

ILLINOIS POLLUTION CONTROL BOARD

February 27, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
v.) PCB 74-380
LEROY J. WAGNER,)
Respondent.)

Mr. Howard Thomas, attorney for Complainant.
Mr. Leroy J. Wagner, appeared pro se.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On October 25, 1974, the Environmental Protection Agency (Agency) filed a Complaint against Leroy J. Wagner charging that he operated a solid waste disposal site without an Operating Permit. The landfill is located on a 68-acre tract in Section 31, Township 1 North, Range 8 West, in St. Clair County, Illinois. The Complaint alleged that a violation of Rule 202 (b)(1) of the Solid Waste Regulations (Chapter Seven) and Section 21(e) of the Environmental Protection Act (Act) had occurred from July 27 until October 25, 1974.

A hearing was held on December 18, 1974, in the City Council Chambers of Belleville, Illinois. The evidence established that Mr. Wagner operated his site without an Operating Permit from July 27, 1974, through October 25, 1974 (R. 26, 49). On November 12, 1974, Mr. Wagner applied to the Agency for a permit (R. 49). At the time of the hearing, the Agency had not ruled on the application. The Respondent was aware of the July 27, 1974, compliance date in early September, 1973 (R. 66). He failed to take positive steps to satisfy the permit requirement until April, 1974, because he didn't realize that preparation of the permit application would take as long as it did (R. 69).

In mitigation, the evidence established that since approximately April 22, 1974, when Mr. Wagner retained a registered civil engineer, who was a licensed land surveyor, diligent and good faith efforts have been made to achieve compliance (R. 49, 52 to 54). The requisite tests had to be conducted. A delay in receiving boring data detained Mr. Wagner's application.

Mr. Wagner's application was postponed 10 days, because he believed (on the basis of information from an outdated Agency form) that newspaper publication of the application was necessary.

The Respondent has clearly violated the Act and Chapter Seven from July 27, 1974, to October 25, 1974, as alleged in the Complaint. A penalty is called for in this case, but a severe one would not be appropriate. First, while Respondent clearly had knowledge of the compliance date almost eleven months before it became due, delay was not based on any intention to violate the Act or Regulations. Second, although economic information was not presented, it is clear that Respondent has had to expend reasonable sums in a good faith, albeit belated, effort to achieve compliance. Finally, the Complaint did not allege any other violations. While letters submitted into evidence (EPA Ex. D, E, F, G, H, and I) refer to other possible violations of Chapter Seven, they were submitted to show Respondent's notice of the permit requirement rather than on the issue of harm to the environment.

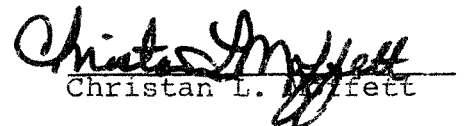
This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent cease and desist violating Rule 202(b)(1) of Chapter Seven and Section 21(e) of the Act within 120 days of the adoption of this Order.
2. Respondent pay a penalty of \$100.00 for its violations of the Act and regulations established in this Opinion. Payment shall be by certified check or money order payable to the State of Illinois, Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706. Payment shall be made within 35 days of the adoption of this Order.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 27th day of February, 1975, by a vote of 4 to 0.


Christan L. Moffett