

ILLINOIS POLLUTION CONTROL BOARD
May 6, 1991

GERSTAD BUILDERS,)	
)	
Petitioner,)	
)	
v.)	PCB 91-73
)	(Provisional Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.C. Marlin):

This matter comes before the Board on receipt of an Agency Recommendation dated May 3, 1991. The recommendation refers to a request from Petitioner, Gerstad Builders for a 1-day provisional variance from the open burning prohibition, as set forth in 35 Ill. Adm. Code 237.102.

Upon receipt of the request, the Agency issued its recommendation, finding that a failure to grant the requested provisional variance would impose an arbitrary or unreasonable hardship on Petitioner.

The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. See Ill. Rev. Stat. 1989, ch. 111½, pars. 1035(b) & (c). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal Order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Having received the Agency recommendation finding that a denial of the requested relief would impose an arbitrary and unreasonable hardship, the Board hereby grants Petitioner a one-day provisional variance from 35 Ill. Adm. Code 237.102 with the following conditions:

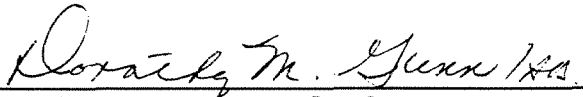
1. The burning is limited to the landscape waste stated in the petition for provisional variance, more specifically, approximately 100 to 150 eight foot trees;
2. The landscape waste must be burned only on the premises on which such waste is generated, more specifically, the rural farmland located at 900 Ridge Road, McHenry, McHenry County, Illinois;
3. The burning must be conducted when atmospheric conditions

- will readily dissipate contaminants;
4. The burning must not create a visibility hazard on roadways, railroad tracks or airfields;
 5. The open burning site shall be established on a cleared area, and access by unauthorized persons shall be adequately restricted;
 6. The open burning site shall be provided with adequate fire protection equipment;
 7. The materials used to promote combustion shall be of no lesser quality than number 2 fuel oil;
 8. Burning shall at all times be supervised;
 9. Burning shall be conducted only during daylight hours;
 10. Ashes, residue, etc., shall be disposed of in a manner consistent with the requirements of the Act and Regulations; and
 11. Gerstad Builders shall comply with other applicable sections of the Act and Regulations.

IT IS SO ORDERED.

B. Forcade and J.T. Meyer concurred. J.D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 6th day of May, 1991, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board