

ILLINOIS POLLUTION CONTROL BOARD

February 8, 1971

CITY OF WINCHESTER)
)
 v.) PCB#70-37
)
 ENVIRONMENTAL PROTECTION AGENCY)

CITY OF HERRIN)
)
 v.) PCB#70-42
)
 ENVIRONMENTAL PROTECTION AGENCY)

Opinion of the Board (by Mr. Currie):

Both cities petition us for variances to permit the burning of trees; we grant both petitions in part, subject to conditions specified below.

The Rules and Regulations Governing the Control of Air Pollution, adopted by the old Air Pollution Control Board in 1965, outlawed most open burning but not the burning of diseased trees, unless in an inappropriate location (Rule 2-1.8). Section 9 (c) of the Environmental Protection Act, effective July 1, 1970, flatly outlaws all open burning of refuse except as exempted by regulations of the Pollution Control Board. Section 49 of the Act preserves existing regulations until modified by the Board.

We have not had occasion to decide whether, because these regulations are preserved by section 49, the old exemption for diseased trees qualifies as a Pollution Control Board exception to the section 9 (c) ban on open burning. We have held hearings on a proposal to allow such burning on the basis of a permit granted by the Agency on a showing that conditions are such as to minimize the adverse effects of pollution (#R70-11), and final action on that proposal is in the near future. In the meantime we have dismissed one variance petition relating to tree burning because it did not allege facts sufficient to justify favorable action (City of Jacksonville v. EPA, #70-30, decided January 27, 1971), and we have postponed action on the present cases pending the outcome of the rule-making proceeding.

The proposal to allow burning of diseased trees on a permit basis reflects the Board's belief that burning may be necessary in order to avoid the further spread of disease, which has become a serious threat to elms, for example, throughout the State and elsewhere, and that under proper conditions the contaminants emitted from such burning are likely not to create a serious pollution problem. This

position contrasts with our holding, in *Swords v. EPA* (PCB#70-6, decided September 2, 1970), refusing a variance for open burning of non-infectious wood wastes in the absence of strict proof of an absence of alternatives. It was in line with these considerations of probable lack of serious harm and probable necessity for open burning, and of the pendency of our rule-making proceeding in #R70-11, that the Board agreed to await the recommendations of the Agency in the two present cases and to proceed without hearing.

The Agency recommends that both variances be granted subject to certain conditions because the burning sites are so situated as to minimize pollution. But no variance can be granted without proof that compliance would impose hardship; the hardship complained of seems to consist of the argument that it would be more costly to find an alternative disposal means. This we have held in the *Swords* case, *supra* to be insufficient. Insofar as diseased trees are concerned, we believe the risk of further infection constitutes sufficient hardship in light of the relatively minor harm that will be caused by burning. But the petitions are not limited to diseased trees, and we cannot permit the burning of other trees without further proof since this rationale applies only in the case of disease, especially since in the *Winchester* case the Agency reported a neighbor had complained about smoke and odor from past burning and opposed burning in the future.

We apologize for the delay in handling this matter; we might schedule a hearing to explore the facts if time permitted, but the statutory requirement of a decision within 90 days (Environmental Protection Act, section 38) precludes that course now. We shall be willing to reconsider the limitation to diseased trees if new petitions are filed requesting hearings in which adequate proof of hardship is made. But the ban on open burning expresses a statutory policy that extra expense is to be incurred if necessary in order to prevent the fouling of the air; this policy is not to be frustrated by the allegation that a few extra dollars must be spent to avoid pollution.

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

ORDER: #PCB70-37, CITY OF WINCHESTER v. EPA

The Board having considered the petition and the recommendation of the Agency, the petition for a variance to permit the open burning of trees is granted subject to the following conditions:

1. Only trees, logs, and limbs infected with infectious disease may be burned.
2. Only trees, logs, and limbs from the City of Winchester may be burned.
3. Burning shall be done at the site described in the petition;

no more than one day per week; only between noon and four p.m.; only when wind speed is between five and twenty m.p.h.; only when the wind is from the western half of the compass; and only when the sky is not overcast.

4. No fuel of lesser quality (smokier) than number 2 fuel oil shall be used to promote combustion.
5. All burning shall be under the direct supervision of a City employee.
6. The period of the variance is limited to six months.
7. This order is without prejudice to a subsequent request for a variance after hearing to permit the burning of additional material.

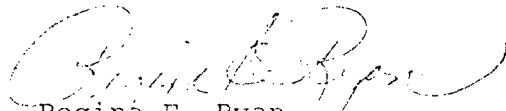
ORDER: #PCB70-42 CITY OF HERRIN v. EPA

The Board having considered the petition and the recommendation of the Agency, the petition for a variance to permit the open burning of trees is granted subject to the following conditions:

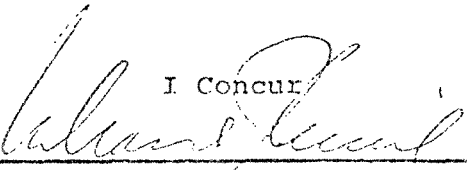
1. Only trees, logs, and limbs infected with infectious disease may be burned.
2. Only trees, logs, and limbs from the City of Herrin may be burned.
3. Burning shall be done at the site described in the petition; no more than one day per week; only between noon and four p.m.; only when wind speed is between five and twenty m.p.h.; only when the wind is from the eastern half of the compass; and only when the sky is not overcast.
4. No fuel of lesser quality (smokier) than number 2 fuel oil shall be used to promote combustion.
5. All burning shall be under the direct supervision of a City employee.
6. The period of the variance is limited to six months.
7. A fence with a lockable gate shall be erected and maintained so as to prevent unauthorized entry to the burning site.
8. This order is without prejudice to a subsequent request


for a variance after hearing to permit the burning of additional material.

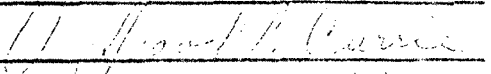
I, Regina E. Ryan, do hereby certify that the Board has approved the above opinions this 12 day of February, 1971.



Regina E. Ryan
Clerk of the Board

I Concur









I Dissent
