

ILLINOIS POLLUTION CONTROL BOARD  
April 25, 1972

WILLIAM L. RUTHERFORD and )  
WILLIAM J. SCOTT, ATTORNEY GENERAL )  
OF ILLINOIS )  
 )  
v. ) PCB72-31  
 )  
KAMMERER CONCRETE PRODUCTS CO. )

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
v. ) PCB72-66  
 )  
ZABORAC ELECTRIC, INC. )

John C. Parkhurst, Special Assistant Attorney General, and  
Prescott E. Bloom, Special Assistant Attorney General  
for William L. Rutherford, a private citizen  
and William J. Scott, Attorney General of Illinois  
Thomas H. Trager, Vonachen, Cation, Lawless, Trager & Selvin for  
Kammerer Concrete Products Co.

Prescott E. Bloom, Special Assistant Attorney General, for the  
Environmental Protection Agency  
Stephen D. Gay, Davis, Morgan & Witherell for  
Zaborec Electric, Inc.

Opinion of the Board (by Jacob D. Dumelle)

Both of these cases deal with complaints of open burning in Peoria County contrary to provisions of the Environmental Protection Act and Regulations prohibiting open burning enacted by this Board in 1971. Both cases are therefore governed by the same principles of law. In 72-31, William L. Rutherford, a private citizen, and William J. Scott, Attorney General of Illinois, represented by John C. Parkhurst averred that Kammerer Concrete Products Co. (Kammerer) caused or allowed the open burning of automotive tires and other refuse on its property on December 8, 1971 in violation of the Environmental Protection Act, Sec. 9 (c). In 72-66 the Environmental Protection Agency (Agency) alleged that Zaborac Electric, Inc. (Zaborac) caused or allowed the open burning of refuse on October 13, 1971 in violation of Section 402 (a) of the Open Burning Regulations. In each case, all parties stipulated to certain material facts.

In the Kammerer case, it was agreed upon that certain open burning had in fact occurred on the Kammerer premises on December 8, 1971 after some of Kammerer's employees had demolished a feed and storage shed and had most of the resulting debris hauled away. The demolition material which was not removed was placed into an area approximately 8 feet by 12 feet and set afire. The fire lasted about one-half hour and had an estimated eight foot flame and one hundred foot smoke plume. Complainant's exhibit one is a photograph of the occurrence which illuminates the evidence in this case most dramatically.

In the Zaborac case, the stipulation of facts stated that certain employees of Zaborac burned several piles of brush and trees on October 13, 1971 cleared from the area in the process of readying the land for a mobile homes site. During the burning process, an inspector for the Agency arrived on the scene and advised an employee of Zaborac that the burning might be illegal and no further burning was commenced, although considerable quantities of waste remained to be combusted.

In each case, the respondents put forth, in defense, the contention of ignorance of the legal prohibition against open burning. Open burning has been illegal in Illinois by reason of existing regulation since 1965. It is true that the rules have been recently rewritten and that there presently are and have been certain exceptions to the ban against open burning. Nonetheless, we are past the time when we can fairly be expected to seriously consider ignorance of the legal prohibition in total mitigation of the environmental offense of uncontrolled open burning. Both respondents in these cases have acted wisely to inform their employees of the law against open burning. We wish they had done so at an earlier date so as to preclude the subject occurrences.

We shall order the payment of a money penalty of one hundred dollars (\$100.00) in each of these matters for the specific instances of open burning. Mr. Dumelle believes the penalty should be \$200.00 in each case.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER: PCB71-31, Rutherford et al v. Kammerer Concrete Products Co.

Kammerer Concrete Products Co. shall pay to the State of Illinois the sum of one hundred dollars (\$100.00) as penalty for violation of the prohibition against open burning. Payment shall be made within thirty-five (35) days of the entry of this order by certified check or money order to the Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

ORDER: PCB72-66, EPA v. Zaborac Electric, Inc.

Zaborac Electric, Inc. shall pay to the State of Illinois the sum of one hundred dollars (\$100.00) as penalty for violation of the prohibition against open burning. Payment shall be made within thirty-five (35) days of the entry of this order by certified check or money order to the Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order of the Board this 25th day of April, 1972, by a vote of 5-0.

*Christan L. Moffett*

