

ILLINOIS POLLUTION CONTROL BOARD

DEERE & CO.)
)
 v.) PCB #70-20
)
 ENVIRONMENTAL PROTECTION AGENCY)

December 22, 1970

Opinion of the Board (by Mr. Currie):

Deere asks a variance to permit open burning for the purpose of instructing employees in firefighting. We grant the petition subject to conditions stated below:

Both section 9 (c) of the Environmental Protection Act and Rule 2-1.2 of the Rules and Regulations Governing the Control of Air Pollution (adopted by the old Air Pollution Control Board and preserved by section 49 (c) of the Act) outlaw the open burning of refuse. Under section 35, however, the Board is authorized to grant variances permitting open burning or other acts in contravention of the statute or regulations, upon proof that "compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship".

Deere proposes to conduct a one-day training session in May, 1971, during which four fires will be lit:

- 1) fifty to seventy gallons of gasoline in a four-foot square steel pan;
- 2) less than one cord of wood on open ground;
- 3) one or two square yards of carpet on open ground;
- 4) An electrical fire in a steel cabinet about the size of an office desk filled with two or three bushels of scrap insulated wire.

The total burning time was initially estimated at four hours. (R. 6-8). However, in a letter to the Board dated December 17 Deere stated that the burning time for the wood, carpet, and electrical fires would be 15-20 minutes each during both morning and afternoon sessions, for a total of about two hours, plus "a number" of "very short" gasoline fires.

Deere first wrote to the Environmental Protection Agency September 1, requesting permission to conduct the exercise on November 2. The Agency returned the petition to Deere because it did not contain allegations of hardship as required to conform with the statute. We received the amended petition October 2 and held a hearing November 23. On December 9, after reviewing the transcript, we directed to the company a request for additional

information. On December 21 we received the reply.

Deere has indicated some irritation at our holding a hearing on a matter such as this (see R. 12-13). We agree that we have many more serious pollution problems to deal with. But, as we clearly stated in authorizing the hearing, we have an obligation to discover the facts; we cannot grant variances without proof; and we cannot ignore unnecessary pollution from one source just because there are other sources that may be worse. Our holding a hearing in no way indicates an intention to disapprove the petition but only our insistence that we know what we are doing before we permit an activity that will cause the emission of contaminants that may be prohibited by the law.

The necessity for holding a hearing was heightened in the present case because this was our first case involving burning for firefighting purposes. The Board must have some means of learning about proposed practices and means of minimizing emissions if it is to act intelligently on variance requests. In later cases we may be able to rely heavily on information received in earlier hearings and thereby reduce the need for hearings in the future. For example, as a result of our experience in this case we have proposed a new regulation (#R70-11) that would allow the Environmental Protection Agency after informal investigation without hearing to grant permits to conduct firefighting exercises upon certain conditions. But we do not think it unreasonable to ask those who seek permission to do what the law forbids to help educate us as to the need for their doing so.

At the hearing Deere suggested that because the statute and regulations forbid only the burning of "refuse" it may be permissible to burn "brand new" combustible material without a variance (R. 28). While the statutory ban itself incorporates a definition of "refuse" as discarded solid materials (§ 3 (k)), the regulations contain a definition of "trade waste" that includes "liquid waste materials" and "liquid material . . . resulting from . . . the prosecution of any business, trade or industry" (Rules & Regulations Governing the Control of Air Pollution, ch. 1, Section 1). Because the combustion of "new" material can cause as much pollution as the burning of "discarded" material, we are inclined to follow the example of the United States Supreme Court in a related context and construe "refuse" to include material that becomes waste upon its release into the environment. Cf. United States v. Standard Oil Co., 384 U.S. 224 (1966), where a conviction under the Refuse Act of 1899 was sustained for the accidental discharge of valuable gasoline into navigable waters. Since we have decided to grant the present variance, we need not resolve this question today; we expect to clarify the issue when we revise the open-burning regulations under our general authority to adopt rules for the prevention of air pollution. Hearings on that subject, in #R70-11, will be held in January.

The importance of instructing employees in firefighting techniques is clear. Indeed, such instruction not only may reduce injuries and property losses due to fire; it may in the long run result in less air pollution, since the destruction of a plant by fire would emit far more pollution than a few small and controlled instruction sessions. Moreover, we agree with Deere that there is no substitute, in learning how to fight fires, for actually fighting fires. Further, Deere tells us its insurability may depend upon adequate firefighting knowledge among its employees (R. 17).

On the other side of the balance, the contaminants that will be emitted in the present case are not extreme. A little wood smoke is small cause for concern under the circumstances; there will be some carbon monoxide and smoke from the gasoline and especially from the burning of electrical insulation (R. 24). A local pollution control official, who testified in favor of the variance, said the particulate matter emitted would be "quite dense" although he had earlier estimated that it would be equivalent to #1 or 2 on the standard Ringelmann chart (R. 25). The burning will take place in an isolated area, on Deere's property, outside any municipality, over a mile and a half from Moline and half a mile from any inhabited residences, and close by a fire hydrant (R. 5-6). No one testified or submitted written statements in opposition to the grant of the variance, and the Environmental Protection Agency asks us to grant it (R. 16).

On the basis of the above facts and considerations we conclude that denial of the present petition would impose an arbitrary and unreasonable hardship.

Though we are convinced that a variance must be granted, it is our responsibility to impose conditions that will ensure that the air pollution resulting from the proposed activity is minimized. It is for this reason that the conditions enumerated in the order below are attached.

One of the questions in our December 9 letter to the Company related to the number of employees to be instructed at these sessions and to possible coordination with similar activities in the Moline area. We were concerned to assure that a separate school was not conducted every time a single new employee needed instruction but that municipalities and industries coordinate their instructional activities in order to maximize the instructional benefit from each fire that is set.

The Company has replied that it plans to instruct about 60 persons in this session; that additional sessions may be required yearly; and that "because of the special nature of these sessions and the need for individual participation, it is not feasible to combine these sessions with those of other industries or municipalities."

(December 17 letter, P. 2). We are satisfied with these assurances. It should be noted that no bond is required by our order; this is not the type of case in which the statute contemplates security to assure the installation of equipment designed to reduce a continuing pollution problem.

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

ORDER

Deere & Co. having petitioned for a variance to permit the open burning of matter as specified in the opinion of this Board, the Board after examining the hearing transcript hereby orders as follows:

1. Deere & Co. is authorized to conduct open burning as described in the Board's opinion for firefighting instruction purposes.

2. The exercise shall take place upon a single day in May, 1971, to be selected by Deere & Co.

3. The exercise shall not be conducted upon any day on which weather conditions are adverse for the dispersal of air contaminants.

4. The Environmental Protection Agency shall be notified in advance of the day on which the burning is to take place and shall be permitted to observe the exercise.

5. Burning shall be conducted according to recognized practices designed to maximize the instructional benefit of the exercise while avoiding unnecessary emissions. Unnecessarily smoky materials shall not be used, and the total duration of burning shall not exceed four hours.

6. Photographs of the exercise shall be made and submitted to the Agency and to the Board, in addition to a full report of the exercise, in order to demonstrate the effects of the open burning.

7. The open burning shall not be so conducted as to cause air pollution as defined in section 3 (b) of the Environmental Protection Act.

8. The breach of any of these conditions shall be ground for revocation of this variance and for other sanctions as provided by the Act.

I Concur

I Dissent

[Handwritten signatures: Robert D. ...]

I, Regina E. Ryan, certify that the Board adopted the above opinion and Order this 22 day of December 1970.

[Handwritten signature: Regina E. Ryan]
Regina E. Ryan
Clerk of the Board