

ILLINOIS POLLUTION CONTROL BOARD  
March 3, 1971

VALENCE )  
 )  
 v. ) # 70-54  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

STRIEGEL'S TREE SERVICE )  
 )  
 v. ) # 70-44  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

Opinion of the Board (by Mr. Currie):

These petitions request variances to permit the open burning of brush and trees. Because of the simplicity of these cases, we have proceeded without hearing. The facts appear from the pleadings; the petitions are denied.

The applicable law has been spelled out in prior Board decision: Swords v. EPA, # 70-6 (Sept. 2, 1970); City of Jacksonville v. EPA, # 70-30 (Jan. 27, 1971); City of Winchester v. EPA, # 70-37 (Feb. 3, 1971); City of DuQuoin v. EPA, # 70-40 (decided today). Conclusory allegations carry no weight; the gist of both these petitions is that it costs more to dispose of woody wastes properly than to burn them. Avoiding pollution is a legitimate cost of doing business and the saving of a few shekels is not grounds for a variance. See Swords v. EPA, supra, which governs the present cases.

In neither case is there any allegation of an intention to bring emissions under control in the future; both petitions seek permission to burn substantial quantities of material indefinitely and for profit. In the Valence case there is no allegation that the petitioners are in any more difficult position to comply with the law than is any other person in the waste disposal business. That the Valence petition asks in substance is a repeal of the open-burning restriction, but the variance procedure is not intended to authorize a repeal of what the statute provides. The legislature cognizant that preventing pollution costs money, deliberately forbade open burning. We cannot say the legislature was wrong. Moreover, as in the DuQuoin case, supra, the Valence site is, according to the Agency, operated in violation of the landfill regulations so that burning would create a hazard of setting other refuse on fire. The site is next door to an oil storage facility

which is highly subject to flame. And the Agency has received letters from some sixty citizens objecting to the grant of the variance.

The facts in Striegel's Tree Service are not so shocking, but we find the allegations in that case insufficient as well, for reasons given above and in the opinions cited. Although some of the trees sought to be burned in that case are diseased, and although we have held in the Winchester case that burning of diseased trees may be allowable under appropriate circumstances to avoid contagion, the Agency points out the possibility that an alternative burning site may be available in the area, and we agree there should not be two. Moreover, we have today published the proposed final draft of a regulation that would grant the Agency authority to issue permits for burning diseased trees under appropriate conditions; Striegel's will be free, when that regulation is adopted, to apply for a permit and to give further evidence in support of its application.

ORDER

For the reasons given in the Board's opinion, and on the basis of the petitions and the Agency's recommendations, the petitions for variance are denied.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted by the Board this \_\_\_\_\_ day of \_\_\_\_\_, 1971.

I concur:

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I dissent:

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