

ILLINOIS POLLUTION CONTROL BOARD

May 12, 1971

CHARLES FIORE NURSERIES, INC.     )  
  )  
                  v.                    )  
  )  
ENVIRONMENTAL PROTECTION AGENCY    )

PCB # 71-27

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

On February 25, 1971, Charles Fiore Nurseries, Inc. ("Fiore") submitted a petition for a Variance from Section 9 (c) of the Environmental Protection Act and from the Rules and Regulations governing the control of air pollution. Fiore has specifically requested permission "to burn diseased trees and tree trimmings (branches)" in the open air at three different sites on the grounds of the nursery, located in Prairie View, Illinois.

As noted in the recommendation of the Environmental Protection Agency, the Petition is ambiguous on the question of whether the materials to be burned consist of something other than diseased trees, since "tree trimmings" may be, and probably are, cut from healthy trees. The Petition itself points out that the nursery does "a great deal of trimming in order to keep [the] trees in symmetrical form".

While this Board has held that the risk of further infection caused by diseased trees is sufficient hardship in itself to justify allowing the open burning of such trees especially in light of the relatively minor harm that will be caused by the burning (see City of Winchester, PCB 70-37), there must, on the other hand, be a convincing showing of an arbitrary or unreasonable hardship before similar permission will be granted to burn undiseased trees in the open air. There is no such allegation or showing made by Fiore in this case.

Not only are we unaware of the nature and extent of the increased costs, if any, which would be incurred were Fiore ordered to dispose of such trimmings by some means other than open burning, but we are also not told what the effect such open burning would have on the neighboring community. Therefore, we cannot allow such burning since to do so might be to permit an activity which could conceivably cause great damage or inconvenience to the public. We have decided, however, to allow open burning of any elm wood, whether diseased or not, on the ground that elm wood if allowed to accumulate might come to harbor the elm bark beetle and thus lead to the further spread of disease.

We add that in #R 70-11 we have before us a proposal that would allow open burning of woody wastes on a broader bases. Hearings

have been scheduled for early June, and all persons on whom the present rule imposes a hardship are invited to present their views at that time.

In view of the above findings of fact and conclusions of law, it is the order of the Pollution Control Board that:

1. A temporary variance is hereby granted to Fiore for a period of six (6) months from the date hereof to burn in the open air diseased trees or infectious vegetation, and any elm wood, but only under the following conditions:
  - (a) burning shall be done only at those burning sites specified in the Petition;
  - (b) burning shall be done no more than one (1) day per month;
  - (c) burning shall be done only between the hours of 10:00 a.m. and 4:00 p.m.;
  - (d) burning shall be done only when wind speed is between five (5) and twenty (20) miles per hour, and only when the sky is not overcast;
  - (e) all burning shall be under the direct and constant supervision of an employee of the nursery;
2. That portion of the Petition which requests a Variance to burn undiseased trees, trimmings or vegetation other than elms, in the open air is hereby denied.

I, Regina E. Ryan do hereby certify that the above Opinion and Order was approved by the Board on the 10 day of July, 1971.

  
Clerk of the Board