

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1972

ENVIRONMENTAL PROTECTION AGENCY)
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 V.) PCB 72-47
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 WILLIAM SMISTIC AND)
 RONALD HAYDEN)
)

William J. Scott, Illinois Attorney General, by John W. Leskera, Esq.,
Assistant Attorney General, for the Complainant
William L. Wimmer, III, Esq., for Respondent Smistic
Donald E. Weihl, Esq., for Respondent Hayden

OPINION OF THE BOARD (by Mr. Dumelle)

This complaint, filed February 8, 1972, charges William Smistic and Ronald Hayden (respondents) with numerous violations of statute and regulation in regard to the operation of a landfill for solid waste disposal. Hearing on the charges was held in East St. Louis, Illinois on April 7, 1972.

Count 1 of the complaint alleges that on the dates in question (dates within a period time from May 14, 1971 thru September 10, 1971) respondent Smistic was owner and respondent Hayden was operator of a certain landfill in or about the City of East St. Louis, Illinois, in St. Clair County. The Board finds that this allegation is clearly established by the testimony (R. 26, 28, 30, 54, 89, 127).

Count 2 alleges that the respondents have never registered the landfill with the Illinois Department of Public Health, in violation of Rule 1.01 of the Rules and Regulations for Refuse Disposal Sites and Facilities (hereinafter referred to as the "Rules"). There is no evidence in the record to establish non-registration. Therefore, the Board finds that no violation of Rule 1.01 has been proved.

Count 3 alleges that the respondents have conducted the refuse disposal operation in question since July 1, 1970, without at any time obtaining a permit therefor from the Illinois Environmental Protection Agency (hereinafter referred to as the "Agency"), in violation of Section 21(e) of the Illinois Environmental Protection Act (hereinafter referred to as the "Act").

Section 21(e) of the Act provides, in part, that "no person shall conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without

a permit granted by the Agency... ."

There is conflicting testimony on the question of whether the dumped refuse was generated by the operator's own activities. Mr. Smistic, the owner, testified that the only person who was allowed to dump at the site was Mr. Hayden, the operator, and that the only refuse which was dumped there was demolition material from Mr. Hayden's own demolition operations in St. Louis and East St. Louis (R. 127-131). However, Mr. Hart, the Illinois Environmental Protection Agency Sanitary Inspector, testified that he personally inspected the site on June 21, 1971, and, during a conversation with the gate attendant, learned that money was being collected from the truck drivers (R. 31, 32). The gate attendant also admitted to the inspector that he was taking in from 75 to 100 trucks per day (R. 32).

It seems highly unlikely that Mr. Hayden would be charging a fee to his own trucks. Therefore, the Board finds that refuse other than that from Mr. Hayden's own operations was also being dumped at the site, and therefore a permit was legally required. The evidence, however, established that no State permit for the landfill was ever issued until January 24, 1972 (R. 9, 28, 90, 121). The respondents' attitude concerning compliance with the permit requirement was made apparent during a conversation between Mr. Smistic and one of the State inspectors on June 14, 1971. The inspector testified (R. 28) that he told Smistic he needed a permit to fill the area and that Smistic replied, "I'm going to fill it, I'm going to contest it, and I'm going to fill it if I have to stand up by the gate with a machine gun to fill it." This attitude will not be tolerated.

The Board finds that the respondents were in violation of Section 21(e) of the Act from July 1, 1970 to January 24, 1972.

Count 4 alleges that the respondents caused or allowed open dumping of refuse at the landfill in violation of Section 21(b) of the Act and in violation of Rule 3.04 of the Rules on eleven specified dates. Open dumping is a broad violation that includes a number of specific violations alleged elsewhere in the instant complaint. In view of our findings on these more specific counts, we do not find it necessary to decide whether or not they also constitute open dumping.

Count 5 alleges that the respondents caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution, in violation of Section 12(a) of the Act, also on the same eleven specified dates as in Count 4 of the complaint. There is no evidence in the record to indicate that the landfill operations actually caused or tended to cause water pollution. No testing was ever done (R. 100). The only testimony on this issue was from Mr. Mensing, an Illinois Environmental Protection Agency Sanitary Inspector, who stated there could "possibly" be some surface and ground water pollution (R. 100). That testimony alone is insufficient to establish that the refuse "caused or tended to cause" water pollution.

