

ILLINOIS POLLUTION CONTROL BOARD  
October 4, 1973

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 vs. ) PCB 73-150  
 )  
 BRESLER ICE CREAM COMPANY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by Mr. Seaman):

On September 24, 1973, Respondent, Bresler Ice Cream Company, filed its Motion For Reconsideration of this Board's Opinion and Order adopted on September 13, 1973, in the above-captioned cause. Respondent prays that the Board, upon reconsideration, modify Paragraph 3 of its Order with respect to the assessment of monetary penalty or, alternatively, with respect to the amount of penalty assessed.

This cause came before the Board with a Complaint and a Stipulation of Facts entered into between the respective parties. It was upon consideration of these two documents that our disposition of the cause was reached.

In Paragraph 1. of the subject Motion, Respondent states that the only facts which the Board may properly consider were those submitted by Stipulation. Here, we agree; this is precisely what we did. Further, in Paragraph 1, Respondent complains of the fourth paragraph of Page 2 of our Opinion which is as follows:

Respondent stresses, in mitigation, that it unilaterally terminated the use of the subject incinerator prior to the date of the Agency complaint (R.6). This fact would carry more weight if Respondent had not waited approximately three years to take remedial action. Further, it would have been well for Respondent to have introduced evidence regarding the amount of money expended, rather than content itself with the bare stipulation that sums were expended.

Respondent argues as follows:

In the fourth paragraph of Page 2 of the opinion, the Board suggests that respondent ought to have introduced evidence in addition to the Stipulation. On the other hand, the Board imposes no equivalent burden on the complainant with respect to the facts adduced by it.

Respondent has misinterpreted the thrust of our comment. We merely suggested that Respondent might have been wise to include in the Stipulation the specific amount of the sums expended in order that this Board might have considered same in mitigation.

In Paragraph 3. of the subject Motion, Respondent details alleged inaccuracies occurring in the Complaint. We are of the opinion that any defects in the allegations of the Complaint were cured by the Stipulation. Further, it cannot be seriously suggested that the Agency cannot file an enforcement action merely because the violation complained of has ceased. Paragraph 10. of the Stipulation is as follows:

10. The emission of said contaminants constituted air pollution as defined in Section 3 (b) of the Environmental Protection Act, Ill. Rev. Stat., Ch. 111 1/2 §1003 (b), 1971, in that the contaminants caused by said incinerator which existed in the atmosphere were in sufficient quantities and of such characteristics and duration as to unreasonably interfere with the enjoyment of life or property of those persons making complaints.

Of Paragraph 10., the Board, in its Opinion stated as follows:

By paragraph 10. of the Stipulation, Respondent admits that the emission of contaminants from the subject incinerator constituted air pollution as defined in Section 3 (b) of the Environmental Protection Act. The said contaminants were emitted in sufficient quantities and were of such characteristics and duration as to unreasonably interfere with the enjoyment of life or property.

Respondent quarrels with our use of the term "admits." It is argued that the language of Paragraph 10. of the Stipulation presents only stipulated fact and not conclusions of law. Irrespective of the verbiage employed, the only construction of Paragraph 10. which occurs to this Board is that Respondent has stipulated that in fact it has caused air pollution.

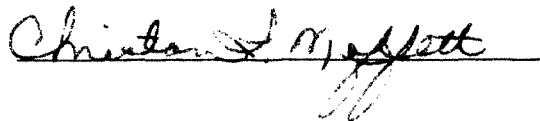
Respondent has presented numerous other arguments in support of its Motion. Suffice to state that upon due consideration this Board finds no legal merit therein and remains convinced that Respondent has committed violations.

The only issue remaining is that of the amount of the penalty, which Respondent argues is excessive. This Board assesses penalties only after thorough consideration of all of the circumstances surrounding the violation in each individual cause. The amount assessed in our Order will not be modified; however, we hereby amend the date by which the penalty must be paid. Respondent may withhold payment of the amount assessed until December 10, 1973.

IT IS SO ORDERED.

Mr. Odell abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted by the Board on the 4<sup>th</sup> day of October, 1973 by a vote of 4 to 0.

  
Christan L. Moffett

