ILLINOIS POLLUTION CONTROL BOARD
June 13, 1985

THOMAS E. GREENLAND, an Individual, Complainant,	)	
v.	)	PCB 84-155
CITY OF LAKE FOREST, ILLINOIS a Municipal Corporation, Respondent.	)	

THOMAS E. GREENLAND APPEARED ON HIS OWN BEHALF.
MURRAY R. CONZELMAN, OF CONZELMAN, SCHULTZ, SNARSKI & MULLEN AND THOMAS H. COMPERE, CITY ATTORNEY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon an October 17, 1984 complaint filed by Thomas E. Greenland against the City of Lake Forest (City) alleging that the City is in violation of Section 9 of the Illinois Environmental Protection Act (Act), Ill. Rev. Stat. 1983, ch. 111 ½, par. 1009, by permitting leaf burning pursuant to a city ordinance. Mr. Greenland also alleges that the City is in violation of two Board regulations, 35 Ill. Adm. Code 237.102 (prohibition on open burning) and Section 237.120(c) (open burning of landscape waste). The City's motion to dismiss was denied by the Board on January 10, 1985. Hearing was held on January 16 and February 6, 1985 in Lake Forest, Illinois. Board Orders relating to a briefing schedule were issued on March 7 and April 4, 1985.

PRELIMINARY ISSUES

A few preliminary issues need to be disposed of first. The Board denies the oral motion to strike at page 83 of the transcript and affirms the decision of the hearing officer. The question asked by the City, although capable of being answered with a yes or no, apparently elicited a clarification statement and question from the witness. The City certainly could have answered the first or second question of the witness or objected and let the hearing officer decide. The City chose to let the witness ramble and then move to strike. Arguably the response was responsive to the question asked, and the Board will let the response stand.

A second issue involves Complainant's Exhibit 1 which was a study by the then Illinois Institute of Natural Resources (IINR)

[now Department of Energy and Natural Resources (DENR)] entitled "Advisory Report on the Potential Health Effects of Leaf Burning," Document No. 78/19, December 1978, Project No. 90.002. The City objected to its admission on hearsay grounds because it could not cross-examine the author and ascertain the authoritativeness of the study. Mr. Greenland countered that it was offered as a treatise or a study. The hearing officer overruled the City's objection and admitted the document. While the document is hearsay the Board will accept the document under the Board's rule regarding admission of evidence, located at 35 Ill. Adm. Code 103.204, which allows evidence which is "material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs...." Id. In the instant case, the Advisory Report was issued by the IINR in regulatory proceeding R73-5 (See 40 PCB 81, December 4, 1980; 13 PCB 645, September 19, 1974).

Although the respondent is entitled to the procedural safeguards of testimony under oath, cross-examination, and confrontation of witnesses, the Board holds that there is enough reliability to the document to cure any absence of these safeguards as to this document, since the agency has been statutorily mandated to perform such a study. IL. REV. STAT. 1979, ch. 96 1/2, pars. 7401 (b) (1) and 7403 (5).

DISCUSSION

STATUTORY CONSTRUCTION: SECTIONS 9 AND 10

Mr. Greenland is a resident of Lake Forest. The City is a municipal corporation of the State of Illinois located in Lake County. The City population is approximately 15,245 while that of the County is in excess of 440,000 people. At the heart of the controversy is the leaf burning ordinance of the City, adopted October 13, 1984, which permits leaf burning (See Joint Exhibit 1).

Mr. Greenland alleges that the City has violated Section 9 of the Act, which in pertinent part, provides as follows:

> No person shall:
>
> a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;
>
> * * *
>
> c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically

> designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning.
>
> * * *
>
> This Section shall not limit the burning of landscape waste upon the premises where it is produced or at sites provided and supervised by any unit of local government, except within any county having a population of more than 200,000. [Added by P.A. 82-678, eff. 1-1-82].

Section 3(s) defines person to include political subdivisions and corporations.

