

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 1972

CITY OF GALENA )  
 )  
 V. ) PCB 72-122  
 )  
 ENVIRONMENTAL PROTECTION AGENCY )

Martin D. Hill for the City of Galena;  
Roger L. Horwitz, Assistant Attorney General, for the Environmental Protection Agency.

OPINION AND ORDER OF THE BOARD (by Mr. Parker):

The City of Galena, a city of about 3,300 population, seeks a variance from the existing law and open burning regulations to permit open burning of fallen trees and wooden underbrush located in a flood plain area along the Galena River.

The original petition took the form of a letter to the Agency from the Galena City Manager dated March 24, 1972. By Interim Order dated April 4, 1972 this Board required an amended petition to be filed including information on alternative means of disposal of the trees and brush and the cost of those means. Such an amended petition was filed, this time taking the form of a letter from the Galena City Manager to the Board dated April 7, 1972.

The area in question constitutes about 22 acres which the City of Galena began clearing of trees and brush in 1969 pursuant to an Army Corps of Engineers recommendation (R. 26). The work was not completed, however, because of substantial problems encountered in disposing of the cleared material. The City presently proposes to complete the project and then use the area for recreation purposes.

At the public hearing, held June 27, 1972, the City Manager described the 22 acre area as made up of four regions of different characteristics. The north end region had been covered with dead elm trees, about 20-30 percent of which were lying on spongy ground. Most of the trees in this region have been cut down and bunched into several piles (R. 13). A second region, of similar character to the first, has fewer dead elm trees and more small, young trees (R. 14) which have been cut down (R. 17). An old railroad right of way forms part of a third region, drier than the first two, containing box elder trees of 10 to 15 foot height and covered with underbrush (R. 14). Some of these trees have been cut down and piled (R. 17). The fourth is a cliff region

containing a large number of trees of all sizes and shapes, and accompanying underbrush (R. 15).

All of the cut trees in the 22 acre area are still on the site, some in piles and some strewn around the ground (R. 17). The City plan is to remove about 90 percent of the trees and brush from the first three regions, grade these regions so that rain-water flows to instead of away from the river, and seed them with grass (R. 15). The fourth (cliff) region will be thinned out (R. 15), dirt filled and seeded (R. 16).

Petitioner seeks a variance to burn not only the existing piles of cut and dead trees and brush, but additional piles of trees and brush which will result from completion of the land clearance project (R. 18). There are presently about seven piles of elms and box elders, and an estimated additional dozen piles of box elders will result from the clearance operation (R. 18). Each pile is 12 to 15 feet in diameter and 8 to 10 feet high (R. 18). The piles to be burned will include diseased as well as nondiseased trees (R. 19).

The record includes evidence as to the alternatives to open burning, several of which must be summarily dismissed. Thus, the cut trees and brush cannot simply be left on the ground (R. 20) since this would constitute disposing of refuse at a site not approved for use as a landfill, a flood hazard would result, and the City's plan would be thwarted, since the land would not be useful for recreation. Likewise, burying the cut refuse on the site, even if the high ground water level would permit such burial, would also be barred for similar reasons.

Use of an air curtain destructor was considered but rejected (R. 21, 109). It would be impossible to operate such a device at the site because the ground water level is so near the surface that the ditch which must be provided beneath the device would fill with ground water, and the destructor could not be cleaned (R. 21). Installation of such a destructor at a site away from the flood plain was considered (R. 109) but apparently rejected because of the cost of hauling as well as the high cost of purchasing the device.

The only feasible disposal alternative to open burning appears from the record to be chipping the material (cutting it into small pieces) on the site and then hauling it away to an approved dump. The local tree trimmer testified (R. 98, 103-105) that he would be able to cut down the standing trees, chip them and haul them away for approximately \$1200. (\$30. per hour total for three men, eight hours per day for an estimated five days). While his chipping equipment cannot handle trees larger than six inches in diameter, which means that the larger trees on the site could not be handled in this way (R. 98, 104), the tree trimmer

indicated that he would include cutting and hauling of the larger trees in his five day cost estimate (R. 104-105).

