

ILLINOIS POLLUTION CONTROL BOARD  
January 6, 1972

FOREST PRESERVE DISTRICT )  
OF COOK COUNTY )  
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 )  
v. ) PCB 71-304  
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 )  
ENVIRONMENTAL PROTECTION AGENCY )

Mr. Arthur L. Janura and Mr. James H. Tyndall for Forest Preserve  
District of Cook County  
Mr. Nicholas G. Dozoryst II, for the Environmental Protection Agency

Opinion of the Board (by Mr. Currie):

The Forest Preserve District asks a variance to permit open burning of trees near Wheeling until July 1, 1972. We grant the variance subject to several conditions, for reasons given below.

Open burning was forbidden by the Air Pollution Control Board in regulations adopted in 1965, but the burning of diseased trees was exempted, presumably because of the absence of satisfactory alternative means of preventing the spread of plant diseases such as Dutch elm. The Environmental Protection Act, in 1970, forbade all open burning of refuse except such as might be authorized by Board regulations (section 9 (c)). The relationship between the statutory ban and the old regulations being less than clear, we held hearings on revised regulations, which were finally adopted September 2, 1971. In the meantime we entertained numerous petitions for variances from the strict statutory ban, and our practice was to allow the burning of diseased trees, on appropriately remote sites under appropriate conditions, because of the need to stop the spread of disease. E.g., City of Winchester v. EPA, # 70-37 (Feb. 8, 1971).

The new regulations (PCB Regs., Ch. 3, Part IV) recognize both the necessity for burning diseased trees (for reasons more fully stated in the Board's opinion, Open Burning Regulations, #R 70-11, Sept. 2, 1971) and the impracticality of distinguishing at the burning site between those that are and those that are not infected with disease. For these reasons, and because of the demonstrated lack of satisfactory alternatives for the disposal of non-diseased wood, the regulation allows permits for

the burning of landscape wastes under certain conditions. The Forest Preserve District has obtained such a permit for its Palos Hills burning site, which is not at issue in the present case.

The regulations impose three conditions on the grant of permits to burn landscape wastes. One is that by July 1, 1972 all such burning shall be conducted with the aid of an air-curtain destructor or comparable device, which will virtually eliminate smoke. The others are that the burning shall not take place within 1000 feet of populated areas and that air-curtain destructors are required at once within one mile of any municipality of over 1000 persons, or within any municipality. Rules 401(g), 404(a)(4). In short, the principle is that burning cannot entirely be avoided; that air-curtain destructors are to be used to minimize pollution; that in more remote areas a grace period is allowed to permit orderly acquisition of such devices; but that burning should be moved away from populated areas until destructors can be obtained.

The propriety of the restriction on burning in populated areas is affirmed by the evidence in the present case. The District has been burning trees within one mile of Wheeling, with homes not far away to both east and west. Despite attempts to burn only when the wind is toward the north or northeast, the neighbors have suffered:

The smoke that comes from the burning area, with open burning, is intolerable. . . . The smoke, the debris that comes down from the air that covers my yard, my automobile, covers my home, becomes an intolerable situation.  
(R. 121-22)

The District was unable to get a permit for continued open burning at Wheeling because the site is within one mile of the municipality. It has obtained a permit for and installed an air-curtain destructor, which at the hearing December 3 was expected to be in operation before the end of December, and thus presumably is in use today. The District's petition asked two things: permission to burn in the open until the destructor was in operation, and permission to burn amounts in excess of the destructor's capacity thereafter. For the destructor's capacity is estimated at 80 tons per day, and this is less than one fifth of the peak loads received at the Wheeling location.

The request to burn until installation of the destructor should by now be moot, unless a complaint is later filed challenging the District's actions during that time; we see no need to resolve now what may never be a controversy and thus

dismiss that portion of the request as moot. Cf. National Gypsum Co. v. EPA, # 71-99 (August 2, 1971). The important issue is what to do about the trees the destructor cannot handle from now to July.