Furthermore, the dumped materials themselves are not "discharged" within the meaning of Section 12(a) of the Act. They are "deposited" upon the land, and therefore the more appropriate section to cite in this case should have been Section 12(d) of the Act.

The Board does not find any violations of Section 12(a) of the Act.

Count 6 alleges that the respondents deposited refuse into standing water in violation of Rule 5.12(c) of the Rules, also on the same eleven specified dates as in Counts 4 and 5 of the complaint. The evidence indicates that the standing water at the site covered an area of two to three acres (R. 24, 85) and was three or four feet deep (R. 24). The Board finds that refuse was deposited into the standing water on five of the alleged dates, namely: May 14, 1971 (R. 23, 24), June 14, 1971 (R. 27), June 21, 1971 (R. 32), July 12, 1971 (R. 58), and July 22, 1971 (R. 87), in violation of Rule 5.12 (c) of the Rules.

As to the remaining six alleged dates, the evidence does show that there was refuse in the water on those dates but does not indicate that it was actually deposited therein on those dates.

Count 7 alleges that the respondents did not spread and compact refuse as it was admitted to the site, in violation of Rule 5.06 of the Rules, on eight specified dates. The Board finds that the respondents did not spread and compact the refuse on the fill face in the water on four of the alleged dates, namely: June 21, 1971, June 25, 1971, July 12, 1971; and July 20, 1971 (R. 72). The evidence, however, fails to establish that spreading and compacting was not done on the other dates alleged.

Count 8 alleges that the respondents did not provide proper cover, in violation of Rule 5.07 of the Rules, on the same eleven specified dates as in Counts 4, 5, and 6 of the complaint. Rule 5.07 provides, in part that "a compacted layer of at least six inches of material shall be used to cover all exposed refuse at the end of each working day;..."

The evidence does indicate that on all the alleged dates there was improper cover at the times the State inspectors were present. However, the only alleged dates for which there was evidence that the cover remained inadequate at the end of the working day were: May 14, 1971 (R. 25, 58), June 14, 1971 (R. 58), June 21, 1971 (R. 58), June 25, 1971 (R. 58), July 12, 1971 (R. 58), and July 20, 1971 (R. 58, 112).

In summary, the Board finds:

1. That respondents Smistic and Hayden were the owner and operator respectively of the subject landfill;
2. That the respondents conducted a refuse disposal operation without obtaining a State permit therefor from July 1, 1970 to

January 24, 1972, in violation of Section 21(e) of the Act;

3. That the respondents deposited refuse into standing water on five separate dates, in violation of Rule 5.12(c) of the Rules;
4. That the respondents did not spread and compact refuse on four separate dates, in violation of Rule 5.06 of the Rules;
5. That the respondents did not provide proper cover on six separate dates, in violation of Rule 5.07 of the Rules;
6. That the respondents have not violated Rule 1.01 (registration), and Section 12(a) of the Act (water pollution); and,
7. That the respondents are jointly and severally liable to pay to the State of Illinois, on or before June 15, 1972, the total sum of \$2,000.00 (Two Thousand Dollars) as a penalty for the aforementioned violations of the Act and Rules.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The respondents shall cease and desist from all the aforementioned violations of the Act and Rules.
2. Should the respondents cease operations at the site, they shall comply with Rule 5.07 (b) of the Rules as to final cover.
3. The respondents are jointly and severally ordered to pay to the State of Illinois, on or before June 15, 1972, the total sum of \$2,000.00 (Two Thousand Dollars) as a penalty for the aforementioned violations of the Act and Rules. Penalty payment by certified check or money order should be made payable to the State of Illinois shall be sent to the Fiscal Services Division, Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Ordered was adopted by the Board on the 21 day of May, 1972 by a 5-0 vote:


Christan L. Moffett, Clerk
Illinois Pollution Control Board