

ILLINOIS POLLUTION CONTROL BOARD  
July 26, 1979

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 79-13  
 )  
 JAMES ATHANS and BRANDENBURG )  
 DEMOLITION, INC., )  
 )  
 Respondents. )

MS. NANCY M. BENNETT, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;  
MR. WILLIAM SOMERVILLE APPEARED ON BEHALF OF RESPONDENT BRANDENBURG DEMOLITION, INC.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

On January 17, 1979 the Environmental Protection Agency (Agency) filed a Complaint against two respondents, James Athans and Brandenburg Demolition, Inc. (Brandenburg) alleging various violations of the Environmental Protection Act (Act) and the Solid Waste Regulations: Chapter 7 of the Board's Rules and Regulations. On March 1, 1979, the Agency filed an Amended Complaint. A hearing was held on March 13, 1979 and a Stipulation and Proposal for Settlement was filed with the Board on March 27, 1979. A re-hearing was held on May 16, 1979 in which several citizen witnesses participated.

The Amended Complaint alleges the following violations: that on August 22, 1978 James Athans caused or allowed concrete debris to be deposited at his building site without a permit in violation of Section 21(e) of the Act and Rule 202(a) of Chapter 7; that allowing operation of said site constituted open dumping in violation of Section 21(b) of the Act; and that on August 22, 1978 Brandenburg disposed of the above mentioned materials at the site, knowing that the site had no operating permit, in violation of Section 21(f) of the Act.

In the Stipulation the parties state that James Athans owns a site east of Ridgfield Road in Crystal Lake, McHenry County, Illinois, on which a plant for Chem-Tool Inc. is to be built. On August 22, 1979, Brandenburg hauled broken

brick and concrete debris to this site and deposited it there. Although James Athans was informed by the Agency on August 22, 1978 that the action of depositing the materials required a permit, at no time in August, 1978 did he obtain one. At the time of the filing of the Stipulation, the materials deposited on Athen's site had been covered.

The Board finds that the terms of the settlement are sufficient to ensure that the environment is protected and that no further violations occur. The refuse disposed of at the site is adequately covered and the dumping appears to be completed. (Tr., May 16, p.8) Thus, it appears that the Respondents are now in compliance with the Act. The stipulated penalty of \$500 is sufficient to aid in enforcement of the Act. Although the site is in an environmentally sensitive area (the watershed of Crystal Lake) there is no evidence of harm to the environment. The Board finds that further litigation in this matter is not in the best interests of the People of the State of Illinois and will accept the Proposed Stipulation as filed with the Board on March 27, 1979.

Mrs. Mary Erikson, Mrs. Diane Gorr and Mrs. Jan Chinliund testified as citizen witnesses at the May 16, 1979 hearing. Their main concern was the Respondents would disregard the \$500 fine and that future violations would occur. However, the unlawful dumping was a single event, incident to the initial stages of construction. The debris is now adequately covered and future violation is unlikely.

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

#### ORDER

It is the Order of the Pollution Control Board that:

- 1) James Athans is found to have violated Sections 21(b) and 21(e) of the Act, and Rule 202(a) of Chapter 7 of the Regulations.
- 2) Brandenburg Demolition, Inc. is found to have violated Section 21(f) of the Act.
- 3) James Athans and Brandenburg Demolition, Inc. jointly and severally, shall, within 35 days of the date of this Order, pay a penalty of \$500 by certified check or money order to:

Fiscal Services Division  
Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

- 4) James Athans and Brandenburg Demolition, Inc. shall cease and desist any further violation of the Act and Regulations.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26<sup>th</sup> day of July, 1979 by a vote of 3-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board