

ILLINOIS POLLUTION CONTROL BOARD
June 29, 1972

CITY OF OLNEY)
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 v.) PCB 72-205
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 ENVIRONMENTAL PROTECTION AGENCY)
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Opinion and Order of the Board (by Mr. Dumelle)

On May 15, 1972, the Board received a letter from the City which requested a "permit for variance" to conduct open burning of trees within the City. On May 17, 1972, we adopted an Opinion and Order stating it was not clear from the letter whether the City was seeking a permit or taking an appeal from a permit denial or seeking a variance from the open burning regulations.

Construing the communication as either an appeal or a variance application, we asked the City to submit information with respect to alternatives available for disposition of trees and brush, the costs involved and what effect the burning would have on the surrounding community.

On May 31, 1972, we received a further communication from the City in response to our order, stating that the alternatives available were either to haul the material to a privately owned landfill which did not have a State permit or to burn the material on what used to be the city dump. The annual costs for the two alternatives would be \$3000 to \$5000 and \$500 to \$1000 respectively. The City further stated that it did not contemplate any adverse effects if the burning were to be done in the old city dump. It also stated that it would cost considerably more to use the privately owned landfill and also that the landfill was not State approved.

On June 6, 1972 we adopted an Opinion and Order in which we noted that neither letter from the City had made reference to the possible use of an air curtain destructor as another alternative to solving the problem. The Opinion further stated that under some circumstances the use of a destructor would obviate the need for a variance and under other circumstances would serve as a suitable basis for granting a variance. We ordered that we would allow the City ten days in which to submit information regarding the possible use of an air curtain destructor or else its reasons why such facility would not be available to resolve the problem.

By letter dated June 16, 1972, the City responded stating that it earlier had received a brochure on the air curtain destructor but that the City nevertheless wanted to burn at the city dump for one or two years in order to save enough money to then remedy the problem.

We find that the City has not shown that it would suffer an arbitrary or unreasonable hardship if it were to solve its problem now. The only statement the City has really made is that it would prefer to wait a year or two in order to save up enough money so as not to suffer any hardship at all. The City, however, has not shown anything concerning its actual financial condition at the present time nor has it shown that under its current financial condition it would be arbitrary or unreasonable to comply with the Act immediately.

As we stated in the Lindgren Foundry Company case (PCB 70-1) "a variance is to be granted only in those extraordinary situations in which the cost of compliance is wholly disproportionate to the benefits; doubts are to be resolved in favor of denial." In the instant case we have serious doubts as to exactly what financial burden would be placed upon the City if it were to comply now. We cannot grant a variance' under these circumstances.

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

ORDER

It is hereby ordered that the petition for variance by the City of Olney be and hereby is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted on the 29th day of June, 1972 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board