

EL DORADO COUNTY GRAND JURY 2014-2015

PASSING THE SMELL TEST

Case GJ-14-06

A citizen complained that Wilkinson Portables moved to an industrially zoned area bordered by three residential homes, then immediately began “flooding the surrounding residential homes with the sickening odor of raw sewage and strong chemicals.” The complaint further stated that although the complainant had complained to various county agencies, all failed to take required corrective action.

BACKGROUND

Wilkinson Portables is a sanitation and septic system business located in Kingsville, near Placerville. It supplies portable toilets to customers with delivery, pickup and cleaning. Portable toilets are cleaned at its facility on Venture Road.

The County General Plan and Zoning Ordinance delineates zones where various types of businesses can be located. Sections 130.34.020 and 130.34.030 describe when a special use permit may, or may not, be required for businesses in an industrial zone. Those uses include producing or emitting odor, gas fumes, dust, smoke, noise and more beyond the confines of the owner’s premises to adjacent properties. Various County Departments inspect and approve business license applications for specific types of businesses to ensure compliance with these, and other, zone restrictions and special uses.

METHODOLOGY

The Grand Jury reviewed the El Dorado County Zoning Ordinance:

- Chapter 130.34 Industrial Districts.
- § 130.34.020 - Uses permitted by right
- § 130.34.030 - Uses requiring special use permit.

The Grand Jury interviewed county staff from:

- Planning Department
- Surveyor
- Environmental Management
- Treasurer Tax Collector
- Code Enforcement
- Air Quality Management District

DISCUSSION

The Grand Jury visited the Wilkinson Portables facility in an industrial district on Venture Road to determine if they were, or were not, in compliance with the El Dorado County industrial district Zoning Ordinance, specifically Sections 130.34.020 and 130.34.030 governing special use permits.

Section 130.34.020 addresses uses by right, or uses that are allowed without a special use permit. Section 130.34.030 addresses uses requiring a special use permit, or uses that are allowed only after obtaining a special use permit from the Planning Commission. Both Sections address odor. A special use permit is required if odor is emitted beyond the confines of the property owner's premises and is not required if it does not.

Members of the Grand Jury did not detect any odor being emitted beyond the confines of Wilkinson's property when they visited the site.

The Grand Jury verified that Wilkinson Portables, Inc. has held a business license since 1978 and that its license was most recently renewed in March, 2015. Wilkinson Portables, Inc. was located on Roxana Street in Placerville until it moved to its present location. A special use permit was not required of Wilkinson at its new location.

The Complainant seems to allege that the county was remiss in allowing Wilkinson Portables to move its operation to its present location without requiring a special use permit. As noted above, a special use permit is required if the business is emitting an obnoxious odor beyond the confines of its premises. The complainant is forceful in asserting that Wilkinson was emitting such an odor.

The Grand Jury found the complainant had made numerous contacts with several El Dorado County departments. The Grand Jury also found that county staff worked diligently with the complainant and the business to resolve this issue. Each department recorded every discussion with the complainant and made email inquiries with other departments in an effort to work with the complainant and resolve the issues reported. The emails reviewed by the Grand Jury were consistent with the testimony given by witnesses representing the various El Dorado County departments.

However, the county's process of handling this and similar situations is complaint driven. Without a complaint, an existing business that has not been required to have a special use permit is deemed to be in continued compliance with Section 130.34.020. If a complaint is received, the county investigates to determine whether changed circumstances require a special use permit pursuant to Section 130.34.030.

County staff described their approach to resolving this and similar complaints. They stated they endeavor to work with businesses, especially in industrial zones, to accomplish voluntary compliance rather than simply requiring involuntary special use permits.

