

ILLINOIS POLLUTION CONTROL BOARD
June 23, 1971

City of Carthage)
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)
 v.) PCB 71-65
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 Environmental Protection Agency)
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Opinion of the Board (by Mr. Dumelle)

The Illinois Pollution Control Board (Board) received this petition for variance on March 26, 1971. The City sought to be allowed to burn trees, limbs, and logs at the City's landfill site.

In its petition the City asserted that the City operates a sanitary landfill through an independent contractor, that landscape waste is generated within the City as a normal occurrence, that the City collects the debris and deposits it at the landfill site, and that in the past the City has burned the landscape waste at infrequent intervals at such times as the wind and other atmospheric conditions were favorable. Further the City asserted that they have never received any complaints from residents in the area relating to the burning. The City stated that denial of the variance would impose an arbitrary and unreasonable hardship upon the City inasmuch as the tree waste would either have to remain where it had fallen to be dealt with by the individual property owner or it would be accumulated and stored indefinitely at a site which the City would be forced to acquire at an assertedly unrealistic price. The City asserted that pests and rodents living in the accumulated tree waste would create a public health and safety hazard.

The Environmental Protection Agency (EPA) investigated the situation in response to the petition and reported on June 10 that about 500 cubic yards of landscape waste is presently stockpiled at the landfill site. The EPA further reported that the landfill is located a quarter mile northwest of the city of 3,350 and recommended that the City be allowed to burn their diseased tree waste subject to certain conditions.

The Board has encountered the hardship asserted in this case in several previously decided cases. The hardship is simply the unavailability of feasible alternate methods of disposal of diseased trees. Burning of diseased trees appears to be the only effective method of disposal because of the risk of further infection incident to other disposition, City of Winchester v. EPA, PCB 70-37, (February 8, 1971). In this case

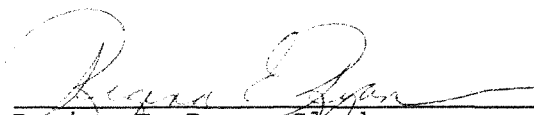
we are allowing the burning of non-diseased elm woody waste which has been commingled resulting in the 500 cubic yard accumulation reported by the EPA. It would be most difficult, if not impossible, to make distinctions in the mass of waste at this time. In addition, the admixture of diseased and non-diseased elm waste has a high probability of resulting in refuge for the elm bark beetle in the healthy elm wood with the consequence of further spread of the elm disease, see Charles Fiore Nurseries, Inc. v. EPA, PCB 71-27 (May 27, 1971). We have heard from Mr. James Tyndall, Assistant General Superintendent of the Cook County Forest Preserve District in our rule-making hearing on open burning that sanitation is a basic procedure for a successful Dutch elm disease control program and that effective sanitation is accomplished by the careful, thorough, and prompt removal and disposal of all elm trees and other material in which the bark beetles can colonize. By this action we are not varying from our previous policy of not allowing the burning of non-diseased wood, we are simply recognizing a particular hardship. Open burning generally has been against the law in Illinois since 1965. Until the complete prohibition spelled out in the Environmental Protection Act (effective July 1, 1970) an exception to the burning ban was applicable to diseased trees. Since the effective date of the Act we have granted variances to allow burning of diseased trees in appropriate cases where the statutory standard was met. This is such a case.

The manner of dealing with the hardship in this case as in the multitude of other cases in which this vexing question of tree burning has arisen will soon be changed to an easier and more satisfactory method than the ad hoc consideration of variance requests. We have completed our hearings in the rule-making proceeding relating to open burning which were begun on January 6, 1971 (R70-11). It is likely that the Board will adopt new open burning regulations within the next few weeks.

For the present, in the instant case we grant the City's request to burn subject to certain conditions, generally those recommended by the EPA except we will not place the burden on the City of separating and burning only the diseased trees and parts. We are granting this variance for a period of three months only. We feel confident that our new rules will be finalized well before that time and will provide an answer to the question posed in this situation without the necessity of applying for a variance.

This opinion constitutes the Board's findings of fact and conclusions of law. The Board's Order in this case was adopted on June 16, 1971. This opinion is in support of that Order.

I, Regina E. Ryan, Clerk of the Illinois Pollution Control Board,
certify that the Board adopted this Opinion on the 20 day of June, 1971.



Regina E. Ryan, Clerk
Illinois Pollution Control Board