The District is committed to terminating all non-destructor burning by July 1. It asks to be given two months in which to evaluate the performance of its first destructor before investing additional money (at \$50,000 for each installation, since these are large and permanent destructors) to buy others. It also wishes to pursue the possibility of installing a sawmill so that the larger logs, which take a long time to burn, can be cut into useful lumber after removal of the infested outer portions and then sold. Attempts are now being made to secure a market for the product, which is said to be mostly elm wood of relatively low value. The District testified that it has been unable to find an alternative site for the burning outside the restricted areas. ,

We think the District has made its case. While the Wheeling site is clearly a bad place for open burning, we see no way in which continued burning there can be avoided before the summer of 1972 without creating a serious problem of trees that cannot be disposed of. We cannot find that the District was wrong in experimenting with a single destructor for a short period before investing several hundred thousands of dollars to buy half a dozen of them. We cannot say it should have abandoned efforts to find a solution far preferable to burning up the wood in a destructor, namely, translating the refuse into a useful product. Cf. Decker Sawmill, Inc. v. EPA, # 71-73 (July 8, 1971). Nor can we really say that all these actions should have been taken years ago, we cannot buy the District's conception that "diseased" trees includes all dead trees because they are obviously not in good health, but the truly diseased trees that form a substantial part of the District's problem were exempt from the burning ban until 1970 and their status uncertain for another year. Nor can we on the special facts of this case insist that the District do what the regulation expects people to do who have been burning inside restricted areas and who need time to provide destructors: move the operation to a more remote location. The District's burning operation is an enormous one, which not only takes care of the trees generated by the District itself but also furnished a disposal service to many municipalities and private contractors within the entire Cook County area. The entire metropolitan area is highly congested, and it has proved difficult to find any preferable site for interim use. Long transportation of trees beyond the metropolitan area would not only be quite costly but would enlarge the risk of spreading disease along the way. As we know from another case decided today, City of Rockford v. EPA, # 71-311 (Jan. 6, 1972), the process of obtaining permission to utilize a large new site for any sort of refuse disposal can be extremely time-consuming,

and we have no assurance that it could be accomplished in the present case before the requested termination date of July 1. In short this is an unusually large burning operation in an unusually crowded area, and the possibilities of moving it are far less than in the ordinary case.

One very attractive suggestion for an alternative to open burning at Wheeling was made by a citizen witness: transporting the trees the destructor cannot handle to the District's own Palos Hills site, which is more remote, where interim burning could proceed with less adverse results. The District did not respond to this suggestion. We shall require that the Palos Hills site be used in preference to Wheeling to the extent practicable and shall require that reports indicate the extent to which this practice can avoid burning at Wheeling.

We cannot tell from the record whether or not the use of the present destructor is limited to certain hours or days by the permit. If so, we hereby grant a variance from such time conditions; the destructor should be utilized to the fullest practicable extent to minimize the need for open burning.

In granting this variance we are entirely aware that open burning at Wheeling is highly undesirable and must be brought to an end as soon as practicable. The District has promised to end it by July 1, 1972, and we expect to hold the District to that promise.

#### ORDER

The Forest Preserve District of Cook County is hereby granted a variance from the open burning regulations to permit open burning of landscape wastes at its Wheeling site until July 1, 1972, on the following conditions:

1. No waste shall be burned in the open except that which is in excess of the capacity of the air curtain destructor; and
2. To the extent practicable, waste beyond the capacity of the destructor shall be burned at Palos Hills in preference to Wheeling; and
3. No new fires may be ignited nor additions made to existing fires except between 9 a.m. Monday and noon on Wednesday, and all fires shall be completely extinguished by 6 p.m. Friday of each week; and
4. The District shall continue its practice of limiting open burning, to the extent practicable, to times when wind conditions are such as to minimize the effect of emissions on nearby populations; and

5. The residue from open burning shall be cooled with water and deposited in an approved sanitary landfill at least once a week; and
6. The District shall diligently pursue alternative methods of disposing of landscape waste without open burning, such as chipping, sawmilling, and additional air-curtain destructors; shall inform the Agency and the Board no later than March 1, 1972 of its decision as to which method is to be employed; and shall cease open burning without the aid of an approved device for reducing emissions no later than July 1, 1972; and
7. The District shall submit monthly reports to the Agency, beginning February 1, 1972, detailing the following:
  - a. The per hour operating capacity of the air curtain destructor;
  - b. The amount of waste actually disposed of by the air curtain destructor and the number of hours it was operated each day;
  - c. The total daily amount of waste disposed of by all of the burning;
  - d. The amounts of waste burned daily at the Palos Hills site and the extent to which this site is used and can be used to alleviate the burning burden at Wheeling;
  - e. The progress toward achieving an alternative to open burning.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 6th day of January, 1972 by a vote of 4-0.



