

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1973

INCINERATOR, INC.)
PETITIONER)
)
)
V.) PCB 73-314
)
)
ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)
)

PEDERSEN & HAUPT, ATTORNEYS, on behalf of INCINERATOR, INC.
LEE A. CAMPBELL, ASSISTANT ATTORNEY GENERAL, on behalf of the
ENVIRONMENTAL PROTECTION AGENCY

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

This action involves a petition to extend a variance from Rule 3-3.232 which expired on July 30, 1973. Said variance was granted on April 30, 1973. An extension until January 30, 1974, is requested.

On August 1, 1973, the Agency filed a recommendation for an extension stating that a denial of this petition would impose an arbitrary hardship on the Petitioner.

Incinerator, Inc., owns and operates a municipal refuse incinerator near Cicero, Illinois. The plant contains two rotary kilns capable of incinerating 500 tons of refuse per day. The plant is now equipped with high energy Venturi type air pollution control equipment. This equipment, however, is not functioning up to the performance guarantee which was entered into by Petitioner and their contractor, Zurn.

Under normal conditions this request could be handled fairly routinely. However, in this case a long and erratic history must be considered. The following is a step by step history of Incinerator's dealings with the Environmental Protection Agency.

I. PCB 71-69

Flagrant and obnoxious discharges were proven against Incinerator in an enforcement action brought against Petitioner by the Environmental Protection Agency on April 1, 1971. Very meager attempts to control these emissions were undertaken prior to this

complaint. Citizen testimony during the hearing in this action attested to severe infringement on their ability to enjoy normal living conditions. As a result of this action, a large (\$25,000) penalty and a Cease and Desist Order were entered by the Board. The size of the penalty and the severe step of a Cease and Desist Order attest to the magnitude of the violations. The text of the Order in PCB 71-69 is made a part of this opinion to reiterate the severity of the order.

- "1. Within ten days from the entry of this order, Incinerator shall cease and desist from the operation of its facility in Cicero, Illinois. Operation of the facility shall not commence until Incinerator has installed and has ready for operation either the Detrick-Jens wet baffle system or another comparable control device approved by the Agency, and until it has filed the variance petition required under paragraph 3 of this order, and until it is in compliance with paragraph 4 of this order. The control device installed must adequately abate the nuisance pollution as described in the opinion.
2. In the event that Incinerator decides to proceed with the installation of the equipment provided for in paragraph 1 of this order, it shall post a performance bond in the amount of \$200,000 when it seeks approval from the Agency for the equipment provided in paragraph 1. This sum, in the form of a bond or other adequate security satisfactory to the Agency, shall be forfeited to the State of Illinois should Incinerator operate its facility in violation of paragraph 1 of this order. Upon completion of the installation of the equipment referred to in paragraph 1, this performance bond shall be remitted.
3. Before Incinerator may commence operation of the facility after shutdown, it shall submit to the Agency and the Board a supplemental petition for a variance. Such petition shall contain a firm program for bringing the facility into compliance with the existing Illinois standards. Upon the filing of such program, the Board shall authorize a further hearing on the variance petition and shall enter such further order as it deems necessary under the circumstances.
4. Even after compliance with the preceding paragraphs of this order, Incinerator shall not operate its facility unless the thermocouple devices in the gas stream are operating adequately and properly transmitting information to the recorder device.

5. Even after compliance with the preceding paragraphs of this order, and until Incinerator has installed and has in operation equipment which will bring it into compliance with the applicable Illinois standard, it shall not accept for incineration refuse other than domestic garbage or industrial paper wastes. Nor shall the amount of wastes incinerated ever exceed 500 tons per day at 20% moisture content.
6. In the event that Incinerator decides to proceed with the installation of the equipment provided for in paragraph 1 of this order, it shall file monthly progress reports with the Agency.
7. Incinerator shall pay a penalty to the State of Illinois in the amount of \$25,000."

II. A motion was filed by Incinerator, Inc., for stay of order. The penalty was stayed pending appeal, with the provision that a bond in the penalty amount be posted. The plant was allowed to reopen at 50 percent capacity due to the filing of a compliance program.

III. PCB 71-324.

A variance was granted to Incinerator until November 1, 1972. Various conditions were imposed under this variance including:

- A) A 50 percent reduction in capacity
- B) An interim check (at six months) by the Agency
- C) A \$300,000 bond
- D) A 0.1 grains per Standard Cubic Foot particulate concentration limitation

Step (D) is noteworthy in that under Rule 3-3.232 emission levels are 0.2 gr/scf. Incinerator, however, has been required to meet a much tighter 0.1 gr/scf limit.

IV. PCB 72-416.

An extension to the above variance was issued until January 31, 1973. This extension was granted because Petitioner had suffered unexpected delay on electrical supply, and because some of its equipment was damaged in transit.

One additional condition was imposed at that time. The requirement was that a stack test be run and the results monitored by the Agency.

V. PCB 73-23.

A further extension was granted until April 30, 1973. The

reason for this extension was that the weather did not permit stack testing.

An additional condition imposed at that time was the requirement for two more bonds in the amount of \$60,000.

VI. PCB 73-204.

Yet another extension was granted until July 30, 1973. The reason for this extension was to allow more time for its testing company to complete laboratory work.

This tortuous path leads us to the present PCB 73-314, which requests still another extension. Petitioner alleges that its now installed scrubber has malfunctioned and is obtaining particulate emissions of 0.156 gr/scf. PCB 71-325 calls for a 0.1 gr/scf limit. Perhaps more relevant is that by December 31, 1973, Petitioner will fall under Rule 203 (e) (2); at that time the effective standard will be 0.08 gr/scf.

Steps are underway to correct the malfunctioning scrubber, and in Pet. Exhibit "A" a letter by Zurn Industries outlines the steps being taken.

The variance extension requested will run right into the worst weather of the year. If this extension is granted, it would open up the request for yet another extension on the same grounds used in PCB 73-23 (poor weather for stack tests). The only factor in Petitioner's favor is that citizen complaints have dropped off dramatically as a result of interim steps taken.

As mentioned in PCB 72-416, the absence of a variance does not require the incinerator to be shut down. It simply leaves the Petitioner open to an enforcement action. The same facts demonstrating arbitrary or unreasonable hardship in a variance proceeding would constitute a defense in an enforcement proceeding, should one ensue.

In Zurn's letter to Petitioner (Exhibit A), it is evident that with a little effort complete compliance could be accomplished very shortly after the date of this order.

In PCB 71-324, a condition for a variance grant was that Incinerator comply with a 0.1 gn/scf loading. Upon termination of this variance the required loading will revert to 0.2 gn/scf as required by Rule 3-3.232. This fact may indeed render this action moot. However, it is important for Petitioner to remember that on December 31, 1973, the new Rule 203 (e) (2) will be effective, which will limit emissions to 0.8 gr/scf of effluent gas corrected to 12 percent carbon dioxide.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that Incinerator's petition for a variance is hereby denied.

IT IS SO ORDERED.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 18th day of October, 1973, by a vote of 5 to 3.

Christian L. Moffett

