

ILLINOIS POLLUTION CONTROL BOARD  
August 13, 1971

CITY OF MONMOUTH )  
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 v. ) # PCB71-121  
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 ENVIRONMENTAL PROTECTION AGENCY )

Bufford W. Hottle, Jr. of Monmouth, Ill. for City of Monmouth  
Roger C. Ganobcik, for the Environmental Protection  
Agency

Opinion of the Board (By Mr. Currie):

Petitioner desires to burn both diseased and undiseased trees for an unspecified period of time. In earlier cases, we have held that the threat of the spread of disease is appropriate justification for the burning of diseased trees or of elm wood which can harbor disease-bearing pests (City of Winchester v. EPA, #PCB70-37, February 8, 1971). However, we have also ruled that the disposal of ordinary dead trees does not ordinarily imply hardship (ibid).

In the present case a hearing was held in which the City demonstrated, we think, that burial of bulky logs is a poor alternative means of disposal because the fill is difficult to compact, with the result both that future use of the filled land is made less likely and that a favorable habitat is created for rodents. Moreover, burying trees increases greatly the acreage required to dispose of waste, and this must be viewed as an environmental as well as a financial cost. The City also showed that its burning site is suitably remote, since the nearest occupied property (other than a junkyard) is half to three-quarters of a mile away. And the magnitude of the disposal problem was shown to be considerable; after a storm there may be as much as ten acres covered with dead trees and limbs, and in recent operation the accumulation has averaged ten truckloads per day.

We have published for final comment a proposed final draft of a revised regulation which, on the basis of such proof as in the present case, recognizes that traditional landfill operations are not a very good means of disposing of bulky trees and which therefore would allow burning in suitable remote locations and under suitable conditions. This new regulation, which we expect to adopt September 2, would require the use of an air curtain destructor or comparable device to reduce emissions from tree burning after the middle of 1972 (#R 70-11). We note in the present case the absence

of any evidence as to the need for additional time to obtain such a device, or that it is not practicable under the City's circumstances. Consequently we cannot on the present record say the City has demonstrated the unavailability of satisfactory alternatives to uncontrolled open burning.

The new regulation, if adopted as anticipated, will grant an automatic grace period for the acquisition of a destructor, and during that period burning will be permissible, on a permit basis. Thus we conclude that the variance should be denied insofar as it relates to other than diseased trees or elms, without prejudice to the filing of a permit application with the Agency under the revised regulations. An alternative would be to hold the case pending adoption of the regulation and to pass upon it in light of the new rule; to do so would not only require a waiver of the statutory requirement that we decide the case within 90 days but would also conflict with the principle that, when a permit is required, an applicant should seek such a permit from the Agency rather than a variance from the Board. We have authority to review the Agency's action on the permit, but the proposed regulation contemplates that the initial determination of whether the proposed burning complies with restrictions will be made by the Agency.

Insofar as diseased and elm wood is concerned, we note that because of an equipment breakdown there was a period during which other refuse at the burning site (which is a landfill) was not adequately covered. The evidence is that the City has taken steps to correct this problem, and we make permission to burn contingent upon prior completion of the covering of all such refuse. Cf. City of Zion v. EPA, # 71-128 (July 22, 1971).

#### ORDER

The City of Monmouth is granted a variance to allow the open burning of trees for six months from this date at the site described in the petition, subject to the following conditions:

1. No burning shall be done until all other refuse at the site, apart from trees, has been adequately covered or removed;
2. Only vegetation affected with infectious disease, or any elm wood, may be burned;
3. Burning shall take place only between hours of noon and 4:00 p.m., when the wind is from the west at five to twenty miles per hour and the sky is not overcast. Burning will not be conducted more than three times per week;



4. Burning will be under direct supervision of an employee of the City of Monmouth;
5. No oil of lesser quality than #2 fuel oil will be used to promote combustion.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion this 13th day of Aug., 1971.

Regina E. Ryan