

ILLINOIS POLLUTION CONTROL BOARD

April 26, 1973

CITY OF FREEPORT,)
)
) Petitioner,)
)
) vs.) PCB 72-487
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

John G. Garrity, Attorney for City of Freeport
Michael A. Benedetto, Jr., Assistant Attorney General for the EPA

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

City of Freeport filed a Petition for Variance to allow the burning of four large piles of logs. The logs, located approximately one mile from Freeport, were placed on private property by the Illinois Division of Waterways at the City's request. They cannot be burned there without a variance since they were not grown on that property. Petitioner desires to burn the logs because spring floods might move the logs back into the River and in position for another log jam thereby causing possible flooding in Freeport; the site is virtually inaccessible to trucks; and, the City's air curtain destructor would not be practical at the site due to a high water table.

The logs in question accumulated over a 14 year period in a bend of the Pecatonica River downstream from Freeport. Each of the four piles is about 6' in height and 100' long. City officials requested the log removal by the State Division of Waterways in the summer of 1972. The Division of Waterways brought in a drag line and caterpillar tractor, removed over 90% of the logs at the site and piled them on both sides of the River in approximately equal portions. The logs on the north side of the River are located on private property adjoined on one side by the Pecatonica River and on the other by a small body of water normally 15 - 20 feet in width and 1 foot deep. Access to the north site is along a dirt road approximately 1 mile in length and through the shallow body of water.

The logs piled on the south side of the River are also on private property about 3/4 of a mile from the nearest residence or road. Access to the south side is through a wooded area along a route previously used by the Division of Waterways to transport their removal equipment.

An Agency investigator estimated the quantity of logs to be about 2500 tons. This figure was used in conjunction with standard emission factors to calculate the following estimated emissions:

Particulates	42,500 lbs.
Carbon Monoxide	125,000 lbs.
Hydrocarbons	10,000 lbs.
Nitrogen Oxides	5,000 lbs.
TOTAL	<u>182,500 lbs.</u>

However, Mr. Robert Boeke, Freeport municipal employee who operates the City's air curtain destructor, felt that the Agency figure of 2500 tons was under-estimated and stated "I think it will go way over that" (R. 10). Mr. Boeke estimated that the entire quantity of logs could be disposed of in 2 or 3 weeks by burning 8 hours per day, 5 days per week (R. 13). Auxiliary fuels such as dry kindling or diesel fuel would be required according to Boeke (R. 14).

The Environmental Protection Agency has recommended denial of this variance. One of the Agency's arguments relates to the definition of trade waste as contained in our Open Burning Regulations. It is the Agency's contention that the logs are trade waste resulting from Freeport's "governmental activity" and that the burning of such is strictly prohibited by Regulation. While the logs unquestionably are landscape waste, we reject the contention that they represent trade waste. Petitioner surely did not generate them as a result of prosecution of its normal governmental functions. The City was not engaged in any activity whereby these logs were a waste material. Our previous decisions should have made it abundantly clear that the Board does not consider landscape waste accumulated on government property to be trade waste (City of Galena vs. EPA, PCB 72-122; Sterling Park District vs. EPA, PCB 72-409; and Pekin Lake Conservation Area vs. EPA, PCB 72-420).

The Agency also argues that Freeport's obligation is moral in nature rather than legal thereby leaving Freeport with no standing to sue for variance. The contention is that the City did not pay for the use of the private land on which the logs were deposited and that no formal contract was signed stating that the logs would be disposed of by burning or any other method.

However, Mayor McLeRoy testified that the verbal negotiations called for the disposal of the logs by burning and he was informed by someone at the Agency that he could burn the logs without a permit. We feel that Freeport's responsibility for disposal of the logs is sufficiently clear and the City has standing to sue for the variance.

Use of the City's air curtain destructor was considered but rejected by both the Mayor and Mr. Boeke. The evidence clearly shows that a high water table at the north side (an island) would prevent the use of the pit required for proper burning with an air curtain destructor (R. 19, 34). Burial of the logs was rejected for similar reasons.

Agency investigator, Joseph Mall, testified that uncut timber located about 50 yards from the stacked logs would represent a potential fire hazard (R. 70). We note in Respondent's exhibit #3, page 7, that Mayor McLeRoy informed the Agency investigator that at least one man would be present at the site during the proposed burning and normal fire prevention techniques would be employed. In addition, the Mayor is quoted as saying that although the fire department would not be present it could respond to any emergency in a matter of minutes.

Neither of the two landowners on whose property the logs had been piled had any objection to the burning, according to the Mayor (R. 39). Three persons residing in the probable downwind direction from the burning piles also expressed no opposition to the burning. It was the general consensus of these persons that whatever smoke resulted would be preferred over the flooding problems which exist in the area.

The Freeport City Engineer estimated it would cost \$22,500 for removal of logs to the present air curtain destructor site. Mayor McLeRoy thought the cost would be much higher. The Freeport budget does not currently have an appropriation for such activities (R. 42). The Agency contends that such a cost does not constitute unreasonable and arbitrary hardship.

The south site is more accessible and would lend itself to proper disposal utilizing the air curtain destructor. The City intended to have a bulldozer at the site in the event we granted variance for open burning (R. 10). We do not think the temporary relocation of the portable air curtain destructor at the site would impose an unreasonable hardship, in view of the fact that the operator and a bulldozer were to be at the site if open burning were to occur. Agency photographs and

testimony convince us that the logs on the south site would be less susceptible to flooding.

We believe the evidence is sufficient to grant Freeport a variance to burn part of the logs without an air curtain destructor. The logs on the north site can not be disposed of by use of an air curtain destructor because of the high water table and relative inaccessability. To order their removal and relocation for burning at the City's present air curtain destructor site would be an unreasonable hardship.

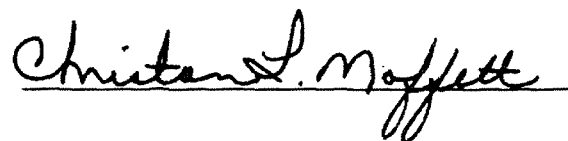
We will allow the variance for open burning in that area which will not accomodate an air curtain destructor and deny the variance for the south site where an air curtain destructor may be used.

ORDER

It is the Order of this Board that:

1. City of Freeport is granted variance from Rule 502(a), Part V, Chapter 2, of the Air Pollution Control Regulations until September 1, 1973 only for burning of logs presently located on the "north site", as described in this Opinion. Additional combustible materials may not be added to any fire at this site after 3 p.m., but due to nature of the logs, fires need not be extinguished after 3 p.m.
2. Petitioner may burn the logs on the "south site" only by proper use of an air curtain destructor in accordance with standard procedures.
3. Petitioner shall notify the Environmental Protection Agency five (5) days prior to commencement of any burning in order to allow for Agency observation.
4. All residue from burning shall be buried to a sufficient depth to prevent its entrance into any stream. Burial shall be completed within two (2) days of completion of burning at any site.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 26th day of April, 1973 by a vote of 3 to 0.


Christan L. Moffett