

ILLINOIS POLLUTION CONTROL BOARD  
October 9, 1975

PEOPLE OF THE STATE OF ILLINOIS, )  
Complainant, )  
 )  
v. ) PCB 75-239  
 )  
ROLAND W. FRIEDER, an individual, )  
and H.H. DAVIS CO., an Illinois )  
Corporation, both d/b/a a )  
Partnership known as )  
"JOLIET INDUSTRIAL DISTRICT", )  
Respondent. )

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

This matter comes before the Pollution Control Board (Board) upon the June 12, 1975, complaint of the State of Illinois against Roland W. Frieder (Frieder), and H.H. Davis Co. (Davis), an Illinois corporation. Frieder and Davis did business as a partnership known as Joliet Industrial District (Industrial).

Industrial is charged with violating Rule 201 of the Solid Waste Regulations in that it operated a solid waste management site without a Development Permit since July 27, 1973, thereby violating Sections 21(b) and 21(e) of the Environmental Protection Act (Act). Respondents are also charged with violating Rule 502 of the Air Regulations and Sections 21(b) and 9(c) of the Act by causing or allowing open burning of refuse.

On September 12, 1975, the parties filed a "Stipulation and Proposal for Settlement" with the Board. However, the stipulation is insufficient. Respondents are charged with developing a solid waste management site without a permit in violation of Sections 21(b) and 21(e) of the Act. This is inconsistent in that if the Respondents are charged with developing a sanitary waste disposal site without a permit, it does not automatically follow that they are causing or allowing open dumping. The stipulation does not support a finding of violation of Solid Waste Rule 202 or Section 21(e) of the Act as the parties do not agree that Respondent was operating a solid waste management site nor do the stipulated facts make this an inescapably implied conclusion.

The stipulation does support a finding that the Respondents cause open dumping. However the complaint only alleges this violation in connection with Respondent's failure to have a permit or causing open burning in violation of Air Rule 508. Open burning, while violating Section 9(c) of the Act, does not constitute a violation of Section 21(b) of the Act.

The Board holds that the stipulation and agreement filed in this matter is insufficient and therefore must remand this cause to the Hearing Officer for appropriate action, either by way of amendment of the complaint and stipulation or for hearing.

It is the Order of the Board that this matter be remanded to the Hearing Officer for action not inconsistent with this Opinion.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 9<sup>th</sup> day of October, 1975 by a vote of 3-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board