

ILLINOIS POLLUTION CONTROL BOARD

July 8, 1971

F.D. DECKER d/b/a/)
DECKER SAWMILL)
)
v.) PCB 71-73
)
ENVIRONMENTAL PROTECTION AGENCY)

Douglas Marti, Attorney for Decker Sawmill.

Lee Kane Zella, Attorney for Environmental Protection Agency.

Opinion of the Board (by Mr. Kissel):

Decker Sawmill (Decker) filed a petition for variance with the Environmental Protection Agency (Agency) and the Board on April 12, 1971 in which it requested that it be given until March 1, 1972 to purchase equipment for chipping wood slabs, and until that time it sought permission to burn the wood slabs in the open. The Agency filed its recommendation on May 10, 1971 asking that the petition for variance be denied. A hearing on this matter was held on May 11, 1971 in Greenville, Illinois on the petition before Carl Kasten, hearing officer.

Decker operates a sawmill at a location about one quarter of a mile northwest of Greenville, Illinois at the intersection of Routes 140 and 127, and adjacent to the east fork of Shoal Creek. The plant has been located at that site for the last 18 months. In the operation of his business, Decker receives various kinds of wood, from good hard woods such as white oak and walnut, to low grade lumber, which he cuts into boards for sale. As a result of this operation, Decker produces basically two kinds of waste product - sawdust and wood slabs. The sawdust is readily useable by local dairy farmers for bedding in the stalls of the dairy cattle. The wood slabs, however, are not as easily useable by third parties in their present form. Decker has been burning six to eight tons of these slabs each day in the open since he has been on the present site.

There are really three alternatives (other than open burning) for disposing of the wood slabs: 1) salvaging by chipping the wood; 2) burning in incinerators; and 3) landfill. Each of these alternatives was adequately explored in the record. In the salvaging operation, Decker would debark and chip the waste wood and then sell the chips and bark. The cost of the chipper and debarker is estimated to be approximately \$70,000 (see Pet. Ex. 3). But Decker will realize some income from the sale of the chips and the bark. (Chips sell for \$14.60 per oven-dried ton). Decker says that he cannot install the chipper and debarker in his present site due to lack of space and due to an installation cost of \$10,000 (included in the above cost) which would have to be paid again in 1972 when Decker moves to a new site (which is nearby and about twice the size of the present site). The chipper and debarker would also benefit Decker because he would realize a savings in saw blades and the operation would be speedier. The second alternative, incinerators, would cost about \$92,000 and would result in no side benefits to Decker. The cost (see Pet. Ex. 4) would cover the purchase and installation of an incinerator which would burn about 3000 pounds per hour. A smaller incinerator would indeed cost less, but would have to be operated around the clock, and therefore, additional personnel would have to be hired to operate the incinerator. This would make the cost of a smaller incinerator roughly the same as a large one. The third alternative, landfill, would be the costliest. One witness testified that the cost of disposing of 16 to 18 tons of wood slabs per day would be \$124,500 per year. Decker, however, only generated about 6 to 8 tons of wood slabs per day, but the testimony still has validity because the only difference would seem to be the size of the hauling equipment, and the amount of land needed. This method of disposal would not result in any return to Decker.

Before discussing the petition for variance, it is necessary to deal with a constitutional question raised by Decker's attorney. Essentially, Decker's attorney demanded a trial by jury, and stated that his client's right to due process would be violated if the variance were denied. The Board has dealt with all of these issues previously in the Granite City Steel case, EPA v. Granite City Steel, PCB 70-34. We held there, and reaffirm here, that the procedural safeguards provided all petitioners and respondents in the Environmental Protection Act and the Rules and Regulations of the

Board meet every constitutional requirement. The petitioner in this case had more than an adequate opportunity to be heard. He was in no way limited to the quantity of evidence he wished to produce. He was treated fairly and equitably as the statute and the constitution require. We therefore hold that the petitioner's rights were not violated and that it was not error to provide for the hearing of this case before a hearing officer and not a full jury.

We now turn to the substantive issues of this case. The Environmental Protection Act requires that any person seeking a variance must prove that compliance with the law would impose an "arbitrary or unreasonable hardship". We have consistently held that in determining what an "arbitrary or unreasonable hardship" is we will employ a balancing process, balancing the benefits and detriments to the community at large against the benefits and detriments to the person seeking the variance. We have also said that this is not an equal balance, but rather the benefits to the person seeking the variance must substantially outweigh the detriments to the community at large. In the instant case, we have on the one hand the financial hardship which would be imposed on Decker, the industries and the farmers in the surrounding area to be weighed against the harm to be suffered by the public as a result of the emission of contaminants into the air from the open burning of wood slabs. In this case, it seems that if the Board were to deny the variance, Decker would have two basic alternatives: first, he could close his business, or second, he could install some kind of device (incinerator, or chipper and debarker) or landfill to avoid any open burning. Both alternatives are expensive either to Decker himself or to the community. If he were to close his business, farmers would not have needed sawdust for the dairy farms, the low grade logs would be left in the woods to rot because there would be no mill close by to accept these, the better wood would be more expensive to haul because the nearest mill is about 70 miles farther away than Decker's mill, and finally, six men would be put out of work. This alternative is not called for by the evidence. The open burning that has been done by Decker has simply not affected the neighbors, and they so testified. One neighbor lived as close as 750 feet and he was not bothered by the burning at all and was not familiar with anyone nearby that was bothered by it.

