

ILLINOIS POLLUTION CONTROL BOARD
June 18, 1976

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 75-236
)	
INCINERATOR, INC.,)	
)	
Respondent.)	
)	
INCINERATOR, INC.,)	CONSOLIDATED
)	
Petitioner,)	
)	
v.)	PCB 75-88
)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

Mr. Dennis R. Fields, Assistant Attorney General, appeared for the People of the State of Illinois
Mr. William A. Erdman, appeared on behalf of the Environmental Protection Agency
Mr. Richard V. Houpt, appeared on behalf of Incinerator, Inc.

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

This matter is a consolidation of two cases, the first a Variance Petition by Incinerator, Inc., (Incinerator) in PCB 75-88 and the second a Complaint by the People of the State of Illinois (People) in PCB 75-236. On June 26, 1975, the two cases were consolidated by Board Order.

On June 10, 1975, the Environmental Protection Agency (Agency) in PCB 75-88 moved to dismiss the Petition for Variance and the Board on July 10, 1975 ordered the motion held until final consideration of the case. The Agency's Motion to Dismiss is hereby denied.

A hearing was held on the consolidated cases on May 6, 1976, at which a Stipulation and Proposed Settlement Agreement was presented by the parties in the enforcement action, PCB 75-236. At that time Incinerator amended their Petition for Variance in PCB 75-88 to reflect the contents of the Proposed Stipulation and Settlement Agreement and at the same time the Agency amended their Recommendation in that case recommending the variance requested by Incinerator be granted until October 1, 1976.

The Stipulation and Proposal for Settlement in PCB 75-236 recites Incinerator's history with regard to violation of Section 9(a) of the Environmental Protection Act (Act). On September 30, 1971 the Pollution Control Board found Incinerator in violation of the Act and assessed a penalty of \$25,000.00 and imposed a million dollar compliance program for the facility including the installation of a wet scrubber system. The wet scrubber was installed by spring of 1973, but tests showed emissions of 0.156 gr./scf under maximum load. The Board's Regulations provide for emissions not to exceed 0.08 gr./scf. Additional modifications were made by Incinerator's contractor but they were unable to bring the emission below 0.12 gr./scf, well above the regulation's limits. Incinerator then hired a consultant to evaluate the situation and was informed by the consultant that prospects for successfully modifying the equipment were at best very bleak. Upon consideration of the facts before it, Incinerator has decided that conversion of the facility from an incineration process to a waste transfer station is the company's only viable option.

In the Settlement Agreement, Incinerator does not admit any wrong doing or violation of any of the regulations. The People believe that the imposition of a penalty in this case would not further enforcement of the Act or the Board's Regulations. Incinerator agrees to cease all operations of its incinerators on October 1, 1976, thus giving the corporation a reasonable amount of time to convert its waste burning facility into a waste transfer station without incurring loss of customers. A project completion schedule for this process is included in the Stipulation. In addition, Incinerator agrees to utilize all the existing pollution control equipment and operational procedures so as to minimize emissions during the continuance of its operations. Incinerator also agrees to permit representatives of the Attorney General's office to inspect its operation to insure that the provisions of the Stipulation are carried out as agreed.

Incinerator agrees that only domestic garbage or industrial paper will be accepted at the installation and that the amount of waste incinerated shall never exceed 500 tons per day at a 20% moisture content.

Considering the significant amount of resources, both financial and otherwise, expended by Incinerator in their good faith effort to comply with the Board's Regulations in the past, and the fact that final compliance will result in the total elimination of emissions from the facility, the Board finds the Stipulation and Proposed Settlement Agreement by the parties in PCB 75-236 to be an acceptable resolution of the issues presented. The Board will therefore accept the terms of the Proposed Stipulation and Settlement Agreement as presented at the hearing of May 6, 1976.

In the Variance Petition, PCB 75-88, Incinerator originally requested variance from Rule 203(e)(2) of the Board's Air Pollution Control Regulations (Regulations) for as long a time as possible to allow them to further investigate modifications to their equipment. During the course of the variance proceedings, Incinerator came to the conclusion, as noted above, that they would be unable to reasonably comply with the Regulations and therefore would convert the incinerator installation into a waste transfer station. Incinerator now requests variance from the Regulations until October 1, 1976, proposing the compliance plan included in the Stipulation and Settlement of PCB 75-236 as their compliance plan for purposes of the variance in PCB 75-88. The Agency has now amended its Recommendation in PCB 75-88 to the effect that the said variance be granted.

The Board finds that it would be an unreasonable and arbitrary hardship on Incinerator to deny the variance in the face of the good faith shown by the company in its attempt to comply with the Regulations and the fact that the company will cease all emissions by October 1, 1976. Therefore the Board will grant Incinerator variance from Rule 203(e)(2) of the Regulations until October 1, 1976.

Upon consideration of the record herein and the Board's decision to grant variance to Incinerator, we find Incinerator in violation of Rule 203(e)(2) of the Regulations and Section 9(a) of the Act from December 31, 1973 to February 24, 1975. In consideration of the Stipulation filed herein, no penalty for this violation will be assessed.

This Opinion constitutes the findings of facts and conclusions of law of the Board in this matter.

ORDER

1. It is the Order of the Pollution Control Board in PCB 75-236 that Incinerator, Inc. was in violation of Rule 203(e)(2) of the Regulations and Section 9(a) of the Act from December 31, 1973 to February 24, 1975. Incinerator, Inc. shall cease operation of their refuse incinerator facility at 3815 South Laramie Avenue, Stickney, Illinois in accordance with the project completion schedule attached as Exhibit A to, and under the conditions contained in, the Stipulation entered into by the parties herein on May 6, 1976, which Stipulation and Settlement Agreement is hereby incorporated by reference as if fully setforth herein.

2. It is the Order of the Board in PCB 75-88 that Incinerator, Inc. be granted variance from Rule 203(e)(2) of the Board's Regulations, from February 24, 1975, until October 1, 1976, under the conditions and provisions in the Stipulation and Settlement Agreement referred to in paragraph 1 of this Order.

Mr. Dumelle dissents in PCB 75-88.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of June, 1976 by a vote of 5-0 in PCB75-236 and a vote of 4-1 in PCB75-88.



Christan L. Moffett, Clerk
Illinois Pollution Control Board