

ILLINOIS POLLUTION CONTROL BOARD

July 12, 1979

PEOPLE OF THE STATE OF ILLINOIS,)
and ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Complainants,)
 v.) PCB 77-162
))
WATTS TRUCKING SERVICE, INC.,)
an Iowa corporation,)
))
 Respondent.)

MS. JUDITH S. GOODIE, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANTS.

MR. MARVIN L. SCHRAGER, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon an amended complaint filed March 20, 1978 by the Environmental Protection Agency (Agency) against Respondent Watts Trucking Service, Inc., (Watts) an Iowa Corporation. The amended complaint alleges various violations of Sections 12 and 21 of the Environmental Protection Act (Act) and Board Rules, Chapter 7: Solid Waste, in connection with the operation of a permitted landfill near Andalusia in Rock Island County. A hearing was held in Rock Island on April 17, 1979, at which time the parties presented a stipulation and proposal for settlement. Members of the public appeared and objected to the terms of the settlement. The allegations of the amended complaint are summarized in the following table:

<u>Count</u>	<u>Section/Rule</u>	<u>Gravamen</u>
I	Section 12(d)	Failed to control leachate and other contaminants so as to create a water pollution hazard.
II	Section 21(b) Rule 302	Failed to comply with permit condition: deposited refuse above 740 foot level.
III	Section 21(b) Rule 304	Failed to supply sufficient equipment and/or supervision at the site to ensure compliance with permit, Act and Regulations.

IV	Section 21(b) Rule 305(a)	Failed to place a compacted layer of at least six inches of suitable cover material on all exposed refuse at the end of each day.
V	Section 21(b) Rule 305(b)	Failed to place a compacted layer of at least twelve inches of suitable cover where no additional refuse will be placed within sixty days.
VI	Section 21(b) Rule 305(c)	Failed to place a compacted layer of at least two feet of suitable cover not later than sixty days following the placement of refuse in the final lift.
VII	Section 21(b) Rule 306	Failed to collect all litter from the site by the end of each working day.
VIII	Section 21(b) Rule 308	Caused or allowed scavenging operations at a sanitary landfill site.
IX	Section 21(b) Rule 311	Caused or allowed open burning at a sanitary landfill site.
X	Section 21(b) Rule 313	Operated the site so as to allow the discharge of contaminants into the environment.
XI	Section 21(b) Rule 314(b)	Did not provide roads at the site which were adequate to allow orderly operations.
XII	Section 21(b) Rule 314(c)	Failed to provide fencing and gates or control access.
XIII	Section 21(b) Rule 314(e)	Failed to provide adequate measures to monitor and control leachate at the site.

In an earlier action, Watts was charged with substantially the same violations and was fined \$9000 in an Order entered September 25, 1975 (18 PCB 611). The penalty was assessed pursuant to a stipulation which included a plan to bring the site into compliance. The present stipulation is silent as to Watts' record of performance of this agreement. In a related action involving another landfill, EPA v. Joyce E. Frye and Watts Trucking Service, Inc., Watts agreed to a stipulated penalty of \$2000 (PCB 78-38, Order entered May 24, 1979).

The Watts site is located on a fifty-six acre tract within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 25, T. 17 N., R. 3 E., 4 PM, Rock Island County. There are several ravines and an intermittent creek which carry surface and spring water about one mile north to the Mississippi River. The site is largely surrounded by agricultural lands with private residences to the north (Stip. 2). Watts receives daily, under an Agency permit, 3000 to 3500 cubic yards of domestic, commercial, industrial and municipal wastes. Watts holds supplemental permits for liquids and sludges whose identities are not disclosed in the stipulation. The original permit included provisions for a cutoff trench and berm to control leachate migration (Stip. 3).

The stipulation provides that Respondent admits to having inadequate equipment on the site and failing to take adequate measures to control leachate. Count VI is "dismissed". Ten other counts are left in limbo (Stip. 8). Respondent promises to come into compliance as detailed below and to pay a \$3000 fine. There is provision for an additional penalty of \$1000 for each future violation of the settlement agreement, plus \$500 for each day the violation may continue (Stip. 8, 13). It is stipulated that leachate control measures will entail the expenditure of "upwards of \$300,000" (Stip. 13).