Section 10 is a limitation on the Board's authority and provides as follows:

> The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe:
>
> * * *
>
> The Board may not adopt any regulation banning the burning of landscape waste throughout the State generally. The Board may, by regulation, restrict or prohibit the burning [sic] landscape waste within any geographical area of the State if it determines based on medical and biological evidence generally accepted by the scientific community that such burning will produce in the atmosphere of that geographical area contaminants in sufficient quantities and of such characteristics and duration as to be injurious to humans, plant, or animal life, or health.

The cardinal rule in construing a statute is to ascertain and give effect to the intent of the legislature. People v. Boykin, 94 Ill. 2d 138, 445 N.E. 2d 1174 (1983). In order to determine this intent, one must first look to the statutory language itself. If the meaning of the language itself is clear on its face, then it will be given effect. Where the meaning of the language is ambiguous, one must look to the legislative history. Id.

The City contends that Section 9 is invalid because it is inconsistent with Section 10. The Board disagrees. Section 9

establishes a statutory prohibition against the burning of landscape wastes in counties over 200,000 in population. Section 10 limits the Board's regulatory authority in this area and does not address the statutory ban of Section 9. The language of the statute on its face is clear. The Board need not look to the legislative history. While Section 9 was amended in 1981, the General Assembly simultaneously chose to amend the Section 10 limiting paragraph by replacing the word "leaves" with "landscape wastes." The legislature continued its Section 10 limitation on Board authority yet also decided in Section 9 to ban the burning of landscape wastes within any county having a population of more than 200,000. Section 10 should not be read, as the City does, to limit the Section 9 ban. Therefore, the open burning of landscape wastes in counties having populations of greater than 200,000 is flatly prohibited by the Act. In counties having populations of less than 200,000, it is allowed by state law only if it is burned upon the premises where it is produced or at sites provided and supervised by any unit of local government.

The City mistakenly relies on the Attorney General's Opinion No. S-633, October 16, 1973. That opinion was issued before the new amendments and does not control the statutory construction of Sections 9 and 10 (See effect of opinion on regulations, discussed below under BOARD REGULATIONS heading). Furthermore, the City's assertion that the Attorney General's opinion is legally binding on a state agency is without merit. The opinion was merely an advisory opinion provided to an Agency. Such an opinion has been held to be nonbinding on the Illinois Supreme Court and appellate courts. City of Springfield v. Allphin, 74 Ill. 2d 117, 384 N.E. 2d 310 (1978); Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, (1956); Long v. Long, 15 Ill. App. 2d 276, 145 N.E. 2d 509 (2d Dist. 1957). The latest court decision on this issue emanates from the First Appellate District which stated, "[w]e are aware that the Attorney General's opinion does not have the force and effect of law." Kendzior v. Kusper, 118 Ill. App. 3d 83, 454 N.E. 2d 1070 (1st Dist. 1983). This interpretation is binding on the Board. Hughes v. Medendorp, 294 Ill. App. 424, 13 N.E. 2d 1015 (1938). The cases cited by the City do not support its contention that the opinion of the Attorney General is binding on the Board. The City is confusing the issue of precedential value with the non-issue of representation. The Briceland decision and related cases are solely based on the authority of the Attorney General as the chief legal officer of the state and who he may represent. People ex rel Scott v. Briceland, 65 Ill. 2d 485, 359 N.E. 2d 149 (1976). Briceland does not address whether the opinion of the Attorney General is of precedential value.

"CAUSE OR ALLOW" AIR POLLUTION:

The issues then become whether the City has caused or allowed the discharge of a contaminant so as to cause or tend to cause air pollution pursuant to Section 9(a), and whether the City caused or allowed the open burning of refuse pursuant to

9(c). A "[contaminant] is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source" (Section 3(d)). Leaf smoke contains contaminants.