This complaint was eventually handled by the El Dorado County Air Quality Management District (AQMD). An AQMD inspector made two visits to the complainant property without smelling any

odor. During a third visit on June 16, 2014 an odor was detected. It was described as having an intensity of 4 on a 1 to 10 scale and only lasting several seconds. Subsequently, AQMD issued a Notice to Comply On June 19, 2014 directing Wilkinson to "Conduct the cleaning of portable toilets in such a way that odor is not present at the property line or beyond." County staff made suggestions for Wilkinson to achieve compliance. On June 24, 2014, Wilkinson returned the Notice to Comply stating that odor emission had been corrected; they had installed air filtration devices on its cleaning equipment.

AQMD staff subsequently revisited the site several times without detecting any odor and reported that geography, wind patterns and the corrective action taken made odor emission unlikely. No further complaints have been received or reported from inspection by AQMD staff.

It should be noted that AQMD odor detection reported in this report was made with human noses, where the sensitivity and consistency can vary greatly among individuals. In this case, that was sufficient to determine a reliable result. AQMD is obtaining a field olfactometer, a portable odor detection and measurement device.

IRREGULARITIES

Several anomalies in the County Business License process surfaced during this investigation. They had no direct consequence to the result of this investigation and will not be included in this report. However, it is recommended that an investigation of Business License change of address procedures, and others, be initiated by the 2015-16 Grand Jury.

FINDINGS

1. County departments and agencies addressed this complaint properly with due diligence. Their efforts included field inspections, consulting with other departments and keeping detailed and accurate records with follow up.
2. The Air Quality Management District resolution was effective and reasonable.
3. Wilkinson Portables is licensed; its county business license is current.
4. Wilkinson Portables responded affirmatively to a Notice to Comply by stating it had eliminated odor leaving its property.
5. Wilkinson Portables is not currently emitting an odor beyond its premises and is therefore not required to have a special use permit.
6. The El Dorado County Zoning Ordinance imposes specific requirements for Special Use Permits.
7. Review of a business and its business practices can be initiated upon receipt of a complaint.

RECOMMENDATION TO THE 2015-16 GRAND JURY

Investigate business license procedures and practices, particularly business change of address and businesses without business licenses.

ATTACHMENTS

1. El Dorado County Zoning Ordinance sections 130.34.020 and 130.34.030.
2. El Dorado County Air Quality Management District *Notice to Comply* to Wilkinson Portables.
3. Wilkinson Portables reply to *Notice to Comply*.

RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

This Report has been provided to the El Dorado County Board of Supervisors.

The Presiding Judge of the El Dorado County Superior Court requests that responses be sent electronically as a *Word* or *PDF* file to facilitate economical and timely distribution. Please email responses to the El Dorado County Grand Jury at: courtadmin@eldoradocourt.org

Sec. 130.34.020. - Uses permitted by right.

The following uses are allowed by right without special use permit or variance:

- A. Any use except residential uses allowed by right or special use permit in C commercial district; provided, however, that all requirements provided in Sections 130.32.010 through 130.32.040 for the regulation of C commercial districts shall apply to any such commercial use in I industrial districts;
- B. Any industrial use other than automobile wrecking, junking or dismantling yards in which no odor, gas fumes, dust, smoke, noise, vibrations, glare, heat, electrical interference, radioactive or waste material is produced or emitted beyond the confines of the owner's premises to adjacent properties or into the air or watercourses, and which does not constitute a physical hazard to persons or property beyond the confines of the owner's premises by reason of fire, explosion or similar cause;
- C. Dwellings for the caretaker, watchman or persons primarily employed in the industrial use of the premises and their immediate family;
- D. Public utility distribution lines;
- E. Any structure or use incidental or accessory to any of the foregoing uses;
- F. Two signs not exceeding 50 square feet in total area of any one display surface, or one sign not exceeding 80 square feet in area advertising authorized activities on the premises.

(Prior Code, § 9414(a); Code 1997, § 17.34.020; Ord. No. 3419, § 16, 1984; Ord. No. 3606, § 46, 1986)

Sec. 130.34.030. - Uses requiring special use permit.