As for the cut trees and other wood debris presently lying on the ground (which was not included in the \$1,200 estimate), the tree trimmer said it would cost "a fortune" to cut this up (R. 99, 103). The City Manager's estimate of the cost of the overall chipping and hauling alternative was a minimum of \$10,000 (R. 57). While this estimate was admittedly not based on cutting, loading and hauling time studies (R. 57), the estimate was not substantially undermined on cross-examination and we note that the Agency did not come forth with any contrary evidence of its own on the point.\*

The City Fire Chief testified that no residences or businesses are located near the flood plain area and that there would be no safety hazard created by the open burning should the variance be granted (R. 83). He also described the precautions that would be taken to insure proper control of the burning, including the stationing of men and tank trucks in the area (R. 87). The entire 22 acre tract could be reached by water hoses connected to a nearby hydrant (R. 89-90). One pile at a time would be burned; possibly three or four piles could be burned in one day (R. 95). Ideally, the burning would be conducted when little or no wind was present (R. 94, 95).

Several citizens testified in opposition to the petition at the hearing, mainly on grounds that open burning is generally undesirable (R. 119-120, 124-125, 129, 130-132, 133). In its recommendation filed the day before the public hearing, the Agency stated that the variance request should be denied because the City's petitions had not presented sufficient information for the Agency "to determine whether the Petitioner's conclusions are accurate" (p. 3). The Agency alternatively recommended if the variance were granted that the burning be conducted only under favorable dispersion conditions and that the nearby\*\* former City dump be closed with two feet of cover prior to commencement of burning.

Turning now to whether the variance should be granted, we believe that the cutting and hauling alternative as concerns the trees which are presently standing is a viable one, and that the open burning request as to these trees should be denied. The project is technically feasible and the \$1,200 cost estimate seems to us to be well within the range of what the City can afford. Accordingly we find that petitioner has failed to show that an arbitrary or unreasonable hardship would exist sufficient to justify open burning of the presently standing trees, and the petition is denied to this extent.

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\* The Agency's "Final Statement" filed after the hearing argues that "the total area could have been cut for about \$1,500" (p. 3) but we are unable to verify this from any evidence in the record.

\*\* An Agency engineer testified (R. 116-117) that the former dump containing general refuse is located about 150 feet from the presently existing wood piles in the flood plain area.

On the other hand, we believe petitioner has shown that an unreasonable hardship does exist sufficient to justify open burning of the trees and brush which are presently lying on the ground. The only practical alternative to open burning, i.e. cutting, chipping and hauling, involves an expenditure which would, on the record before us, work an unreasonable hardship on the City. The funds available to Galena for this purpose are sharply limited (see R. 23, 30, 51-52, 65). We are persuaded that it would be most difficult for the City to justify spending the \$10,000 minimum that would be necessary to cut, chip and haul this material.

Looking at the other side of the coin, the record does not in our view show that substantial harm to the public would result from limited open burning of the trees and brush lying on the ground. The burning site is remote from dwellings and businesses, and we are impressed with the precautions that will be taken by the City Fire Chief and his men to insure proper control of the burning. The record contains several references to the possibility of an air inversion impeding dispersion of combustion products (e.g. see R. 87-88, 95-96, 121, 136), but we do not regard the evidence on the point as competent or persuasive.

We do believe, however, that the burning to be permitted as described herein should be carried out in accordance with certain conditions, including those recommended by the Agency, as set forth below.

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

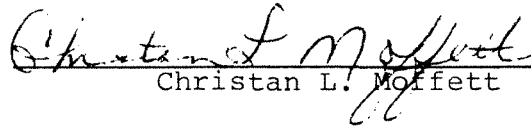
#### ORDER

1. The petition is denied as to the open burning of trees and brush which is presently standing.
2. The petition is granted as to the open burning at the site of trees and brush presently lying on the ground, provided that the following conditions are met:
  - a. Materials to be burned shall be strictly limited to trees and brush presently lying on the ground.
  - b. Only one pile is to be burned at a time and the burning shall be conducted only during daytime hours.
  - c. The open burning shall be conducted only under favorable dispersion conditions.
  - d. The former Galena City dump shall be properly and finally closed with two feet of cover prior to commencing the open burning.
  - e. The City Fire Chief or his designee and his men shall be in attendance at all times when open burning is taking place. The burning site shall be provided with

adequate fire protection and with such equipment as necessary to control accidental fires.

f. The City shall notify the Agency's Regional Office (4302 North Main, Rockford, Illinois 61103, 815/877-8051) prior to the first burning and thereafter so that the Agency may make an on-site inspection during each burning.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 6<sup>th</sup> day of September, 1972 by a vote of 7 to 0.

  
Christan L. Moffett