, 1973. This case concerns the City of Chicago's Northwest Incinerator facility, located at 700 North Kilbourn Avenue, Chicago, Cook County, Illinois. The Complaint consists of three Counts and alleges the following:

Count I. That from July 1, 1971 to October 31, 1973 the City caused or allowed the emission of particulate matter in excess of and in violation of Rule 3-3.232 of the Rules and Regulations Governing the Control of Air Pollution (old Air Rules).

Count II. That on several specified dates the City caused or allowed emissions which violated the opacity standards of old Air Rule 3-3.232(b).

Count III. That since April 1, 1973, Respondent has operated the aforesaid facility without having obtained a permit from the Agency as required by Rule 103(b)(2) of the Board's Air Pollution Control Regulations.

A hearing was held in this matter on June 11, 1976 at which a Stipulation and Proposal for Settlement was presented pursuant to Rule 333 of the Board's Procedural Rules. The Board must determine whether it is in the best interests of the People of Illinois to accept that Proposal.

The Northwest Incinerator represents an investment of \$23 million to the City of Chicago and is used to dispose of

residential household refuse collected from 14 wards located in the Northwest and South Central portions of the City (approximately 858,000 persons).

The Agency and the City have stipulated to the results of stack tests which indicate that the Incinerator did not violate Rule 3-3.232 as alleged in Count I. Therefore, Count I must be dismissed. The Agency further requests that Count II be dismissed due to a lack of evidence on that alleged violation. The City does admit, however, to violation of Rule 103(b)(2) as alleged in Count III. Under the proposed Settlement, therefore, the Board could find only the failure to secure the required Agency permit. However, as the Board has often stated, the permit program is the cornerstone of Illinois' effort to protect the environment.

The parties have proposed the following Settlement:

13. In lieu of paying a penalty for causing a violation of Rule 103(b), the City agrees to do the following:
  - a) To install two Lear-Siegler Transmissometers to automatically monitor the opacity from its stacks. Said device would allow the U.S. and Illinois Environmental Protection Agency to test such device for feasibility in other installations.
  - b) Said device will be installed by July, 1976.
14. The City also agrees to obtain an operating permit within ninety (90) days of the date of the Order of the Board entered herein.

The cost of the proposed device will total approximately \$125,000 (R. 11). The installation of this device was suggested by the Illinois Environmental Protection Agency and the U.S. Environmental Protection Agency (R. 9). The Board is in no position to determine the context of those suggestions and whether the City has committed to the installation for purposes and parties other than the Settlement in this pending matter before the Board.

The Board finds the Proposed Settlement to be reasonable, given the fact that no substantial adverse effect upon the environment has been shown to have been caused by violations at the Northwest Incinerator.

The Board has some doubt concerning the use of 1975 stack tests (R. 7) to disprove violations which allegedly occurred in 1971.

However, inasmuch as any problem which may have existed has now apparently been corrected, the Board finds that the interests of the People of Illinois will best be served by finally disposing of the instant cause (which is nearly 3 years old).

This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

A. In PCB 73-285, which deals with the City of Chicago's Southwest Incinerator, the Board's Order is as follows:

The Proposed Settlement enumerated at the April 12, 1976 hearing in this matter, and incorporated by reference as if fully set forth herein, is hereby accepted and adopted.

1. The Board hereby finds Respondent City of Chicago to have violated Rule 3-3.232 of the old Air Rules and Rule 103(b)(2) of the Board's Air Pollution Control Regulations.

2. The Board hereby orders Respondent to adhere to the Compliance Plan set forth at the April 12, 1976 hearing (R. 53).

3. Respondent City of Chicago shall pay to the State of Illinois, the sum of \$10,000.00, payment to be made within 35 days of the date of this Order to the State of Illinois by certified check or money order, payment to be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

4. Count I of the Complaint is hereby dismissed without prejudice.

B. In PCB 73-286, which deals with the City of Chicago's Calumet Incinerator, the Board's Interim Order is as follows:

This cause is hereby remanded to the assigned Hearing Officer for further action not inconsistent with this Opinion.

C. In PCB 73-457, which deals with the City of Chicago's Northwest Incinerator, the Board's Order is as follows:

1. Counts I and II of the Complaint are hereby dismissed.



2. The Board finds Respondent City of Chicago, to have caused a violation of Rule 103(b)(2) of the Board's Air Pollution Control Regulations, and hence Section 9(b) of the Act, at its Northwest Incinerator.

- a) Respondent City of Chicago shall install two Lear-Siegler Transmissometers at its facility, within 30 days of the date of this Order, and allow the Agency access to the device and the data resulting from its operation.
- b) Respondent City of Chicago shall, within ninety (90) days of the date of this Order, obtain the required permits from the Agency, thereby ceasing and desisting from the aforesaid violation.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30<sup>th</sup> day of September, 1976 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board