

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1972

ENVIRONMENTAL PROTECTION AGENCY)
)
 v. PCB 71-236
)
SOLID WASTE DISPOSAL COMPANY)

James I. Rubin, Attorney for the Environmental Protection Agency
Samuel H. Young, Attorney for Solid Waste Disposal Company

Opinion and Order of the Board (by Mr. Aldrich):

On August 12, 1971, the Environmental Protection Agency ("Agency") filed a complaint against Solid Waste Disposal Company ("Solid Waste"), alleging violations of the Rules and Regulations Governing the Control of Air Pollution ("Air Rules"), the Air Pollution Control Act, the Sanitary Water Board Act, and the Environmental Protection Act. Respondent was, from 1959 until August 24, 1971, engaged in the business of incinerating refuse, garbage and commercial wastes at its disposal site at 9301 West Higgins Road, Des Plaines, Illinois.

The complaint alleges that Respondent:

- 1) Operated its incinerating facilities so as to cause or allow the emission of particulate matter, thereby causing air pollution in violation of Sections 2 and 3 of the Air Pollution Control Act and of Section 9(a) of the Environmental Protection Act;
- 2) Operated its incinerating facilities so as to emit particulate matter in amounts in violation of Rule 3-3.232 of the Air Rules;
- 3) Since June 15, 1967, has failed to file a Letter of Intent to file an Air Contaminant Emission Reduction Program ("ACERP") in violation of Rule 2-2.12 of the Air Rules or since April 15, 1968, to file an ACERP in violation of Rules 2-2.31(f) and 2-2.41 of the Air Rules;
- 4) Operated its incinerating facilities so as to cause or allow the emission of smoke of such density as to violate Rule 3-3.232 of the Air Rules;
- 5) Caused or allowed the discharge of black water carrying suspended particles of fly ash into a ditch which flows into the Des Plaines River, so as to cause water pollution in violation of the Sanitary Water Board Act and of Section 12(a) of the Environmental Protection Act.

The complaint seeks the entry of an order directing Solid Waste to cease and desist from the aforesaid violations and assessing a money penalty.

Respondent's facilities have for some time been operated under the restrictions of a legal non-conforming use under the Cook County Zoning Ordinance. Since October 24, 1968, Solid Waste or its predecessor has attempted to have the premises rezoned and a special use permit issued in order to construct three rotary kilns as replacements for its present incinerator. Respondent plans to equip these kilns with pollution control equipment which would bring its facilities into compliance with applicable regulations. Plans to install the new facilities have been delayed pending the outcome of litigation concerning Respondent's request for rezoning and issuance of a special use permit. On August 24, 1971, Solid Waste ceased operation of its present facilities and has refrained from any incineration of wastes since that time.

On January 24, 1972, the parties to the case submitted a stipulation and proposed settlement. The parties stipulate that from October 1, 1963 to August 24, 1971, Respondent has operated its incinerating facility so as to violate Sections 2 and 3 of the Air Pollution Control Act and Section 9(a) of the Environmental Protection Act. The parties also stipulate that from March 26, 1965 to August 24, 1971, Respondent has violated Rule 3-3.232 of the Air Rules with regard to particulate emissions and has further violated said Rule with regard to smoke emissions on June 20, 1971, July 16, 1971, and July 17, 1971. The parties further stipulate that Respondent has violated Rule 2-2.12 as well as Rules 2-2.31(f) and 2-2.41 of the Air Rules by failing to file either a Letter of Intent to file an ACERP or an ACERP itself. The Agency withdraws the allegations in the complaint which deal with water pollution.

The parties request that in lieu of a hearing, the Board accept the stipulation and proposed settlement. Under the terms of the proposal, Solid Waste would be prohibited from incinerating until pollution abatement equipment is installed which brings the operation of the incinerator into compliance with all applicable statutes, rules and regulations. Solid Waste would also pay a money penalty for the aforementioned violations, in the amount of \$1000.00.

This Board is on record as favoring a reduction in the time and expense of litigation wherever it is possible to arrive at an equitable settlement which serves the purposes of the Environmental Protection Act (see EPA v. Charles R. Rhodes, PCB 71-53, September 16, 1971; EPA v. Custom Farm Services, Inc., PCB 71-312, December 21, 1971). Certainly the proposed settlement in the instant case provides for the future protection of the environment. Respondent would simply not operate its incinerator until such time as adequate pollution abatement equipment is installed. In view of the number of past violations stipulated to and their continuous nature, we feel the proposed penalty of \$1000.00 is somewhat low. We note, however, that Respondent is not now a profitable corporation and has incurred a considerable indebtedness in recent years. Furthermore, we are reluctant to reject a settle-

ment which both parties deem to be in the public interest. We therefore accept the proposed settlement and shall enter an order in complete accordance with the terms of that agreement.

Mr. Dumelle Dissents.

ORDER

1. Solid Waste Disposal Company shall not incinerate further wastes at its facilities in Des Plaines, Illinois, until pollution abatement equipment has been installed which brings the operation of the facilities into compliance with the provisions of the Environmental Protection Act and all applicable rules and regulations.
2. Solid Waste Disposal Company shall, within 35 days of the entry of this order, pay to the State of Illinois, the sum, in penalty, of \$1000.00. **Penalty payment by certified check or money order payable to the State of Illinois shall be made to the Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.**

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 3rd day of February, 1972 by a vote of 4-1.

Christan L. Moffett

