

ILLINOIS POLLUTION CONTROL BOARD

September 13, 1973

ROCKFORD PUBLIC SCHOOLS (BOARD)
OF EDUCATION SCHOOL DISTRICT OF THE)
CITY OF ROCKFORD, NO. 205,)
WINNEBAGO COUNTY))

v.)

#72-475)

ENVIRONMENTAL PROTECTION AGENCY)

DALE E. CONDE OF PEDDERSON, MENZIMER, CONDE, STONER, FEROLIE AND
SPELMAN, APPEARED ON BEHALF OF PETITIONER
STEVEN C. BONAGUIDI, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF
OF ENVIRONMENTAL PROTECTION AGENCY

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

The Board of Education, Rockford Public Schools, requests a variance from the emission standards applicable to incinerators until December 31, 1975, with respect to 73 buildings operated by petitioner in the City of Rockford. The regulation presently applicable is Rule 3-3.232 of the Rules and Regulations Governing the Control of Air Pollution. The standards which will be effective December 31, 1973 are found in Regulations of the Illinois Pollution Control Board, Air Pollution, Chapter 2, Part II, Rule 203(e) (3) (4).

Petitioner proposes to update and modify 37 existing incinerators located in 35 schools, to install new incinerators in 29 schools and to install new compactors to replace inadequate existing incinerators, or provide compaction where no previous service existed in 9 schools. (Petitioner's Exs. 1, 2, R. 15, 16). The six remaining schools in the district appear to have adequate compaction facilities.

Petitioner represents that its schedule for completion of engineering, letting of bids, budgeting of funds, contracting and installation, together with difficulties inherent in the financing of the program, necessitate a delay until December 31, 1975 before the program can be completed and operational. Attached to the variance petition are two books, designated "A" and "B", (later introduced as Petitioner's Exhibits 1 and 2, respectively) containing the applications filed with the Agency and supporting data with reference to petitioner's renovation and installation program.

Trash burned in school incinerators is Type "O" and Type "I". Refuse, Type 3 classification, (garbage) is now and will continue to be hauled by scavengers to landfills. The presently operating incinerators are not in compliance, principally because of the absence of primary and secondary gas burners necessary to reduce emissions. (R. 19, Amended Variance Petition Par. 7). Petitioner proposes to initiate its control program January 31, 1974 and complete it by December 31, 1975. The School District contends that compliance with the present and prospective regulations will constitute an arbitrary and unreasonable hardship for the following reasons (Amended variance petition, par. 10):

- "A. Lack of sufficient time from date of receipt of official Environmental Protection Act and the numerous forms from the Environmental Protection Agency to formulate the extensive plans and budgeting to bring Petitioner's buildings into compliance.
- B. Unrealistic paperwork burden placed upon limited staff of petitioner in research of field conditions and preparation of specifications: (1) not only to purchase or modify incinerators to meet Environmental Protection Agency standards (2) but also to provide gas, electricity, adequate space, adequate stacks for the incinerators and controls.
- C. Preliminary work must be completed before entering into binding agreements to purchase or modify incinerators and controls. Work includes writing specifications for each of the 66 incinerators and 9 compactors, plus preparation of necessary contract documents and bidding time (10 days minimum required by law).
- D. Unreasonable initial cost of compliance placed on general public and residents of School District 205, due to minimal operation time of equipment. Compliance costs range from a \$3,000 minimum to a \$7,000 maximum, or an average of \$5,000 per equipment. Average operation time is 3 hours per day, 5 days a week, 44 weeks per year, or a total of 660 hrs./yr. Normal operation time is 8 hours per day, 5 days a week, 52 weeks per year, or a total of 2080 hrs./hr. Initial cost of compliance for normal operation is \$2.40/hr. $\frac{5000}{(2080)}$ but District 205 initial cost is over triple that amount at $\frac{\$7.58}{hr.} \cdot \frac{(5000)}{660}$

- E. Unreasonable financial hardship placed on general public and residents of School District 205, because the District has not budgeted for, and does not have the immediate financial means to make major capital outlays at this time. The Petitioner needs time to determine the best financial methods and to reassign other priorities in order to obtain the necessary funds and budget them in time for payment during the period from its budget year of July 1, 1975 -- June 30, 1976."

Lastly, petitioner contends that the present emissions produce no visible particulates and that there have been no complaints from the persons residing in the area.

The Agency recommends denial of the petition. In essence, the Agency contends that the petition has failed to adequately demonstrate the financial inability of the School District to meet the relevant Regulations; that the contentions with respect to time and personnel necessary to meet Agency Regulations are unpersuasive; and that petitioner has failed to analyze feasible alternatives, (namely, hauling of refuse), that would be possible in lieu of the modification and installation program proposed.

Petitioner filed a reply alleging the absence of available funds for waste disposal, the existence of a deficit for 1973-74 attributable to loss of personal property tax revenues and projected increases in teachers' salaries, and alleging that it has given consideration to hauling and that such procedure does not represent a suitable alternative. Petitioner further asserts that insistence by the Environmental Protection Agency on compliance will constitute arbitrary action necessitating the closing of the schools or severe curtailment of educational services. Hearing was held on the petition on April 23, 1973.

We grant the petition for variance for a period of one year subject to completion of the program in its entirety by August 30, 1975, in compliance with the terms and conditions hereinafter set forth.