The following uses are allowed only after obtaining a special use permit therefor from the Planning Commission:

- A. Any use allowed by special use permit in A agricultural districts;
- B. Any industrial use in which odor, gas fumes, dust, smoke, noise, vibrations, glare, heat, electrical interference, radioactive or waste material is produced or emitted beyond the confines of the owner's premises to adjacent properties or into the air or watercourses or which constitutes a physical hazard to persons or property beyond the confines of the owner's premises by reason of fire, explosion or similar cause;
- C. Any industrial use which constitutes a physical hazard to persons or property beyond the confines of the owner's premises by reason of fire, explosion or similar cause;
- D. Automobile wrecking, junking or dismantling yards;
- E. Other sign sizes and applicable general provisions as itemized in Chapters 130.14, 130.16 and 130.18
- F. Airports, heliports and their accessory uses and structures.

(Prior Code, § 9414(b); Code 1997, § 17.34.030; Ord. No. 3606, § 47, 1986)

El Dorado County Air Quality Management District
330 Fair Lane
Placerville, CA 95667
aqmd@edcgov.us
Fax (530) 295-2774

7501
(530) 621-6662

NOTICE TO COMPLY

No. 3209

Name: Wilkinson Portables
Mailing Address: PO Box 700 Placerville CA 95667
Location: 3005 Venture Rd
Telephone: 530-622-6169

YOU ARE HEREBY NOTIFIED TO CORRECT THE FOLLOWING MINOR VIOLATIONS:

Description of violation & action to correct:

H&SC: 41700
District Rule: 205
Permit #:
Condition#:

RECEIVED

JUN 27 2014

AQMD

Odor from cleaning portable toilets is leaving the property and causing a nuisance.

Conduct the cleaning of portable toilets in such a way that odor is not present at the property line or beyond.

The above violation(s) must be corrected no later than:

7/21/2014

Recipient's name: Debbie Wessels
(Print) Last Name First Name

Title: Office Manager

Recipient's Signature: Debbie Wessels

(Signing only indicates receipt of this Notice and is not an admission of guilt.)

Issued by: Conduethomas

Date: 6/19/2014

THIS SECTION SHALL BE COMPLETED BY RECIPIENT:

Instructions: You are required to complete this section, sign below, and return the pink copy of this Notice to Comply within five (5) working days of achieving compliance. Also include a written statement describing when and how compliance was achieved. Failure to respond, failure to correct listed violations or a false statement that compliance has been achieved is a violation and may be subject to further legal action pursuant to the California Health and Safety Code, Section 42400 et seq.

Your facility may be subject to re-inspection at any time. If you disagree with one or more of the alleged violations cited in this Notice, you may submit written notice of appeal to the District within five working days of issuance of this Notice.

All deficiencies listed above were corrected as of: 6-24-14 (date)

I, the undersigned, hereby certify that the violation(s) identified above have been corrected on the date indicated.

Responsible Official: WILKINSON FRED
(Print) Last Name First Name

Title: DOWNER

Signature: [Signature]

Date: 6-24-14



Wilkinson Portables, Inc.

P.O. Box 706
Placerville, CA 95667
530-622-6169

To: El Dorado County Air Quality,

In regards to the notice to comply # 3239 for Wilkinson Portables, Inc. The odor is generated from vacuum trucks while removing the air out of waste tank to create a vacuum that air is discharged into atmosphere, so to help with the odor that this makes we have added a 55 gallon chamber on the vacuum tank which is partially filled with odor control scent to mask the vacuum tank smell. To my knowledge there is nothing on the market that addresses this situation, I have owned this company for 40 years, and it is nearly impossible to completely control the odor. We are trying our best to comply, but containing where the wind blows is something we cannot control, and there is no other way that I know of on how to contain the odor, let's not forget we keep this county clean from human waste without waste haulers there would be a health and safety problem, and my neighbors act as if we are criminals, but we are trying to address the problem to best of our ability.

Thank You

Sincerely
Fred Wilkinson
530-409-6494

RECEIVED

JUN 27 2014

AQMD