Whether the City caused or allowed the discharge of a contaminant by the existence of its municipal ordinance permitting leaf burning in violation of a state statute is one of first impression before the Board. The Second District Appellate Court entertained the cause or allow clause of Section 9(a) and stated that the respondent must "[exercise] sufficient control over the source of the pollution." Phillips Petroleum Co. v. IEPA, et al., 71 Ill. App. 3d 217, 390 N.E. 2d 620 (2d Dist. 1979). The Fifth District, in construing identical language in Section 12(a) of the Act, affirmed the Board and found that the respondent "had the capability of controlling the pollutional discharge." Meadowlark Farms, Inc. v. IPCB, et al., 17 Ill. App. 3d 851, 308 N.E. 2d 826 (5th Dist. 1974); Freeman Coal Mining Corp. v. IPCB, et al., 21 Ill. App. 3d 157, 313 N.E. 2d 616 (5th Dist. 1974). In interpreting the word allow, the Board has found that one can allow a discharge by poor practices which contribute to the problem. IEPA v. Bath, Inc. et al., PCB 71-52; Bath, Inc. et al. v. IEPA, PCB 71-224, (consol.), 2 PCB 433, September 16, 1971. The Fourth District, in affirming the Board, noted that to argue that a violation cannot be predicated upon the existence of burning in the absence of a finding that respondent by its affirmative act caused...the burning" is not persuasive. Bath, Inc. et al. v. IPCB, et al., 10 Ill. App. 3d 507, 294 N.E. 2d 778 (4th Dist. 1973).

Herein, the Board finds that the City has caused or allowed the discharge of contaminants into the environment. Although the leaves are burned on private property, the City has openly encouraged its residents to burn leaves by passing an ordinance in direct contravention of the state statutory ban on leaf burning contained in Section 9 of the Act. The record shows that in fact 17 percent of the residents do burn leaves (R. 32). The Phillips test of sufficient control over the source of the pollution has been satisfied. Had the City obeyed the statutory mandate and enforced it, the widespread burning of leaves in the City would not occur.

Air Pollution: Injurious to Health, Environment or Property

Whether the City caused or tended to cause air pollution is another issue. Section 3(b) defines air pollution. In interpreting this Section, the Illinois Supreme Court distinguishes two types of air pollution. Incinerator, Inc. v. PCB, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). The first is pollution that is injurious to health, the environment, or property. The second is a nuisance type where there is an unreasonable interference with the enjoyment of life or property.

As for the first type of air pollution, the record herein amply demonstrates that leaf smoke and the constituents therein

satisfy the first and second type of air pollution as defined in Section 3(b). Dr. Ryan testified that the hydrocarbons, present in leaf smoke, are irritating antigens which cause the body's immunological system to respond by producing histamines to combat the foreign objects (R.12). Those with allergies and susceptible to asthma attacks not only display itchiness of the eyes, but also have other multiple symptoms (R.10). Dr. Addono, an allergy specialist defined allergies as abnormal responses to normal exposures of things in the environment (R. 73). The allergic response can include coughing, wheezing, increased mucous production and a possibility of secondary infection (R. 73). Dr. Ryan described his own allergic response whereby his bronchial tree secretes excess mucous which overly constricts the bronchial tubes, thereby causing difficulty in breathing (R. 10), termed asthma (R. 73). Asthmatic children are prone to pneumonia (R. 11). In order to reverse asthma, aerosols are injected down the bronchial tree to break up the mucous so it can be expelled from the body and drugs such as adrenaline are used to dilate the bronchial tubes for easier breathing. Aerosol injection can be by a pocket inhalator and can include time on a breathing machine at an allergist's office. Dr. Addono stated that in his opinion, there was a causal connection between exposure to leaf smoke and illnesses such as asthma and chronic bronchitis, apparently in aggravating these conditions (R77-78). Leaf smoke is materially irritating to those who have any respiratory disease, not solely asthma (R. 76). Besides illnesses, the doctor testified tht one particular hydrocarbon in oak leaves is carcinogenic (Id.) Mr. Lubes stated that there were a lot of oak trees in his subdivision, located in the City (R 86-87).