The stipulation provides that Watts is to submit an application for modification of its operating permit within thirty days of signing the agreement (Stip. 8). This is to include engineering plans and specifications for construction of berms and trenches on the south and north sides of the site to control the inflow of water and to control the leachate migration (Stip. 9). Plans for eventual closing of the site are to be included (Stip. 10). Watts is to immediately bring its operation into compliance (Stip. 13). Watts represents that it will hire a licensed engineer to assume fulltime responsibility for the overall management and operation of its landfills (Stip. 14).

Several citizens appeared at the hearing and five testified in opposition to the stipulation. All objected to the fact that the parties did not provide them with a copy of the stipulation prior to the hearing. The stipulation was read to the audience and a question and answer session was held limited to interpretation of the agreement (R. 10, 31). Considering the record as a whole, the Board is satisfied that the public has had an adequate opportunity to be heard.

Mr. Ed Wriedt presented a written statement, testimony and 8 x 10 black and white photographs (R. 48; Ex. 1, 2, 3). The photographs bear dates from March 10 through April 14, 1979. Many of them depict a large mound covered with a large amount of refuse. The material is being unloaded from the top rather than in the toe of the fill. Two taken April 12 show litter scattered away from the fill face. The statement concerns an incident on March 10, 1979 (R. 49; Ex. 1, 3). Mr. Wriedt observed a tanker dumping liquid waste onto the top of the fill. He watched for forty minutes, saw other garbage dumped and saw no effort to work or cover either the liquid or other waste. On April 2, Mr. Wriedt saw a truck dump after working hours. On April 2 and 3 he saw garbage dumped late in the afternoon with no attempt to cover (R. 50). Mr. Wriedt complained of unsupervised dumping and blowing litter. He wanted to know what chemicals were being dumped and wanted periodic analyses of his well water (R. 48).

Mr. William Boon objected to litter and refuse along the road and mud and hazards from the trucks (R. 56). He wanted access to inspection reports, borings and well monitoring data (R. 57). Mr. Joseph Verschoore also objected to the agreement (R. 58.) Mr. Jerry Martens testified that a leachate flow referred to in the stipulation had actually reached the Mississippi River (R. 61). It would be much cheaper for Watts to pay the fine than to comply with the rules (R. 60). Watts had rebulldozed the night before to be sure that it was in compliance on the date of the hearing (R. 61).

Mr. Joe Whitley testified and presented a large number of small, color photographs into evidence, along with a copy of what is apparently the stipulation from the previous enforcement case against Watts (R. 63, 71; Ex. 4, 5). He testified that Watts had been fined and agreed to come into compliance in the earlier case and that there had been no change in Watts' operation (R. 64). There was garbage on the site that had been uncovered since January (R. 65). Photographs show uncovered refuse and also litter on the witness's and a neighbor's property on the date of the hearing. He wanted his drinking water monitored on a regular basis (R. 66).

The agreement was signed by the parties on various dates from March 13 through 27, 1979. Portions of it were to become effective on signing (Stip. 13). Among other things, Watts was to cease dumping outside of stated operating hours or in the absence of authorized supervisory personnel, comply with litter rules and to operate in compliance. The testimony of the citizen witnesses indicates that these provisions may have been violated between the signing of the document and the date of the hearing. The testimony concerning these and other violations during pendency of this action as well as Watts' record of compliance with the earlier stipulation raise questions of good faith. However, the

stipulation provides for an expensive, detailed compliance plan which should protect the public if carried out. Rejection of the stipulation would at least delay execution of the compliance plan by several months. Although an increased penalty could result, this would still be trivial compared with the cost of compliance. It seems unlikely that the Board could order Watts to do more to come into compliance than it has undertaken in the stipulation. The Board therefore finds that, on the balance, the public interest is served by accepting the settlement under Procedural Rule 331.

Respondent is found in violation of the Act and Rules as alleged in Counts III and XIII relating to failure to supply sufficient equipment and supervision and failure to provide adequate measures to monitor and control leachate. The other eleven counts are dismissed without prejudice.

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. Respondent, Watts Trucking Service, Inc., is in violation of Section 21(b) of the Act and Rules 304 and 314(e) of Chapter 7: Solid Waste as alleged in Counts III and XIII of the amended complaint.
2. Counts I and II and IV through XII are dismissed.
3. Respondent shall comply with the terms of the stipulation and proposal for settlement which is incorporated herein by reference.
4. Within thirty days of the date of this Order, Respondent shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$3000 which is to be sent to:

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

Mr. Jacob D. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 12th day of July, 1979 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board