Notwithstanding the fact that present neighbors are not bothered by the contaminants which come from open burning, we feel that it should be the policy of this Board to halt such burning wherever technically and economically feasible. Such is the case here. Decker has any number of alternate methods of disposal of the wood slabs - incineration, chipping and hauling, or landfill. While these methods are certainly technically feasible, there is a real question of Decker's ability to pay for the various alternatives. Decker has been operating this sawmill on this site for about 18 months, and his record of earnings has been less than spectacular, although typical for newly-started sawmills. In 1969 he sustained a loss of \$10,000 which was for only six months of that year. In 1970 he experienced a profit of \$2,900, and anticipates in 1971 to earn a net profit of \$15,000. His indebtedness presently is about \$40,000, but he hopes to have this reduced to \$17,000 by March 1, 1972. His present financial condition is not at the level where he can presently afford large expenditures of money. He did apply for a loan with two banks and was turned down by both (see Pet. Ex. 8 and 9). One bank official said that his bank was unable to make the loan because "your operations simply will not produce enough revenue to repay the debt load" (Pet. Ex. 9). Decker himself seems optimistic about his ability to move to a new location and install a chipper and debarker there by March 1, 1972. The question we must decide is whether to require the move earlier than that. We think not. Not only will Decker be better able to pay for the equipment and the move at that time, but the move now would cause an additional financial loss because the stacked wood would rot. We therefore feel that the petition for variance should be granted, under the conditions outlined below, allowing the open burning of not more than 8 tons of wood slabs per day during the next few months (actually to March 1, 1972) until Decker can move and operate on the new site with the chipper and debarker or with whatever other means Decker chooses to employ to secure compliance with the Act and the Rules and Regulations promulgated thereunder.

Since there is some question about Decker's ability to afford the cost of the chipper and debarker, within ninety (90) days of this order, Decker shall file with the Board and the Agency an exact timetable for the move and for the purchase and installation of the chipper and debarker or of whatever

other means Decker intends to use to bring its operation into compliance with the Environmental Protection Act and the Rules and Regulations promulgated thereunder. In this submission, Decker shall include a report of the negotiations it has had with financial institutions in order to obtain finances for purchase of equipment. In addition, Decker shall report to the Board and the Agency before December 31, 1971 the specific monetary commitment it has obtained to finance the purchase of the equipment. Included in this report will be a report on the negotiations which Decker has had with financial institutions in order to obtain finances for the purchase of the equipment. In addition, Decker shall report to the Board and to the Agency before December 31, 1971 the specific financial commitment which Decker has received to finance the purchase of the equipment.

As a condition for the variance, Decker must, within seven (7) days after the date of this order, remove all the ashes which are presently found on his site and which are a result of previous burning. Further, Decker shall remove whatever further ashes accumulated, within a very short time after burning occurs.

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

O R D E R

It is the order of the Board that the request of Decker Sawmill for a variance be granted subject to the following conditions:

1) Open burning of up to eight (8) tons of wood slabs per day may continue on the present site until March 1, 1972. Open burning shall not be conducted on the present site after the above date and shall never be conducted on the new site.

2) Within ninety (90) days of the entry of this order, Decker shall file with the Board and the Agency an exact timetable for the move and for the purchase and installation of the chipper and debarker or of whatever other means Decker intends

to use to secure compliance with the Act and with the Rules and Regulations promulgated thereunder. In this submission, Decker shall include a report on the negotiations it has had with financial institutions in order to obtain finances for the purchase of equipment. By December 31, 1971, Decker shall report to the Board and the Agency on the specific financial commitments it has obtained to finance the purchase of equipment.

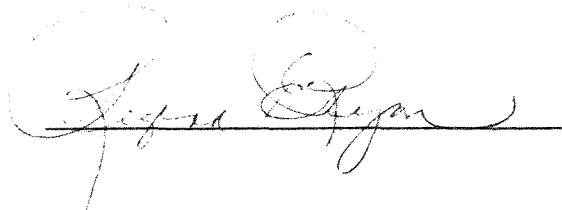
3) Within seven (7) days of the entry of the order, Decker shall remove all ashes presently found on the present site. All further ashes generated by the open burning conducted until March 1, 1972 shall be expeditiously removed.

4) Decker shall post with the Environmental Protection Agency on or before August 10, 1971, a personal bond in the amount of \$70,000, which sum shall be forfeited to the State of Illinois in the event that the conditions of the order are violated.

5) During the period this variance is in effect, Decker Sawmill shall not increase the polluttional nature of the discharge either in strength or volume.

6) The failure of the petitioner to adhere to any of the conditions of this order shall be grounds for revocation of the variance.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above opinion and order this 8 day of July, 1971.

A handwritten signature in cursive script, appearing to read "Regina E. Ryan", is written over a horizontal line. The signature is written in dark ink and is somewhat stylized.