

ILLINOIS POLLUTION CONTROL BOARD
September 19, 1974

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
vs.)	
)	PCB 74-36 through 74-44
CHICAGO HOUSING AUTHORITY,)	inclusive
a Municipal Corporation,)	
)	
Respondent.)	
)	
)	
CHICAGO HOUSING AUTHORITY,)	
a Municipal Corporation,)	
)	
Petitioner,)	
)	
vs.)	PCB 74-152 through 74-160
)	inclusive
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 25, 1974, the Illinois Environmental Protection Agency filed Complaint against the Chicago Housing Authority (CHA), alleging therein multiple and continuous violations of Rule 103(b)(2) of Chapter 2, Part I of the Air Pollution Regulations and Section 9(b) of the Environmental Protection Act. In a second count, Complainant alleges multiple and continuous violations of Rule 3-3.232(b) of the Rules and Regulations Governing the Control of Air Pollution (hereinafter "Old Air Rules").

The CHA is a municipal corporation, created pursuant to the Housing Authorities Act, Ill. Rev. Stat., Chap. 67 1/2, § 1-27. The CHA has the responsibility of operating low income family and elderly housing within the City of Chicago. Among other properties, the CHA owns and operates 141 apartment houses of various sizes located in various areas of the City of Chicago. Each of these 141 apartment houses contains a refuse incinerator for disposal of Type II Apartment House Refuse generated by the tenants of the buildings.

The 141 apartment houses, and the attendant incinerators, are the subjects of nine Agency enforcement actions (PCB 74-36 through 74-44, inclusive) against multiple-building public housing complexes. The allegations against each complex are identical: (1) failure to obtain operating permits for the incinerators in violation of Rule 103(b)(2) of the Air Pollution Regulations and Section 9(b) of the Act; and (2) violation of the emission standard contained in Rule 3-3.232 (b) of the Old Air Rules.

On April 24, 1974, the CHA filed nine Petitions For Variance (PCB 74-152 through 74-160, inclusive) the subjects of which correspond to the nine Agency enforcement actions. On May 2, 1974, the Board ordered the nine enforcement actions and the nine Petitions For Variance consolidated for hearing. Public hearings were held in the matter on July 10, 1974 and August 21, 1974.

At those hearings, the parties submitted a Stipulation of Facts for Board consideration. By that Stipulation the CHA admits that it has caused the subject incinerators to operate without having first obtained a permit from the Agency in violation of Rule 103(b)(2) of the Air Pollution Regulations and Section 9(b) of the Act (Stip. paragraph 8); and that it has, since July 1, 1970, operated its incinerators so as to cause emissions of particulate matter in amounts in excess of and in violation of that which is allowed by Rule 3-3.232(b) of the Old Air Rules (Stip. paragraph 11).

Petitioner plans to achieve compliance by replacing all 141 incinerators with compactors. Attached to the Stipulation is a compliance timetable which indicates the dates on which the compactors will become operational at the various housing complexes. These completion dates vary between October 15, 1974 and October 1, 1975.

Agency surveillance personnel have interviewed residents of the buildings in question. None has voiced any objection to the granting of a variance. The Agency believes that the proposed compliance plan will definitely bring the buildings into compliance with all applicable regulations. The Agency is also of the opinion that the timetable for completion of the new compactors is reasonable.

Emissions from the incinerators consist of particulates, carbon monoxide, hydrocarbons, sulfur oxides, and nitrogen oxides. The Agency has determined that the ambient concentrations are below toxic levels. The CHA contends that denial of the variance would cause severe hardship in that incineration is currently the only means it has to dispose of refuse. Petitioner alleges that since 1969, it has been studying various means of controlling the emissions, but that it has been hampered by difficulties in obtaining funding.

In existence is a Consolidated Cooperation Agreement between the City of Chicago and the Chicago Housing Authority in which the City agrees to remove garbage from various properties of the Chicago Housing Authority. Nevertheless, none of the properties which are a subject of this action would qualify for such garbage removal at no cost to the Chicago Housing Authority. To require the Chicago Housing Authority to remove raw garbage is a much more expensive undertaking than installing compactors and removing the compacted garbage.

According to the Stipulation (paragraph 29) the removal of refuse from the CHA's high rise structures would be absolutely impossible without the use of the existing incinerators, and discontinuance of the use of these incinerators would require that the structures be abandoned as housing facilities. The consequent loss to the inhabitants, the City of Chicago and the State of Illinois in that regard would be immeasurable. We are disposed to grant a variance to allow continued operation of the subject incinerators until September 19, 1975. In taking this action, we are not unmindful of a possible problem to the CHA posed by the limitations of the Clean Air Act (42 U.S.C. 1857 et. seq.) and by four cases entitled National Resources Defense Council, Inc. v. EPA, 478 F2d 875 (1st Cir. 1973); 483 F2d 690 (8th Cir. 1973); 489 F2d 390 (5th Cir. 1974); 6 ERC 1475 (2nd Cir. 1974) if the CHA operates its incinerators for periods beyond May 30, 1975.

A performance bond will be required to insure that the changeover to compactors will proceed according to the compliance timetable contained in Exhibit A of the Stipulation of Facts. However, concerning the 18 incinerators located in the Ogden Courts, William Green Homes, Grace Abbott Homes and Loomis Courts complexes, a performance bond will not be ordered since the fate of these buildings is unclear due to problems in obtaining federal funding. A definite completion date cannot be established for the eight buildings comprising the William Green Homes, although federal funding has been obtained, due to delays in the construction of a much needed security system.

The CHA in its Answer has admitted the truth of each and every allegation of the nine Complaints filed by the Agency. However, we are not disposed to assess a penalty in the instant cause because it appears that the CHA has exercised diligence and good faith in its efforts to obtain the federal funding (\$8,323,100.00) necessary to install compactors and thereby achieve compliance. Furthermore, any penalty would have a detrimental impact upon services to CHA tenants.

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

IT IS THE ORDER of the Pollution Control Board that the Chicago Housing Authority be granted a variance to allow operation of the 141 incinerators (discussed herein and described in Exhibit A of the Stipulation of Facts) according to the following schedule:

COMPLEX

VARIANCE TERMINATES

Rockwell Gardens	08/05/75
Ogden Courts	09/19/75
Henry Horner Homes	09/19/75
Horner Homes Extension	09/19/75
Dearborn Homes	08/15/75
Kenmore Apartments	10/15/74
Robert Taylor Homes	10/26/74
Stateway Gardens	06/15/75
Frances Cabrini	06/05/75
William Green Homes	09/19/75
Harold L. Ickes	06/05/75
Grace Abbott Homes	09/19/75
Brooks Extension	09/19/75
Loomis Courts	09/19/75

and subject to the following conditions:

a. Commencing 30 days from the date of this Order, and quarterly thereafter, CHA shall submit reports to the Agency detailing all progress made toward compliance. Said reports shall be sent to:

Environmental Protection Agency
Division of Air Pollution Control
Control Program Coordinator
2200 Churchill Road
Springfield, Illinois 62706

b. With the exception of the 18 incinerators of the Ogden Courts, Abbott Homes, Green Homes and Loomis Homes complexes, the CHA shall, within 35 days of the date of this Order, post a performance bond in a form satisfactory to the Agency in the amount of \$100,000.00 to guarantee installation of compactors in accordance with the timetable contained in Exhibit A of the Stipulation of Facts.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted on this 19th day of September, 1974 by a vote of 5-0.



Christan L. Moffett