

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 74-435
)
JERRY WIGGS,)
)
)
 Respondent.)

FREDRIC BENSON, Assistant Attorney General for the EPA
J. C. MITCHELL, Attorney for Respondent

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

Respondent Jerry Wiggs is charged in a Complaint filed by the Environmental Protection Agency with operating a solid waste management site in Franklin County, Illinois without permit in violation of Section 21(e) of the Environmental Protection Act and Rules 201 and 202(a) of the Solid Waste Regulations. The violations are alleged to have occurred every day of operation from August 7, 1974 to November 20, 1974, the date of filing of Complaint. Public hearings on this matter were held in January and March 1975.

At the March 1975 public hearing the parties submitted a Stipulation of Facts and Settlement Proposal. The Board is asked to approve a compliance proposal contained in the Stipulation.

The brief stipulated history of this case shows that on July 28, 1974 Respondent submitted to the EPA an application to develop a new solid waste management site. This application was found to be lacking certain information, and Respondent was informed of permit denial on September 16, 1974.

Respondent was notified by letter dated August 28, 1974 that his site was being operated without a permit in apparent violation of the Act and the Solid Waste Regulations. Additional letters in September, October and November 1974 advised Respondent that his refuse disposal site did not have a permit. The Agency issued Respondent a development permit on February 19, 1975.

Wiggs "admits that he has violated Section 21(e) of the Act and Rules 201 and 202(a)" of the Regulations "in the manner specified in the Complaint". Respondent argues, however, that his actions were "not the result of a callous disregard for environmental regulations".

In April 1974 Respondent was considering bidding on a contract to be let by Franklin County for refuse hauling. The contract then in effect, held by Vise Brothers, was to expire on July 31, 1974. Respondent contacted one C. Rice, owner of the disposal site leased to the Vise Brothers, to determine if Rice would lease the property to Respondent should Respondent's bid be successful. Rice mistakenly believed the Vise Brothers lease terminated prior to August 1, 1974 and therefore gave Respondent an affirmative answer. Respondent then submitted his bid to the County.

In May 1974 Respondent was informed that his bid was acceptable pending submission of a satisfactory bond. The required bond was submitted in June 1974, but it was not immediately accepted by the County because of a problem relating to the form employed. Several weeks later Respondent first learned that Vise Brothers had a one year option clause in its lease with Rice. On July 10, 1974 Respondent met with Vise Brothers, Rice, and Rice's attorney at which time Vise Brothers exercised its option to extend the lease. Negotiations with Vise Brothers for its lease were not successful.

Upon first learning of the Vise Brothers' option, Respondent and an engineer named Sagaser began looking for another site. After Vise Brothers exercised its option, Respondent obtained an oral commitment on a lease of property from one Lyndell Minor. On July 20, 1974 the County signed the refuse hauling contract with Respondent. Within two days Respondent secured a written lease with Minor. Sagaser began preparing the necessary permit application.

An incomplete permit application was submitted on July 29, 1974. Three days later, fully aware that he did not have a permit and that such actions were illegal, Respondent commenced operation at his refuse disposal site. Respondent submits that he had to start operations on August 1, 1974 or breach his contract with the County thus leaving the County with no place to dispose of refuse.

It is stated that any undue delays in completing the permit application were due solely to the action or inaction of Respondent's engineer and that despite repeated inquiries to the engineer, Respondent was unable to get him to speed up the work.

Respondent also states that he could not have commenced engineering work at any earlier date because he did not want to become obligated for expenditures of large sums of money until the contract had been signed.

Clearly Respondent created his own dilemma. He signed a contract with the County fully aware that he did not have a permit to develop or operate a waste management site. He was surely aware that it would take more than twelve days to secure the necessary data and information for a complete permit application, prepare and submit that permit application and receive the required permit.

It was Respondent's decision to commence operations at the site without the required permit and to continue operating the site without a permit for another 6 1/2 months. He admits that he did so fully aware of the illegality of his actions.

The parties submit that Respondent's willingness to pay a penalty in the amount of \$600 and insure the proper closure of his site in the event an operating permit is not obtained within 120 days satisfies all interests concerned.

The Board finds the agreement acceptable. Respondent failed to commit to a disposal site at an early date, partly because he did not want to become obligated for financial expenditures. Caution in business affairs is often commendable but this benefit to Respondent was at the expense of the environmental laws. It is appropriate that a monetary penalty now be imposed for violation of those environmental laws.

The EPA has not shown a specific environmental degradation beyond the general harm to our system which arises from any failure to comply with permit requirements. The \$600 penalty seems adequate to us.

The Board finds that Respondent Jerry Wiggs, did operate a solid waste management site without permit, as charged, and that a monetary penalty of \$600 and agreement for possible closure of the site are appropriate in this case.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

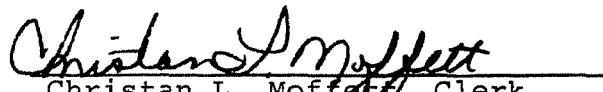
It is the Order of the Pollution Control Board that:

1. Jerry Wiggs shall pay to the State of Illinois

by June 19, 1975 the sum of \$600 as a penalty for the violations admitted in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

2. Respondent shall properly close his waste disposal site in Franklin County, Illinois if an operating permit for this site has not been obtained within 120 days of the date of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted this 22ND day of May, 1975 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board