

ILLINOIS POLLUTION CONTROL BOARD
May 8, 1975

ENVIRONMENTAL PROTECTION AGENCY)
)
 Complainant,)
)
 v.) PCB 74-447
)
MARVIN WILDER, d/b/a CRAWFORD)
COUNTY DISPOSAL, INC.,)
)
 Respondent.)

Howard B. Thomas, Assistant Attorney General, for the Complainant;
Mr. E. H. Price, Attorney, for the Respondent.

OPINION & ORDER of the Board (by Mr. Zeitlin):

The Complaint in this matter was filed by the Attorney General for the Environmental Protection Agency (Agency) on November 27, 1974. The Complaint alleges that Respondent Wilder, through and as the corporate entity of Crawford County Disposal, Inc., operated a solid waste management site in Crawford County, Ill. without the required operating license from the Agency. Such operation without the required license is alleged to constitute violation of both Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of the Board's Solid Waste Rules and Regulations. The violations are alleged to have occurred between July 27, 1974, on which date the operating license requirements of Rule 202(b)(1) became effective, and November 27, 1974, the date on which the Complaint was filed. The Complaint also alleges as a specific date of violation, (but does not limit itself to), July 30, 1974.

Respondent Wilder originally applied for an Agency operating permit in May, 1974. That application, stating that Wilder expected to receive approximately 40 cubic yards of residential waste and 33 cubic yards of industrial wastewater treatment sludge per day, was denied by the Agency in a letter dated June 26, 1974. In its rejection letter for that application, the Agency found considerable shortcomings in the application both as to documentation and the substantive operational plans expressed by Respondent, particularly as regards the acceptance of industrial sludge on the site.

On December 9, 1974 Wilder again submitted a permit application. After its review of the December application, the Agency again refused to issue a permit.

A hearing was held in the matter in Robinson, Illinois, on January 21, 1975. At that hearing the parties submitted a Stipulation of Facts which contain sufficient information to allow a finding that the alleged violation did in fact occur (R. 4-6). The Stipulation basically sets out facts constituting an admission that Wilder operated the solid waste management site in question, and has done so since July 27, 1974 without an operating permit from the Agency.

The stipulation also contains several points bearing on the presence or lack of good faith in Respondent's attempts to secure the necessary permit. It was noted that the Agency had sent to Respondent seven letters, commencing in August, 1973, to the effect that a permit would be required for the site in question. The Stipulation also reiterates Respondent's attempts to obtain a permit. Further, it was pointed out that the site in question was approved by the State Department of Public Health on December 1, 1966.

There was also considerable testimony taken at the hearing, consisting entirely of the direct and cross-examination of Respondent Wilder. Mr Wilder's testimony was offered solely for purposes of mitigation and concerns only matters of good faith attempts to secure a permit and to comply with Agency recommendations for proper operation of the site in question. While the Agency offered no rebuttal testimony, its cross-examination was sufficient to put the question of good faith in issue before the Board in its determination of an appropriate penalty for the admitted violations.

Considerable testimony was taken from Mr. Wilder as to sums spent by him in the preparation of his permit applications for this site. Mr. Wilder apparently spent \$4,311 for the preparation of his first application by consulting engineers, and has spent at least \$2,000 on the subsequent application, which was also rejected (R. 9, 21, 22, 28). Mr. Wilder testified that he was required to borrow at least a portion of this sum. The bulk of those expenses were incurred as engineering fees in 1974, although a portion of the money was allocated to continuing application attempts in 1975.

Mr. Wilder also testified to considerable expenses incurred in attempts to operate the landfill site in question in accord with this Board's Rules, and with operating suggestions

offered by the Agency (R.14, 20, 26). These sums were largely spent for new equipment, maintenance, and the construction of a proper roadway.

Although the Agency's cross-examination on the point was able, it appears that Wilder's reliance on the advice of consulting engineers was real and arguably reasonable. Mr. Wilder apparently felt that he had engaged the most qualified engineering consultants that could be seen as reasonably available, and depended wholly on their advice in the preparation of his permit application. Mr. Wilder did state that he was somewhat concerned by delays in submitting both of the rejected permit applications, which delays may have resulted from the consultant's inaction (R. 32, 34, 39, 41, 44).

While Mr. Wilder may have relied on outside consultants in this matter, and the delays in obtaining a proper Agency permit may be due to the inaction of such consultants, reliance on a third party cannot entirely excuse Respondent's failure to obtain an operating permit. The Agency rejected Wilder's first permit application on June 26, 1974, and a second application was not submitted until December, 1974, six months later. Although Wilder's good faith submission of the initial application, before the permit requirement of Rule 202(b)(1) became effective, responsibility for the subsequent six month delay in reapplication cannot be placed entirely upon his consultants. The final responsibility for applying for and obtaining the required operating permit was Mr. Wilder's.

Also, as was brought out by the Agency in its cross-examination, many of the sums expended by Mr. Wilder on this site may in fact have been spent simply because they were necessary to bring the site into compliance with other solid waste regulations, unrelated to the permit requirement (R. 30). Weighing Mr. Wilder's apparent, if illadvised, reliance on a third party to complete the applications in question here, against the significant period of operation without the required operating license, the Board finds that a penalty of \$750 will serve to fulfill the purposes of the Act and Regulations in requiring licensure of solid waste management sites.

However, because Respondent has shown some good faith in attempts to comply with various regulations concerning the operation of a solid waste management site, involving the expenditure of considerable sums, the Board will allow 180 days for Respondent to continue operations while attempting to obtain the appropriate permit. (The Agency in its Complaint requested that as relief the Board order Respondent to cease and desist all violations, unless the appropriate operating permit had been applied for within 30 days of the Board

Order, and obtained within 120 days of that Order.) The Board trusts that this generous delay will prove more than sufficient time for Respondent Wilder to obtain the appropriate operating permit, and resolve whatever difficulty he has faced in his prior attempts to obtain the permit.

This Opinion constitutes the finding of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent Marvin Wilder, doing business as Crawford County Disposal, Inc., is found to have violated Section 21(e) of the Environmental Protection Act and Rule 202(b)(1) of the Board's Solid Waste Rules and Regulations by operating a solid waste management site in Crawford County without the appropriate operating permit from the Illinois Environmental Protection Agency, during the period of July 27, 1974, to November 27, 1974.

2. Respondent Marvin Wilder, d/b/a Crawford County Disposal, Inc., shall pay as a penalty \$750 for the violations cited. Payment shall be by certified check or money order within 30 days of the adoption of this Order, payment to be made to:

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

3. Respondent Marvin Wilder d/b/a/ Crawford County Disposal, Inc., shall cease and desist the above cited violations to include a discontinuance of all refuse disposal activities at the solid waste management site in question, unless an appropriate operating permit has been applied for within 30 days of the Board's adoption of this Order, and obtained within 180 days of the Board's adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 8th day of May, 1975 by a vote of 4 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board