

ILLINOIS POLLUTION CONTROL BOARD

June 23, 1971

TOM HEWERDINE, INC.)
)
 V.) PCB 71-70
)
ENVIRONMENTAL PROTECTION AGENCY)

Opinion and Order of the Board (By Mr. Aldrich):

Lee Zelle, Attorney for Environmental Protection Agency
Henry Keller, Attorney for Tom Hewerdine, Inc.

Tom Hewerdine, Inc. ("Hewerdine") seeks a variance from the statutory and regulatory ban on open burning to dispose of seven old farm structures. Petitioner is an earth-moving contractor and wishes to burn the structures in order to clear the land for development.

In the past the Board has granted requests to allow open burning only when no acceptable alternative means of disposal exists and provided the burning is carried out in such a place and manner as to minimize pollution. The burning of diseased trees has been permitted in several instances (e.g., City of Winchester v. EPA, #70-37, February 8, 1971) to prevent the spread of disease. Requests to burn non-diseased trees have generally been denied (e.g., City of Lincoln v. EPA, #71-56, June 9, 1971).

In the present case Hewerdine asks for permission to burn the wood from the farm structures. The buildings have already been demolished and the refuse placed in a semi-circular pile about 75 x 108 feet and 4 feet in depth (R. 23,24). A witness for the Agency testified that the pile contained some creosoted poles, hydraulic hoses and straw (R. 24). However, counsel for Hewerdine stipulated that the extraneous material would be removed from the pile before burning. Thus we do not consider said material as part of the petition for variance.

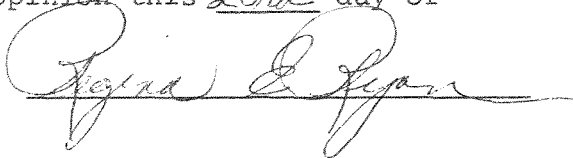
The statute requires a petitioner to bear the burden of proof of showing that denial of a variance would create an arbitrary or unreasonable hardship. This Hewerdine has failed to do. Specifically, Hewerdine did not adequately investigate alternative means of disposal. Tom Hewerdine, Secretary-Treasurer for the petitioner, admitted he did not personally contact nearby landfill operators concerning the possibility of depositing the materials in a dump. Rather, he relied only on hearsay information provided by his subcontractor. He did not know whether one operator within four miles

of the proposed burning site would accept the wooden refuse. He had also failed to contact other operators mentioned at the hearing. The amount of refuse is substantial (R. 24). It is located near a well developed residential area (R. 23). To allow the material to be burned would be in violation of the open burning regulations and would create a potential nuisance without any proven hardship beyond the cost to truck the material to a disposal site if one is available.

The request for a variance is denied without prejudice to filing of a future request after petitioner has thoroughly investigated alternative means of disposal and can furnish the Agency and the Board specific information on availability or lack of availability of refuse disposal sites.

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

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 23rd day of June, 1971.

A handwritten signature in cursive script, appearing to read "Regina E. Ryan", written over a horizontal line.