ILLINOIS POLLUTION CONTROL BOARD July 19, 1973

CITY OF HILLS	BORO,)		
	Petitioner,)).		
vs.)	PCB	72-394
ENVIRONMENTAL.	PROTECTION AGENCY,)		
	Respondent.)		

George E. Ginos, Attorney for City of Hillsboro Frederick C. Hopper, Assistant Attorney General for the EPA

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

On October 4, 1972 City of Hillsboro filed a petition for variance from Rules 502 and 504(a)(4) of the Open Burning Regulations for the purpose of burning landscape waste at the site of a proposed reservoir. At Petitioner's request the hearing was postponed until July 2, 1973.

Petitioner is currently involved in the construction of a water supply and flood control area known as the Shoal Creek Water Shed Protection and Flood Prevention Project. Two of the Project's three main structures have been completed and the remaining structure is currently in the bid letting process. It will be necessary to clear landscape wastes from about 1200 acres of land. Petitioner intends to clear the land by open burning the landscape waste in piles approximately 12' high by 65-75' long by 20-30' wide. Approximately 5-10 gallons of #2 fuel oil per pile will be used to start the fires. The open burning will require about 573 days for completion.

All of the burn areas are located in Montgomery County and are over 1 mile from any municipality or village. Petitioner contends that no open burning will be conducted within 1,000 ft. of any residence. This is not a "prohibited area" where the open burning of landscape waste is barred under our Regulation [See Rule 503(c)(4)].

The Environmental Protection Agency has recommended denial of this variance request. The Agency contends that this material should be classified as "trade waste" since it is accumulated by a unit of government during performance of a governmental

function--the construction of a reservoir. It is argued that landscape waste which is also trade waste cannot be burned without a variance.

It is not trade waste. In City of Freeport vs. EPA (PCB 72-487) we rejected the EPA argument that logs accumulated by the City of Freeport in its effort to prevent a flood constituted trade waste. We said "Our previous decisions should have made it abundantly clear that the Board does not consider landscape waste accumulated on government property to be trade waste".

The brush, twigs, leaves, stumps, logs and branches which are located at the reservoir site were never used in a trade or occupation. Petitioner did not operate a sawmill at the site and is not asking us for permission to burn off the accumulated residue of that trade. The City of Hillsboro stands in exactly the same position as any other property owner who wishes to clear his property for a construction project.

This entire case has been predicated on the incorrect premise that Petitioner would require a variance for the open burning of the landscape waste at its reservoir site. Such burning may take place in compliance with the Regulation. No variance is required and the case is dismissed as moot.

It is so ordered.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this / 1 day of July, 1973 by a vote of to to .

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