Dr. Addono testified that as the leaves die, mold spores disperse and can trigger allergic reactions. Disturbance of the leaves by wind and raking may release many spores, but burning releases billions of spores into the air (R. 75). On leaf burning days the sports activities of asthmatic children are curtailed and on bad days sleep is interrupted because of breathing abnormalities (R.92)

Referring to her eldest daughter, one witness, Mrs. Ryan, testified that "[n]ormally she misses, I would say, five to six weeks of school in the fall." (R. 23). "She coughs so much that walking across the room becomes a great big deal." (Id.). Furthermore, "...[s]he can't go to football games and things that lots of kids in high school like to do. It is just because the air is full of smoke in the fall." (R. 24).

> "...I know so many other kids who miss time in school and who don't get to do the normal things the kids enjoy doing in the fall, just because of all this stuff in the air. And it is a shame. For several years I was just so busy trying to keep our family afloat that it never occurred to me that this is maybe very unnecessary, and when I realized it is not done in Highland Park, it is not done in Deerfield, I think, my goodness, what is

the matter here that our children have to go through this kind of thing. Because we burn leaves?" (R. 26).

To provide some indication of to how many people are involved, Dr. Addono testified that in the United States 10 to 12 percent of the populace have lower respiratory allergies (R. 79).

As for the first type of air pollution, the Board has previously found leaf smoke to be an air pollutant and takes judicial notice of its prior Opinions. After considering the evidence, the Board stated in a prior Opinion the following:

> Dr. George Arnold, on behalf of the Madison County Sanitation and Pollution Committee, argued that leaf burning creates a hazard of fire and of traffic accidents, contributes to the violation of particulate air quality standards, reduces visibility, endangers health, and destroys valuable organic matter (R. 64-67). Several witnesses discussed from personal experience the adverse health effects of leaf burning, especially on persons with respiratory problems (R. 214-32). An allergy specialist testified as to the serious health effects of burning leaves, especially those contaminated with pesticides, upon people with allergies or respiratory diseases (R. 184-91). In the Matter of Open Burning Regulations, 2 PCB 373, 374, R70-11 Opinion, September 2, 1971.

Furthermore, the Board was concerned with the solid and liquid particulates of leaf smoke; solid particulates consisting of dust, smoke and fumes and liquid particulates consisting of mist and spray. In the Matter of Open Burning Regulations, 6 PCB 357, 361, R 72-11 Opinion, November 28, 1972. The evidence continued:

> Solid particulates, with which we are now concerned, have a diverse chemical composition. They may exert a toxic effect in three ways: 1) the particulate may be intrinsically toxic due to its inherent chemical or physical characteristics (although few common atmospheric particulates have been shown to be intrinsically toxic). 2) The particulate may interfere with one or more of the clearance mechanisms in the respiratory tract. 3) The particulate may act as a carrier of an absorbed toxic substance. Particulates sometimes combine with other pollutants, to form harmful products. Synergism occurs when two or more pollutants combine to produce a pollutant more damaging than the sum of the effects of the individual pollutants acting independently. The presence of carbon or soot as a common particulate pollutant is noteworthy, as carbon is well known as an efficient absorber of a wide range of organic and inorganic compounds. Carcinogenic materials have been identified in the atmosphere of virtually all

large cities in which studies have been conducted and it may be seen that large quantities of particulates may help carry these pollutants into the human body. (Air Quality Criteria for Particulate Matter, U.S. Dept. of Health, Education and Welfare, Jan. 1969, AP-49, Page 137). (Id.).

Notwithstanding the evidence contained in prior Board Opinions, the Board finds sufficient evidence in this record to show that smoke from leaf burning contains contaminants that are injurious to human health and that leaf burning, therefore, is air pollution under the first category of Section 3(b).

