

ILLINOIS POLLUTION CONTROL BOARD

September 27, 1974

CITY OF PLANO,)
)
 Petitioner,)
)
 v.) PCB74-244
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

City of Plano filed its Petition for Variance on June 28, 1974 seeking relief from the Open Burning Regulations in order to burn an accumulation of landscape wastes. It is alleged that these wastes were generated as a result of heavy winds passing through Plano on June 20, 1974.

Petitioner requests a variance for a period of time not in excess of 60 days in order to burn a quantity of trees and branches exceeding "the amount which the city would normally expect to experience for more than an entire year". Such wastes would be burned on city owned property adjacent to a sewage treatment plant in the southeast part of the city. The nearest residence is approximately 1,000 feet from the proposed burning site. No other information is provided relative to quantity of waste to be burned, the quantity and type of contaminants to be discharged, proposed equipment for controlling the discharge of emissions, details of past efforts to achieve compliance, or injury that would be imposed on the public by the granting of such a variance.

Under the heading "Statement that Hardship Exists", Petitioner states that the accumulation of trees, branches and leaves create an immediate danger to the residents of the community. Petitioner cites the danger to vehicular traffic because of piles of landscape waste having accumulated on road right-of-ways. Further, Petitioner states that the probability of accidents at intersections has increased because of the inability to see approaching vehicles at intersections.

Petitioner states that it seeks immediate relief as may be authorized under Section 34 of the Environmental Protection Act without regard to the requirements of Section 5(a) of the Act. It is apparent that Petitioner fails to understand the intent of Section

34 of the Act. Nothing before us indicates that the Agency has sealed any facility operated by the Petitioner thus leaving Petitioner no standing to invoke the provisions of Section 34 of the Act.

The Agency moved for dismissal on the ground that this matter is moot, since the landscape waste had already been burned. This motion was denied by the Board and the Agency subsequently filed its Recommendation.

Agency personnel were informed that Petitioner collected 10 to 11 truckloads of landscape waste per day for a month after the storm. Normal landscape waste accumulations by the City amount to about one truckload per week. In an earlier filing Petitioner sought a variance to open burn the regular accumulation of landscape waste (PCB 74-162). This variance was denied on August 8, 1974 because Petitioner had failed to comply with Rule 401 of the Board Procedural Rules.

This record shows that Petitioner has already burned the landscape waste collected since June 20, 1974. The Agency claims that the Mayor of Plano admitted the burning on July 16, 1974 and that an Agency investigator actually observed this open burning of landscape waste on that date. We are also informed in the Agency Recommendation that Petitioner removed the accumulation of trees and branches from the streets shortly after the storm.

The granting of this variance would shield Petitioner from prosecution for its past open burning but is apparently not needed for any current accumulation of landscape waste. Petitioner did not inform the Board that it had burned the waste nor did Petitioner respond to the statements in the Agency's Recommendation. Petitioner failed to state whether it had applied for an emergency burning permit from the Agency pursuant to Section 504(a)(6) of the Open Burning Regulations.

The Agency recommends denial of this variance because of Petitioner's disregard for the Open Burning Regulations and the Board's Procedural Rules. It is the Agency's belief that Petitioner's burning of the landscape waste without waiting for the Board to decide either of its two pending variance requests indicates a willingness to accept any consequences of such actions.

We find that Petitioner has failed to provide the information required by Rule 401 of the Procedural Rules. We cannot properly

assess the situation unless we are told the comparative costs of different methods of disposal and are given an opportunity to evaluate environmental impact of those different methods. The Petition for Variance must therefore be denied.

ORDER

The Petition for Variance is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Opinion and Order was adopted this 27th day of September 1974 by a vote of 5-0.

Christan L. Moffett