

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1972

N. E. FINCH COMPANY)
)
) #72-349
 v.)
)
 ENVIRONMENTAL PROTECTION AGENCY)

WILSON C. WASHKUHN, ON BEHALF OF PETITIONER
PRESCOTT E. BLOOM, SPECIAL ASST. ATTORNEY GENERAL, ON BEHALF
OF ENVIRONMENTAL PROTECTION AGENCY

OPINION OF THE BOARD (BY SAMUEL T. LAWTON, JR.)

Petition for variance was filed by N. E. Finch Company requesting a variance from Rule 504(a)(4)(iii) of Chapter 2 of the Pollution Regulations, to permit the burning of approximately 70,000 tons of landscape waste consisting primarily of leaves and underbrush. Rule 504 relates to permits for open burning. Rule 504(a)(4)(iii) states that the Environmental Protection Agency may grant permits for open burning for the destruction of landscape waste provided that burning shall not occur "after July 1, 1972, except with the aid of an air curtain destructor or comparable device to reduce contaminant emissions substantially".

Petitioner is a general contractor engaging in land clearing operations, in this instance, the construction of a cooling lake near Canton, Illinois, Fulton County, for an electrical power generating station. Petitioner's contractual obligations apparently include clearing brush, felling trees and the disposal of resultant waste.

Petitioner alleges that the following factors make the use of an air curtain destructor unreasonable:

1. The topography of the area makes it virtually impossible to use heavy equipment and attempts to use such equipment would endanger the safety of its construction crew;
2. Further excavation would loosen the ground surface, encouraging erosion and release of particulate matter;
3. Burning elsewhere would create more environmental impact since the proposed site is isolated from the general population (its former residents having been re-located);
4. Hauling the debris elsewhere would create traffic problems;

5. The natural topography of the area, together with the employment of the blower, had the same effect in abating smoke emissions as an air curtain destructor;
6. The cost of disposal of the landscape waste by air curtain destructor is prohibitive;
7. The proposed use of mobile air blowers would result in efficiency equal to or superior to that provided by air curtain destructors.

The record included testimony that the work site is approximately eight miles south and east of Canton, Illinois (R.8), and consists of approximately 1,700 acres, the greater portion of which is ravine-like with (R.10) heavily forested gullies (R.10). Petitioner's method of disposal until July 1, 1972 was open burning with blowers under permit from the Agency (R. 12-14).

The blowers petitioner uses are driven by 12-1/2 horse power engines and contain fuel injectors (R15 and R.37). The burning was done in the bottom of the gullies in small piles (R.12). This procedure was followed by petitioner because the subject land is often marshy, and it was anticipated that the clearing operation will contribute to this condition, making movement by heavy equipment difficult (R. 27). Petitioner contends that its procedure created a "better burn" but offer no data to support this contention(R.26).

Petitioner's witness stated that he had had no experience with air curtain destructors and thus could not compare their efficiency with his proposed method of disposal (R. 32). Experts for the Agency testified that they believe that the proposed method of disposal would be far less efficient than the use of an air curtain destructor allowing much larger particulate emissions (R. 56-57-68-69-85).

Petitioner did not present the evidence relevant to questions of environmental impact, and offered no comparative cost figures, choosing to conclude that the air curtain destructor would be a prohibitively expensive and time-consuming method of disposal (R.24, et. seq.). In a site inspection and a subsequent conference between the parties, the petitioner declined to estimate the dollar impact of disposal by air curtain destructor (R. 77-79).

In Hayes Branch Drainage District of Douglas County, Illinois and Drainage District No. 4 of the Town of Tuscola, Douglas County, Illinois v. Environmental Protection Agency, ##71-356, 71-357, 3 PCB 611-13 (February 7, 1972), we stated:

"We must then turn to the question of whether the variance should be granted. In order for a petitioner to be granted a variance by the Board he must prove that compliance with the law will create an arbitrary or unreasonable hardship. (See Section 35 of the Act.) This Board has consistently held that the question of determining whether an arbitrary or unreasonable hardship exists is determined by a balancing process, that is, balancing the benefits to the petitioner and the public in granting the variance versus the harm to the public and the petitioner in denying the variance. This is not an equal balance; the benefits to be obtained by the public and the petitioner must be significantly greater in allowing the variance, then the harm caused by denying it. Open burning has been prohibited in Illinois for several years and such a ban was reaffirmed with the passage of the Environmental Protection Act. (See Section 9(c))."

In this case, petitioner has not sustained the burden of proving an arbitrary or unreasonable hardship. The testimony with respect to inordinate costs resulting from the use of an air curtain destructor is purely speculative. No evidence of the cost of acquisition, operation or movement of trees consequential to employment of such facility, has been presented. We must likewise conclude that the blower device employed by petitioner is not a "comparable device" entitling petitioner to a permit under the regulations, since a variance of the regulation is sought. We must therefore deny the petition for variance. On the record, this case presents none of the peculiar hardships present in our recent grant of open burning variances in City of Galena v. Environmental Protection Agency, #72-122, 5 PCB , (September 6, 1972), and City of North Chicago v. Environmental Protection Agency, #72-398, 5 PCB (November 3, 1972), or in Hayes Branch Drainage District, etc. v. EPA, Supra.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that the petition for variance be denied.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Opinion was entered on the 5th day of December, 1972, by a vote of 4 to 0.

Christan J. Moffett

