

ILLINOIS POLLUTION CONTROL BOARD
June 18, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-408
)
)
 FRANKLIN FLOWERS, ROGER FLOWERS)
 AND CITY OF VIRDEN, a municipal)
 corporation,)
)
 Respondent.)

Ms. Mary Schlott, Assistant Attorney General, appeared on behalf of the Complainant
Mr. Edmond H. Rees, appeared on behalf of the City of Virden
Messrs. Franklin and Roger Flowers, appeared Pro Se

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

This matter comes before the Pollution Control Board (Board) upon the October 17, 1975 Complaint of the Environmental Protection Agency (Agency) charging the City of Virden (Virden) with owning and Franklin and Roger Flowers (Flowers) with operating a refuse disposal site without an operating permit in violation of Rule 202(b) of the Board's Solid Waste Regulations and Sections 21(b) and(e) of the Environmental Protection Act (Act). A Settlement Proposal was presented to the Board at a hearing held January 23, 1976. This Settlement was reduced to writing May 25, 1976.

The Board has often held that a violation of Rule 202(b) of the Solid Waste Regulations does not constitute a violation of Section 21(b) of the Act. Therefore, that portion of the Complaint alleging violation of Section 21(b) will be dismissed.

The Parties stipulate that Virden owns and Flowers operates a refuse disposal site on eleven acres in Macoupin County. Refuse deposits are limited to those collected from City customers of Flowers' scavenger service and refuse collected by the City in its public works operations.

Flowers obtained a development permit on August 8, 1974. The site was inspected several times (Ex. 1-6). Upon receipt of the Complaint, Flowers moved expeditiously to correct deficiencies at the site. Substantial compliance was shown by November 25, 1975, and an operating permit was issued December 5, 1975.

Although Respondents have an agreement in which Flowers is liable to indemnify Virden for any litigation costs arising from operation of the landfill, Virden has agreed not to seek indemnification in the event a penalty is assessed herein.

The Respondents admit that they operated without an operating permit from July 27, 1975 to the date of the filing of the Complaint. The Board therefore finds that the Respondents have violated Rule 202(b) of the Solid Waste Regulations and Section 21(e) of the Act. The Board finds that the violation was de minimus and that the parties proceeded in good faith and with dispatch to obtain the necessary permit.

Virden pays Flowers \$6,500.00 per year to operate the site. In addition, Flowers receive approximately \$21,000.00 annually from Virden customers for garbage collection. The Flowers purchased a bulldozer for the site at a cost of \$34,650.00 through a bank loan. The balance due as of January, 1976, was \$24,505.00. Flowers paid \$2,100.00 in engineering fees related to the permit application requirements. The site operated at a net loss of \$617.00 in 1974. Franklin Flowers' wife suffered kidney failure shortly after the Flowers started operating the site. This illness is not covered by insurance and has resulted in a debt of \$3,600.00 to date.

The Board finds that a penalty is appropriate in order to protect the integrity of the permit system. Therefore a penalty of \$100.00 will be assessed against the City of Virden. In view of Flowers financial hardship and good faith effort to obtain an operating permit, no penalty will be assessed against them.

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

ORDER

It is the Order of the Pollution Control Board that:

- 1) The City of Virden and Franklin and Roger Flowers are

found to have violated Rule 202(b) of the Solid Waste Regulations and Section 21(e) of the Act from July 27, 1975, to October 17, 1975.

2) The City of Virden shall pay as a penalty for said violation the sum of \$100.00. Said penalty shall be paid by certified check or money order payable to the State of Illinois within 35 days of the date of this Order to:

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

3) The alleged violation of Section 21(b) of the Act be and is hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of June, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board