

ILLINOIS POLLUTION CONTROL BOARD
April 14, 1971

PURDY CO.)
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 v.) # 71-2
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

Purdy operates a railroad car dismantling operation in Madison, Illinois (R. 26). Notwithstanding the fact that salvage by open burning has been against Illinois law since 1965, the company engaged in the open burning of railroad boxcars through 1970 (R. 34-36) at a frequency of once every 5 to 7 days (R. 35). Incredibly, Purdy has no idea of the number of cars that were burned in 1970 (R. 34) and, according to its Plant Superintendent, the company keeps no record whatsoever of the number of wooden cars it burns (R. 36) although it can estimate the frequency of its burning operations.

After repeated urgings of the Illinois Air Pollution Control Board (R. 17), on May 8, 1969, Purdy submitted an air contaminant emission reduction program (ACERP) more than one year after it was due. The ACERP, approved on May 29, 1969, stated categorically that the purchase of wooden cars for open burning purposes would be steadily reduced during the next two years:

It is anticipated that within a 24 month period, we shall reduce our purchase of obsolete railroad cars at a rate of 12 1/2% per quarter (Ex. A, p. 2).

The ACERP, as we held in EPA v. Commonwealth Edison Co., #70-4 (Feb. 17, 1971), was itself a variance and therefore expired one year after its issuance. Purdy now asks us for permission to continue burning railroad cars until June 30, 1971. The petition for variance does not specify how many cars Purdy would like to burn in the open or what will occur after June 30, 1971 and makes no mention of the company's compliance, or even progress toward compliance, with the terms of the ACERP. Indeed, attempts

to adduce this latter but of evidence were resisted at the hearing by the company's counsel (R. 104-107). Testimony at the hearing, however, leads us to believe that Purdy is requesting permission to burn some twenty-nine refrigerator cars (R. 57) it presently has on its site in Madison and an indeterminate number of cars it plans to acquire by June 30. (R. 44, 93-96, 98, 99, 127, 128, 144-147, 151). The Company represents that it has not burned any cars whatsoever since Dec. 22, 1970 (R. 44, 147) and it has not been forced to reduce its work force since that date as a result of the discontinuance of the burning operations (R. 47). We refuse to grant Purdy the permission it seeks and issue a stern warning against the burning of such cars in violation of our order.

The statute provides that a variance may be granted only if the petitioner shows that compliance with the law would impose an arbitrary or unreasonable hardship, and may be extended "only if satisfactory progress has been shown" (Environmental Protection Act, sections 35, 36(b), 37). Purdy has failed to meet these burdens. In addition to resisting efforts to determine whether or not there had been compliance with its ACERP, Purdy also advanced no proof that the harm to the community would be tolerable were we to grant the variance. It fought the requirement that it produce a map showing the location of its operations in relation to neighboring residential communitite (R. 108) and, indeed, admitted that the burning would produce heavy black smoke for about half an hour (R. 28, 58) and then smolder for two to three hours more (R. 28). Such conditions are clearly detrimental to neighboring residents and, in the words of Purdy's Executive Vice President, "it just isn't a pretty business." (R. 144).

In a case decided recently, we denied the request for a variance by Lipsett Steel Products, Inc., for similar boxcar burning operations (70-50, decided March 22, 1971). Lipsett conducted its burning operations with the assistance of a gas-fired blower, a process which cut down emission levels to a point nevertheless adjudged objectionable by the Board. Purdy doesn't even use a hand fan to disperse the obnoxious emissions from the burning boxcars. It seems willing to let the emissions fall where they may, regardless of the potential harm to the community. And we are asked to condone such insensitive behavior by allowing Purdy to burn twenty-nine cars plus perhaps several hundred more (R. 144-47) by June 30, 1971.

Purdy has no real program for emission control. It wants to do what we have refused to allow since 1965 except under rare circumstances. It maintains that although no workers have been laid off since burning operations have ceased, and although it has no idea of the impact such burning operations would have on the community, and although it has no idea of its past progress

(or lack of same) toward compliance with its ACERP, and although it has no program whatsoever beyond June 30, 1971 it should be granted permission to resume burning as many obsolete railroad cars as it can obtain and set a match to within the next few months. We cannot countenance such a request.

It should also be noted that petitioners who expect us to sanction their operations should tell us clearly and concisely in their petitions exactly what they are requesting, for how long and under what conditions. Purdy's petition herein was woefully inadequate and it took a good deal of deductive reasoning and mental gymnastics to conform the pleading to the proof since the evidence elicited at the hearing by Purdy's counsel as to the company's intentions was equally unclear.

The petition for variance is denied. Any further open burning will be subject to severe money penalties. This opinion constitutes the Board's findings of fact, conclusions of law, and order.

I, Regina E. Ryan, certify that the Board has approved the above Order and Opinion this 14 day of April, 1971



A handwritten signature in cursive script, appearing to read 'Regina E. Ryan', is written above a horizontal line.