In granting the foregoing petition, we are constrained to observe that several contentions advanced by the petitioner are unpersuasive. The contention made that the District lacks the time, personnel and money to apply for and obtain permits, we believe wholly lacking in merit. The School District, being a governmental body and subject to the provisions of the Environmental Protection Act, should take affirmative steps to comply with the relevant regulations and statutes of the State. We believe that the administrative difficulties are not of such character or degree as to justify a variance.

Nor do we accept the recurring suggestion that waste disposal is not an appropriate function of a School District. Pollution control is an inherent obligation of all governmental units in addition to their principal functions and a school district is no exception.

With respect to the financial plight of the Petitioner, we do not believe that the District has made a showing of the breadth and magnitude necessary in a proceeding of this character. It may be that the School District would have a financial hardship in achieving compliance with the Regulations. However, the record does not support this contention. Conclusionary statements are made with respect to deficits, decrease in assessed valuation, loss of revenue, and increase in expenditures for teachers' salaries. Counsel for Petitioner, in his closing remarks (R. 114) has stated that there is a \$5,000,000 deficit in the building fund, but nothing appears in the record specifically in support of this statement.

Robert Salisbury, District Superintendent of Schools, testified regarding the financial condition of the District (R. 27-48). He stated that as of July 1, 1972, a \$205,000 balance existed in the Building Fund which was "woefully short" and that the financial picture at the present time was extremely critical. Loss of the personal property tax and reduction in total assessed valuation resulted in an anticipated revenue loss for 1972-73 of \$1,193,056 (R. 39). Cost of operation has increased, and it is anticipated that this will continue during the fiscal year 1973-74 because of an increase in teachers' salaries and built-in escalation provisions. The present budget does not include any allocation for upgrading of the incinerator program or other means of disposal of waste (R. 42). An effort to obtain a revision of the school aid formula is being made with the State Legislature (R. 40). The City of Rockford has agreed to either assist in the hauling of refuse or to distribute a part of the funds it receives from revenue sharing or income tax allocation.

The foregoing constitutes the substance of the District's testimony with respect to its finances. Much remains unsaid. Little is said about the bonded indebtedness or existing Bond funds of the District and what is or could be available from this source for capital improvements. The possibility of a bond issue for capital improvements is alluded to but nothing is brought out as to the District's past or future program in this respect. Details as to the building fund rate and levy are not set forth. We do not know if the District is utilizing this source of revenue to its maximum potential. We are not advised specifically as to funds which might

be forthcoming from the City or the State as income tax allocation, revenue sharing or state equalization.

In summary, the District might be in bad plight, but we have not been presented with a full picture of its financial situation. We grant the variance because we believe the program proposed is a good one and recognize that time will be needed for its implementation. We do not believe that the various alternatives considered, i.e. the hauling of refuse and use of landfills; increased compaction; or the purchase of trucks and use of district personnel, represent suitable long-term programs superior to that proposed by the District in this proceeding. The costs of increased compaction or the purchase of the District's own facilities would approximate the \$945,000 Petitioner contemplates spending for the incinerator modification and installation program. The District's reluctance to commit to a single refuse disposal service is understandable and would use up available landfills faster than necessary.

However, we do not feel that the time frame proposed by Petitioner is necessary. Exhibits 1 and 2 set forth virtually the same dates for all installations. We expect all agreements to be completed by January 1, 1974 and all equipment to be fully operational by August 30, 1975, rather than the December 31, 1975 date requested by the School Board. We believe this can be accomplished.

Notwithstanding what we feel is an inadequate showing of financial hardship on the present state of the record, we will grant Petitioner's variance for a one-year period in contemplation of Petitioner's execution of binding agreements for purchase or modification of the various items of equipment by January 1, 1974, and completion of program by August 30, 1975.

While this variance is limited to a one-year period, which is the maximum time we are permitted to allow variation pursuant to Statute, the possibility of extension exists upon the filing of a new petition and a demonstration that the compliance program is being implemented pursuant to this Order.

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

IT IS THE ORDER of the Pollution Control Board that Petitioner, Rockford Public Schools (Board of Education School District of the City of Rockford, No. 205 Winnebago County) be granted the variance from the provisions of Rule 3-3.232 of the Rules and Regulations Governing the Control of Air Pollution and from Rules 203(e)(3) and (4), Chapter 2, Part II, Pollution Control Board Regulations, until September 13, 1974, subject to the following terms and conditions:

1. This variance is granted petitioner to enable it to make conversion of 37 existing incinerators, replacement of 29 existing incinerators with new incinerators, and the installation of nine new trash compactors as requested in its amended petition for variance and pursuant to installation program as set forth in its amended petition and accompanying exhibits, Book A (Petitioner's Exhibit 1) Book B (Petitioner's Exhibit 2) as to each location as therein specified.
2. The allowance of this petition is in contemplation of petitioner completing its entire modification and installation program, as proposed, on or before August 30, 1975. Petition for extension of variance beyond September 13, 1974 will be considered by the Board pursuant to petition for extension filed by the School District and a demonstration that petitioner is implementing its program for completion of all modifications and installations by August 30, 1975.
3. Within 60 days from the date hereof, petitioner shall submit to the Environmental Protection Agency and the Pollution Control Board its revised program of compliance, consistent with this Opinion and Order.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on the 13th day of September, 1973 by a vote of 4 to 0.

Christan L. Moffett