The DEPA advisory report referenced earlier, submitted in Board regulatory proceeding R 73-5, In the Matter of Leaf Burning[1], generally supports the above record evidence (Cplt.'s Exh. 1). The advisory report found the open burning of leaves to be injurious to human health (Id. at 12).

Air Pollution: Unreasonable Interference

As for the second type of air pollution recognized under Section 3(b), to find an unreasonable interference, the Board must address the Section 33(c) factors. Incinerator, Inc. v. PCB, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974); Mystik Tape v. PCB, 60 Ill. 2d 330, 328 N.E. 2d 5 (1975); Processing and Books, Inc., et al. v. IPCB et al., 64 Ill. 2d 68, 351 N.E. 2d 865 (1976). Section 33(c) provides that

> c) In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits 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;

[1] 40 PCB 81, December 4, 1980. The Board dismissal of this proceeding was due to many factors, most important of which were the probability of a federal respirable standard in the near future and the Agency withdrawal of the proposal, besides the age of the proceeding. The Board stated, however, that dismissal does not mean "that elements from the record...which have continuing validity cannot be brought into the later record." The Board notes that the health aspects in the study are still valid.

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, discharges or deposits resulting from such pollution source.

Concerning the first factor, the City asserts that notwithstanding the evidence on health above, only 0.04 percent of the population testified as to adverse health effects (Resp. Brief 1-2 incorrectly stated as 0.0004). In addition, it asserts that wood smoke and auto exhaust contain the same irritants as leaf smoke and are in far greater number (Id. at 2). The City appears to misunderstand its burden of persuasion. Mr. Greenland produced substantial testimony on the health effects of leaf smoke, yet the City failed to rebut this evidence. The evidence shows substantial injury to and interference with the health of people exposed and susceptible to smoke from leaf burning.

As for the second factor, there has been no testimony that the open burning of leaves is of social or economic value. Even if one would argue otherwise, the proper focus is akin to a Board finding that a properly operated wastewater treatment plant is of value, which value is reduced by inadequate maintenance and operation. IEPA v. City of Carrollton, 47 PCB 405, 411 (PCB 81-145, 1982). There is no intrinsic value in burning leaves. Economic reasonableness is properly considered under the fourth factor.

Regarding the third factor, the City baldly asserts that it is suitable to burn leaves on the property where they were generated. (Id. at 3). The Board does not agree. Leaf smoke knows no boundaries. It leaves the property of origin and drifts onto other private and public properties. Testimony has shown that there are many people susceptible to the constituents of leaf smoke. Based on the evidence presented above, the burning of leaves in the City is unsuitable.

The fourth factor, technical practicability, is not an issue. The evidence has shown that many alternative options were studied by the city staff. The options included City pick-up, landscape service, or composting. The City staff appears to favor continuing its existing collection system. This system requires residents to bag the leaves with plastic bags provided by the City at reduced rates. The City then collects the full bags with the regular garbage collection. The City manager stated at hearing that the City staff was recommending to the

City council that leaf burning be banned in the City (R. 100). Currently, forty percent of the residents have City pick-up, seventeen percent burn and approximately forty percent employ a landscaping service to rid their properties of leaves (R. 46,32). Technical and economic feasibility of alternatives to leaf burning are clearly evidenced by the fact that 83 percent of the residents currently employ them. Assuming that the City repeals its ordinance and that all seventeen percent of those burning leaves choose the City pick-up plan, the City anticipates a first year cost of $88,530 which includes the purchase of a new packer truck for $75,000 (City Exhibit 1, Draft Report to City Council, p. 101). If the cost of the truck is amortized over ten years, the annual cost of the truck is approximately $8,000. Annual operation and maintenance costs will be approximately $14,150 for personnel and fuel. Nowhere has the City argued that this expenditure would be an arbitrary or unreasonable hardship. The Board finds that the elimination of leaf burning in the City is economically reasonable. The Board further finds that leaf burning constitutes an unreasonable interference with life or property.

