

Another Agency Engineer, Eric Chance, visited the City on July 16, 1974. Chance testified that the purpose of his visit was to discuss the City's Second Variance Petition and the alternatives of using an air curtain destructor, chipping and landfilling. During this visit Chance was informed that the City had already burned landscape waste accumulated as a result of a storm which passed through the City on June 20, 1974.

Chance then proceeded to the site where Plano had been storing landscape waste. At the site he observed burning piles of landscape waste and areas where burning had previously been conducted (R. 15). Photographs taken by Chance corroborate his testimony (EPA Exhibits 4 and 5). Chance did not see any city employees lighting fires at the burning site on this date. (R. 23)

Mayor Whitecotton testified that he had met with Franson on March 22, 1974 and that Franson had warned him that the City might be in violation if it burned landscape waste at this site. As a result of this meeting, the Mayor told Superintendent Canham to instruct his employees not to burn any of the accumulated landscape waste. The record indicates that this directive was followed until shortly after the June 20, 1974 storm.

According to Mayor Whitecotton, the storm felled trees which blocked 30% of the City's streets for at least 24 hours. Some streets were blocked for up to 3 days. These blockages created dangerous situations for vehicular traffic and for children and pedestrians according to the Mayor. Clean-up crews spent almost one month cleaning up the storm created debris which was hauled to City owned property adjacent to the municipal sewage treatment plant. The City was declared a disaster area and received financial assistance from the U. S. Government under the Federal Disaster Relief Act.

After the storm debris had been hauled to the landscape waste storage site, the Mayor rescinded his prior order and instructed Canham to burn the material. Canham complied with the Mayor's instructions by burning most of the storm related debris. Burning of the landscape waste may have taken as long as a week to complete (R. 40). Neither the Mayor nor Canham received any citizen complaints about the burning. The record shows that some nearby citizens were not affected by the smoke.

At the conclusion of the Agency's case, Plano moved for dismissal of the complaint on grounds that the Agency had failed to show that any injury had been sustained as a result of the burning. Citing Lonza vs. IPCB, 315 N.E. 2d 652 Plano argued that the Agency is required to prove both a violation of the Regulations and a resulting injury and further, that such injury unreasonably interfered with the enjoyment of life and property.

In the instant case Plano is charged with an open burning violation. Section 9(c) of the Act prohibits the open burning of refuse except where permitted by Board Regulations. Rule 502 of the Air Regulations prohibits open burning unless authorized by other parts of the Regulation. It is important to note that Plano was listed as a disaster area and received over \$3700 in clean-up funds pursuant to the provisions of the U. S. Disaster Relief Act of 1970 (P.L. 91-606). Having qualified as a disaster area, Plano was eligible for special relief under Rule 504(a)(6) of the Illinois Air Pollution Control Regulations. That Rule was adopted by the Board on September 13, 1973 to provide for such situations as Plano faced in June 1974. Under the Rule the Environmental Protection Agency may grant permits for open burning, in a disaster area, of clean wood building debris, landscape waste and agricultural waste caused by the disaster.

During testimony on this Rule in 1973 the Agency stated that an application for a disaster burning permit would receive priority consideration and that action on such an application would be taken within one day. The City of Plano did not apply for such a permit, apparently being unaware of the Rule. If the City of Plano had applied for such a permit under Rule 504(a)(6) of the Illinois Air Pollution Control Regulations and if such a permit had been issued then the open burning which was conducted on July 16, 1974 would have been in compliance with the law. Since the open burning was conducted without the permit we must find that there was a technical violation of both Section 9(c) of the Act and Rule 502 of the Regulations.

In making our decision we are required to "take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions...involved, including, but not limited to: 1) the character and degree of injury to or interference with the protection of the health, general welfare and physical property of the people; 2) the social and economic value of the pollution source; 3) the suitability or unsuitability of the pollution source to the area in which it is located including the question of priority of location in the area involved; and 4) the technical practicability and economic reasonableness of reducing or eliminating the emissions...resulting from such pollution source." [Section 33(c) Environmental Protection Act]

When the Board decided in 1973 to provide a method for the open burning of wastes generated in a disaster, it did so in consideration of the health impact from letting such waste accumulate and the economic impact upon a community in disposing of such waste. There is no evidence that the burning in this case interfered with the health, general welfare and physical property of the people.

The Illinois Supreme Court, in Southern Illinois Asphalt Company vs. Pollution Control Board (March 1975), held that the Board does not have the authority to impose a monetary penalty for punitive purposes, and the imposition of a monetary penalty will not be sustained unless it will aid in the enforcement of the Act. Civil penalties were set aside when it appeared that the failure to obtain permit was inadvertent, that Respondent was not dilatory or recalcitrant and had come into compliance prior to the time the EPA commenced its prosecution.

It appears to us that Plano's failure to obtain permit was through inadvertence. We do not believe that Plano was recalcitrant. Under all of the circumstances we find that there is no justification for the imposition of a monetary penalty against the City of Plano.

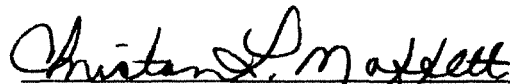
It is the finding of the Board that Respondent has been guilty of a violation of Section 9(c) of the Environmental Protection Act and Rule 502 of the Air Pollution Control Regulations. The Board shall order Respondent to cease and desist from such violations but no monetary penalty shall be imposed.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that the City of Plano shall cease and desist from further violations of Section 9(c) of the Environmental Protection Act and Rule 502 of the Air Pollution Control Regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22ND day of May, 1975 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board