

ILLINOIS POLLUTION CONTROL BOARD
February 27, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
) #72-172
 v.)
)
 VAN DER MOLEN MIDWEST INCINERATOR)
 CO., an Illinois corporation)
)
 VAN DER MOLEN MIDWEST INCINERATOR)
 CO., an Illinois corporation)
) #73-5
)
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

JAMES RUBIN, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF
ENVIRONMENTAL PROTECTION AGENCY
ROBERT F. CASEY, APPEARED ON BEHALF OF VAN DER MOLEN MIDWEST
INCINERATOR CO.

OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Complaint was filed against Van Der Molen Midwest Incinerator Co. alleging that its public refuse incinerator in Melrose Park emitted particulates between July 1, 1970 and "the close of the record herein", in violation of Rule 3-3.232 of the Rules and Regulations Governing the Control of Air Pollution and caused air pollution in violation of Section 9(a) of the Act.

On January 4, 1973, Van Der Molen Midwest Incinerator Co. filed a petition for variance requesting authorization to continue operation in violation of the relevant regulations and statutory provisions "through February, 1973, pending discontinuance of its operations". In the petition, it states: "Petitioner submits that approval of this variance will permit it to complete an orderly transition of its incinerator operation by conversion to a landfill type of operation". The prayer for relief, among other things, states that petitioner would report to the Pollution Control Board its progress in the transition of its business and the closing down of its incinerator during the period for which the variance is sought.

A stipulation and proposal for settlement were entered into between the parties, which was received by the Board on January 9, 1973. In the stipulation, Van Der Molen admits the emission of particulates in amounts constituting violation of Section 9(a) and Rule 3-3.232

of the Rules and that not less than twice each month, Van Der Molen, in its incinerator operation, has permitted smoke, fly ash and particulates to be emitted, settling on residential swimming pools, backyards of nearby residences preventing out-of-door laundry drying, and that ash and particulates fell on automobiles of nearby residents and on buildings, creating additional cleaning problems.

A hearing had been scheduled and was convened on December 26, 1972 but because of the submission of the stipulation, was declared closed without the hearing of the witnesses. The stipulation states that "Van Der Molen is presently in the process of phasing out its closing down operation. A petition for variance has been filed to permit continued operation until February 28, 1973." The stipulation concludes with a statement that complainant prays for the relief sought in the complaint, which was the entry of a cease and desist order and the imposition of fines in the maximum statutory amounts. The Respondent asks that the petition for variance be granted and that any fine imposed be nominal.

Based upon the stipulation aforesaid, the Board was prepared to enter its order on February 6, 1973. A request was received by the Board from the Company asking that no decision be rendered on February 6, 1973, pending determination as to whether Van Der Molen did, in fact, intend to discontinue its incinerator operation. The decision was deferred to the meeting of February 21, 1973, which meeting was cancelled because of lack of a quorum. On February 20, 1973, the Board received a "Motion To Hold Board Final Decision in Abeyance Pending Development of New Facts, or in the alternative, to Render a Decision Which does not Order Shut Down." The substance of the new petition is the contention that incinerator emission control technology is available that would enable compliance with regulations that would become effective December 31, 1973, and that the possible unavailability of gas would preclude Van Der Molen from complying with certain requirements if, in fact, the operation was shut down on February 28, 1973, as intended. Other allegations are made which need not be commented on for purposes of this Order. The essence of the motion is to defer a shut-down of the facility as originally contemplated.

A response and objection to the motion was filed by the Agency noting that in the stipulation, Respondent had admitted violation of the Rules with respect to particulate emissions and the statutory provision prohibiting the causing of air pollution. The Agency prays that the Board decide the case as quickly as is practicable and order abatement of continuing violation and the imposition of a penalty.

A reply was filed by Van Der Molen commenting on specific assertions of the Agency's response. On this state of the record, the matter came up for consideration at the Board meeting on February 27, 1973, at which time both the Company and the Agency were represented by counsel. Because of the somewhat muddled status of the stipulation,

and its apparent repudiation by Van Der Molen before the rendition of any decision, coupled with the absence of any testimony at the hearing on which the Board could render a definitive decision, we are rejecting the stipulation and directing an immediate hearing on the complaint, as filed. Van Der Molen has withdrawn its petition for variance, which would be moot in any event on February 28, 1973. The motion to hold our decision in abeyance is not construed as a new variance petition. The Agency is authorized to amend its petition if it so chooses without any further order of the Board or the Hearing Officer.

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

IT IS THE ORDER of the Pollution Control Board:

1. Hearing on the complaint filed by the Environmental Protection Agency in Case #72-172 shall be held at the earliest possible date.
2. Petition for variance in Case #73-5 is withdrawn. Stipulation heretofore filed by the parties is rejected.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on the 27th day of February, 1973, by a vote of 3 to 0.

Christan S. Moffett