The Board finds that by enactment of an ordinance in direct contravention of a state statute, the City has caused or allowed the discharge of contaminants into the environment so as to cause or tend to cause air pollution in Illinois in violation of Section 9(a) of the Act. It has been held that [m]unicipal authorities cannot adopt ordinances which infringe upon the spirit of a State law or which are repugnant to the general policy of the State. Huszagh v. City of Oakbrook Terrace, 41 Ill. 2d 387, 243 N.E. 2d 831 (1968); City of Marengo v. Rowland, 263 Ill. 531, 105 N.E. 285 (1914). The test is whether the ordinance permits an act which the statute prohibits or prohibits what the statute permits (See City of Chicago v. Union Ice Cream Manufacturing Co., 252 Ill. 311, 96 N.E. 872 (1911), and in case of a conflict, the ordinance fails. Dean Milk Co. v. City of Chicago, 385 Ill. 565, 53 N.E. 2d 612 (1944); Village of Mundelein v. Hartnett, 117 Ill. App. 3d 1011, 454 N.E. 2d 29 (2d Dist. 1983). The municipal ordinance of the City permits an act which the statute prohibits and, therefore, lacks force and effect. The Court in Huszagh found an ordinance to be contrary to public policy and spoke of illegality in voiding the ordinance. Huszagh, supra. The Board declines to declare the ordinance of the City of Lake Forest void as being unnecessary to disposition of this case. It is sufficient to find that the City ordinance conflicts with the banning clause of Section 9 of the Act and that therefore the City is in violation of that Section of the Act.

WASTE DEFINITIONS: SECTION 3 (C)

Mr. Greenland further alleges that the City has violated Section 9(c) of the Act. The Board must construe the definitions of refuse and waste in relation to landscape waste. Refuse is defined in Section 3 (w) of the Act as waste. Waste is further

defined in subsection (11) as:

> ...any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities,.... (emphasis supplied).

Waste includes garbage, sludge, or other discarded material. The statutory language provides certain inclusions, but not to the exclusion of those categories not mentioned. The Board interprets the definition of waste to include landscape waste and therefore, leaves. This interpretation is consistent with 1) the inclusion of the general phrase "or other discarded material" in the definition of waste, 2) the liberal construction of the Act as provided in Section 2(c), and 3) the legislature's use of the word "waste" after the word "landscape" in the definition of "landscape waste" in subsection (uu), which definition does specifically include leaves.

The Board has found that the City caused or allowed the discharge of contaminants so as to cause or tend to cause air pollution. Likewise, the Board finds that the City has also caused or allowed the open burning of refuse in violation of Section 9 (c) of the Act.

BOARD REGULATIONS: OPEN BURNING

Mr. Greenland asserts that the City is in violation of 35 Ill. Adm. Code 237.102 and 237.120(c), the open burning of landscape waste regulations. The City asserts that they are invalid.

Section 237.102 provides as follows:

a) No person shall cause or allow open burning, except as provided in this Part.

b) No person shall cause or allow the burning of any refuse in any chamber or apparatus, unless such chamber or apparatus is designed for the purpose of disposing of the class of refuse being burned.

Section 237.120(c) provides as follows:

The following activities are not in violation of Section 9(c) of the Act (Ill. Rev. Stat. 1981, ch. 111 ½, par. 1009(c)) or of this Part unless they cause air pollution as defined in the Act. Nothing in this Section shall exempt such activities from applicable local restrictions.

* * *

c) The open burning of landscape waste, but only:

1) On the premises on which such waste is generated; and

2) When atmospheric conditions will readily dissipate contaminants; and

3) If such burning does not create a visibility hazard on roadways, railroad tracks or air fields; and

4) In those areas of the State which are not in the following prohibited areas:

A) Municipalities having a population in excess of 2,500 according to the latest federal census.

B) Municipalities of any size which adjoin a municipality having a population in excess of 2,500.

C) All municipalities wholly within 40 air miles (64.5 kilometers) of Meigs Field, Chicago, Illinois.

