

ILLINOIS POLLUTION CONTROL BOARD

August 23, 1973

FRANK NUTTY, INCORPORATED and)
PAULTER BROTHERS CONTRACTORS., INC.)
)
Petitioners,)
)
vs.) PCB 73-249
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

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

Petitioners request a variance from the Open Burning Regulations for the purpose of clearing brush and timber from the site of a proposed water reservoir under construction by the City of Carbondale. In EPA vs. Nutty et al, PCB 72-507, Petitioners were penalized \$250 for unlawful open burning conducted on October 20, 1972 on this same site, and were directed to obtain a variance or permit prior to further open burning.

On November 8, 1972 the Regulation was modified so that open burning of landscape waste could occur in many situations without permit or variance. In our recent decisions we have made clear that brush and timber cleared from a construction site may be burned if it is not located in a prohibited area. Worthy Brothers Pipeline Company vs. EPA, PCB 73-283 (July 26, 1973). The landscape waste which is involved in this case is not located in a prohibited area. [See Chapter 2, Air Pollution, Part V, Open Burning Rule 503(c)(4)] The nearest residence is more than two miles from the site.

Accordingly, we find that the landscape waste may be burned in compliance with the Regulation; that a variance is not necessary; and the Petition should be dismissed as moot. Petitioner may burn the landscape waste provided the burning is conducted with care to avoid injury to human, plant or animal life, to health or to property or the unreasonable interference with the enjoyment of life or property.

The variance petition is hereby dismissed as moot.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 23rd day of August, 1973 by a vote of 3 to 0.

Christan L. Moffett