

ILLINOIS POLLUTION CONTROL BOARD
December 4, 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,")
Respondents.)

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

On June 12, 1975, the Attorney General of the State of Illinois filed a complaint against Roland W. Frieder, an individual, and H.H. Davis Co., an Illinois corporation, both d/b/a a partnership known as "Joliet Industrial District." The complaint alleged that from July 27, 1973, through the present, Respondents caused or allowed the development of a solid waste management site without a development permit, in violation of Sections 21(b) and 21(e) of the Act and Rule 201 of the Solid Waste Regulations (Chapter 7). The Complainant further alleged that on or about April 8, 1975, and April 23, 1975, Respondents caused or allowed the open burning of refuse on the premises of the Joliet Industrial District, in violation of Sections 21(b) and 9(c) of the Act and Rule 502 of the Air Pollution Regulations (Chapter 2). The site is located on Industry Avenue in the City of Joliet, Will County, Illinois.

A hearing was held on September 11, 1975, at which a draft of a Stipulation and Proposed Settlement (Stipulation) representing the final agreement of the parties was entered into evidence. No additional evidence was presented, and no citizen witnesses testified. A final draft of the Stipulation was filed with the Board on September 12, 1975.

On October 9, 1975, the Pollution Control Board (Board) entered an Interim Opinion and Order finding that the Stipulation was insufficient in that it failed to support a finding that Respondents were operating a solid waste management site as alleged in the Complaint. The cause was remanded to the Hearing Officer for appropriate action, either by way of amendment of the Complaint and Stipulation or hearing. On October 24, 1975, Complainant filed a Motion for Leave to File Amended Complaint Instanter and submitted an Amended Complaint. On November 6, 1975, Complainant's Motion was granted.

The two count Amended Complaint alleges that Respondents caused or allowed the open dumping of refuse in violation of Section 21(b) of the Act and caused or allowed the open burning of refuse in violation of Section 9(c) of the Act. The Board finds that the Amended Complaint brings the pleadings into conformance with the facts set forth in the Stipulation and Proposal for Settlement.

The Factual Background in the Stipulation indicates that Respondent H.H. Davis Co. was an Illinois corporation operating in business as a partner under the name Joliet Industrial District until its dissolution on or about December 31, 1974. Respondent Roland W. Frieder has been and is presently operating said business.

On April 8, 1975, April 23, 1975, and August 4, 1975, refuse was observed covering a considerable area of the Joliet Industrial District, primarily in the southeastern section, premises not specifically leased to any given tenant. Photographs of the premises on these dates are attached to the Stipulation. Furthermore, on April 8, 1975, and April 23, 1975, evidence of open burning was observed.

Respondent, Roland Frieder, contends that the refuse on the premises was, at least in part, debris from an uncontrolled fire which occurred on a portion of the premises leased to his tenant, Gundy Industries, in September of 1974. Photographs of said fire are attached to the Stipulation. Respondent indicates that he has taken legal action against Gundy Industries for failure to remove the debris. Respondent further represents that he has spent approximately \$15,000.00 and foresees an additional expenditure of \$5,000.00 in the removal of debris and refuse.

Respondent denies having knowingly permitted or allowed any dumping of refuse. In order to prevent any future unauthorized dumping, he indicates his intention to erect fences in any area accessible to the public where fencing does not presently exist.

In the Terms of Settlement the parties agree that each lessee of the premises located within the Joliet Industrial District is responsible both to Respondent, Roland Frieder, and to the State of Illinois and its agencies in its duty to prevent the accumulation of refuse on the premises in question. The Complainant, however, indicates its position that Respondent's duty, under Section 21(b) of the Act, to not cause or allow the open dumping of refuse attaches regardless of the source of such refuse.

A lessor of property is responsible for causing or allowing violations under the Act whether or not such violations occur on portions of his property he has leased. EPA v. James McHugh Construction Co., et al, PCB 71-291; People of the State of Illinois v. Lincoln Stone Quarry, Inc. et al, PCB 75-368. The Board stated in both these cases that:

The term 'allow' imposes affirmative duties that may in some cases go beyond those of the common law to exercise care to prevent others from causing pollution ... We do not believe the policy of the statute can be evaded by contract ...

Therefore, Respondent is responsible for violation of Sections 21(b) and 9(c) of the Act whether the violations occurred on leased or unleased portions of his property.

Respondent, Roland W. Frieder, agrees to clear the premises of the Joliet Industrial District of all presently accumulated refuse on or before November 30, 1975, barring strikes, Acts of God or inclement weather; provided that any resultant extension of time shall not exceed the time lost by reason of the foregoing causes. In effecting this agreement, the parties agreed that:

- i. Respondent, at his option, may let a contract to engage a third party to clear such refuse;
- ii. Respondent will apprise Complainant of his progress in clearing such refuse on a bi-weekly schedule (to be set by the parties hereto). If Respondent elects to contract for such clearing, he will advise Complainant as to the date said contract is let and the proposed dates for initiation and completion of clearing activities;
- iii. Respondent will allow a representative of Complainant to enter and inspect the premises of the Joliet Industrial District for the purpose of evaluating the progress of clearing activities, at any reasonable time without prior notice.
- iv. Upon completion of clearing activities Respondent will promptly so notify Complainant, whereupon a representative of the Complainant will inspect the premises and take photographs attesting to the removal of all accumulated refuse; and
- v. Thereafter, Respondent will allow representatives of Complainant to enter and inspect the premises of Joliet Industrial District for the purpose of ensuring that no accumulations of refuse are occurring at any reasonable time without prior notice.

Respondent agrees to append to all existing leases and include in any future leases a provision which expressly forbids any on-site dumping by any lessee or agent thereof. Respondent is to serve on Complainant a copy of said appended or included provision with an affidavit attesting to its inclusion in leases pursuant to the agreement.

Respondent agrees to take all reasonable actions to prevent dumping by members of the public on the premises of the Joliet Industrial District, including, but not limited to, the posting of conspicuous signs prohibiting dumping at access points to its premises.

Furthermore, Respondent agrees to clear from the Joliet Industrial District any refuse which is or should be known by him to have been deposited thereon by any person or persons, known or unknown. Respondent is to clear such refuse within the next subsequent ninety-six (96) hours or within such interval of time as may be reasonable under the circumstances, but not to exceed two weeks in any event.

Finally, Respondent agrees to remit \$1,000.00 to the State of Illinois in settlement of violations found by the Board.

The Board finds that Respondent has caused or allowed the open dumping of refuse in violation of Section 21(b) of the Act and has caused or allowed the open burning of refuse in violation of Section 9(c) of the Act. For said violations, the Board assesses the stipulated penalty of \$1,000 and accepts the Stipulation submitted by the parties as an adequate plan of compliance.

This constitutes the findings of fact and conclusions of law of the Board.

ORDER

It is the Order of the Pollution Control Board that:

1. Respondent, Roland W. Frieder, is found to have caused or allowed the open dumping of refuse in violation of Section 21(b) of the Act and has caused or allowed the open burning of refuse in violation of Section 9(c) of the Act.

2. Respondent Roland W. Frieder shall cease and desist violating Sections 21(b) and 9(c) of the Environmental Protection Act.

3. Respondent shall comply with all the terms of settlement of the Stipulation signed by the parties on September 11, 1975.

4. Respondent, Roland W. Frieder, shall, within 45 days, pay a penalty of \$1,000 for the violations of Section 21(b) and Section 9(c) of the Act found herein. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

It is so ordered.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4th day of December, 1975 by a vote of 4-0.



Christan L. Moffett Clerk
Illinois Pollution Control Board