D) All municipalities wholly within 20 air miles (32.3 kilometers) of McKinley Bridge connecting St. Louis, Missouri and Venice, Illinois.

E) Rural areas 305 meters (1,000 feet) or less from a municipality in which open burning of landscape waste is prohibited.

In 1973, by P.A. 78-243, the Illinois General Assembly limited the Pollution Control Board's regulatory authority to "restrict or prohibit" the burning of landscape waste to situations in which it determines "based on medical and biological evidence generally accepted by the scientific community that such burning will produce in the atmosphere of that geographical area contaminants in sufficient quantities and of such characteristics and duration as to be injurious to humans, plant, or animal life, or health."

As previously noted on page 4, in October 1973 the Illinois Attorney General issued a written opinion finding that the previously adopted Board regulation (35 Ill. Adm. Code 237.120(c)) had not been adopted on the basis of this new standard (IL. A.G. No. S-633, October 16, 1973). Additionally, the Attorney General opined that the Board regulation banned the burning of leaves generally, in excess of the Board's statutory authority. While the Board does not agree that it went beyond

its authority and that its regulation banned the burning of leaves generally, it does agree that Section 237. 120(c) was promulgated without consideration of the new standard enunciated in P.A. 78-243 and is therefore invalid. In addition, until a new open burning of landscape waste regulation is adopted, the general prohibition section on open burning, Section 237.102(a), is of no effect as to landscape waste[2]. The Board finds that the City has not violated Sections 237.102 or 237.120(c).

RELIEF

The Board has found the City in violation of Sections 9(a) and 9(c). Mr. Greenland requests that the Board declare the City's ordinance in violation of the Act and Board regulations, enjoin the open burning of leaves within the City, order the City to provide notice to all residents that the open burning of leaves is in violation of the Act and Board regulations, and that the Board provide other relief if warranted (Complaint at 4).

The City asserts the Board has no authority to declare ordinances of a city invalid, to enjoin any acts by a city, or otherwise grant relief including requiring a municipal corportion to provide notice to its residents, yet offers no support for its assertions.

Pursuant to Section 3(c) the City, a municipal corporation and political subdivision, is a person. As such and pursuant to Section 47, it must comply with the Act and the regulations promulgated thereunder. City of Waukegan v. IPCB, 57 Ill. 2d 170, 311 N.E. 2d 146 (1974). Although the Board has no authority to issue an injunction, it has the authority to issue a cease and desist order pursuant to Section 33(b). Processing and Books, Inc. v. IPCB, 64 Ill. 2d 68, 351 N.E. 2d 865 (1976). The Board has ordered municipal corporations to cease and desist from violation of the Act and Board regulations and has been upheld by the Illinois Supreme Court. North Shore Sanitary District v IPCB, 55 Ill. 2d 101, 302 N.E. 2d 50 (1973). The legislature has conferred upon the Board those powers that are reasonably necessary to accomplish the legislative purposes of the Act. City of Waukegan, supra. Finally, while the Board declines to order the City to notify its residents that open burning of leaves in Lake Forest is in violation of state law, the Board trusts that the City will take whatever steps necessary to eliminate the violations.

[2] Public Act 78-243 would allow a Board regulation banning the open burning of landscape waste only in specific geographical areas where evidence shows that such burning will produce air pollution in those geographical areas. The term "geographical area" is a flexible one and its definition will depend on the evidence before the Board in any subsequent regulatory proceeding.

The Board has found the City to be in violation of the Act. It need not also find the ordinance invalid for the resolution of this matter. The Board will order the City to cease and desist from further violations of the Act.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The respondent City of Lake Forest has violated Section 9(a) of the Act.

2. The respondent City of Lake Forest has violated Section 9(c) of the Act.

3. The respondent City of Lake Forest shall cease and desist from further violations of the Act.

J. Theodore Meyer dissented.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of June, 1985 by a vote of 6-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board