

ILLINOIS POLLUTION CONTROL BOARD
April 8, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
)
 v.) PCB 75-351
)
)
 MRS. F.P. CREWS, individually)
 and d/b/a MONA WILLIAMS TRAILER)
 PARK,)
)
 Respondent.)

Mr. M. Barry Forman, Assistant Attorney General, appeared on behalf of Complainant.
Mr. Earl S. Hendricks, Jr., Hendricks & Watt, appeared on behalf of the Respondent.

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

This matter comes before the Pollution Control Board (Board) upon the September 8, 1975, Complaint of the Environmental Protection Agency (Agency) charging Mrs. F.P. Crews (Crews) with violation of Rule 953 of the Water Regulations and Section 12(f) of the Environmental Protection Act in that Crews owned and operated a sewage treatment works without a NPDES permit or a State of Illinois permit. Those portions of the Complaint referring to operating without a NPDES permit were stricken in the Board Opinion of September 29, 1975. That Opinion was reconsidered and affirmed by Order of the Board on December 18, 1975.

Rule 953 of the Water Regulations originally required an operating permit to be obtained prior to January 31, 1975, where the operator must obtain an NPDES permit. This date was extended to June 30, 1975.

A hearing was held on February 26, 1976, at which three exhibits were accepted into the record. No issue of fact is presented to the Board as Respondent, through her attorney, admits that she has not obtained an Agency issued permit (Ex. 2 and 3).

Mrs. Crews is the owner of the Mona Williams Mobile Home Park located on a two acre site outside Murphysboro, Jackson County, Illinois. Mrs. Crews operates a three cell oxidation pond and effluent chlorination serving sixteen trailer spaces and discharging to Pond Creek a tributary of Beaucoup Creek, and thence to Big Muddy River (Ex. 1).

Mrs. Crews applied for and obtained an operating permit for the instant treatment works in 1970 (Ex. 1-A). She did not know that she was required by Rule 953 to obtain an additional permit. However, when she was informed of the requirement, Mrs. Crews applied for an operating permit. This application was denied on February 25, 1976, for deficiencies in the operation (Ex. 3).

Mrs. Crews' attorney contends that Rule 953 constitutes ex post facto legislation in that Mrs. Crews never had a hearing nor notification that her original permit would not suffice under Rule 953. Rule 956 states that the issuance of any permit by the Agency prior to Rule 953's effective date would not excuse compliance with Rule 953.

The Board is of the opinion that the Respondent's contention is without merit. According to Black's Law Dictionary, 663 (Revised 4th edition 1968), an ex post facto law is:

A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed.

It is apparent that Rule 953 refers to the act of operating without a permit after its effective date not before. Therefore, we reject Respondent's contention.

The Board finds that Mrs. Crews has operated a sewage treatment plant in violation of Rule 953 from June 30, 1975, to the date of the filing of the Complaint herein. Due to Mrs. Crews' good faith and apparent confusion as to the state of her permit, no penalty will be assessed.

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

ORDER

It is the Order of the Board that:


1) Mrs. F.P. Crews individually and d/b/a Mona Williams Trailer Park is found to have violated Rule 953 of the Water Regulations from June 30, 1975 to and including September 8, 1975.

2) Mrs. F.P. Crews individually and d/b/a Mona Williams Trailer Park is ordered to cease and desist operating her sewage treatment plant unless she applies for and obtains an operating permit within 150 days of this Order.

IT IS SO ORDERED.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of April, 1976 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board.