

ILLINOIS POLLUTION CONTROL BOARD
September 29, 1975

ENVIRONMENTAL PROTECTION AGENCY,)	
Complainant,)	
)	
v.	)	PCB 74-131
)	
WATTS TRUCKING SERVICE, INC.,)	
an Iowa corporation,)	
Respondent.)	

Mr. Stephen Z. Weiss, Assistant Attorney General, appeared for the Complainant;
Mssrs. Dan A. Ribble, and Marvin L. Schragar, Attorneys, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

The Complaint in this matter was filed by the Environmental Protection Agency (Agency) on April 4, 1974. The Complaint alleges that, in the operation of a solid waste management site near Andalusia, in Rock Island County, Illinois, Respondent Watts Trucking Service, Inc. (Watts) violated various provisions of the Environmental Protection Act (Act), the Rules and Regulations for Refuse Disposal Sites and Facilities of the Illinois Department of Public Health, (old Rules), and the Illinois Pollution Control Board (Board) Rules and Regulations governing solid waste, air pollution, and water pollution ("new Regulations", "Air Regulations", and "Water Regulations", respectively). An abbreviated tabulation of the alleged violations is as follows:

<u>COUNT</u>	<u>ALLEGED ACTIVITIES</u> (Summary of Dates)	<u>ALLEGED VIOLATION</u>				
		<u>Old Rules</u> ¹	<u>New Regs</u> ²	<u>Air Regs</u> ³	<u>Water Regs</u> ⁴	<u>Act</u> ⁵
I	Failure to have proper permits (Oct. 1, '71 to Dec. 12, 1972)	21(e)
II (¶6)	No fencing to prevent litter (Various dates, 7/1/70 - 7/27/73)	5.04	21(b)

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		<u>Old Rules</u> ¹	<u>New Regs</u> ²	<u>Air Regs</u> ³	<u>Water Regs</u> ⁴	<u>Act</u> ⁵
(¶7)	Failure to apply adequate daily cover (<u>id.</u>)	5.07(a)	21(b)
(¶8)	Inadequate fencing to control access (<u>id.</u>)	4.03(a)	...	...	...	21(b)
(¶9)	Accepting sewage liquids, hazardous substances, without approval. (<u>id.</u>)	5.08	...	...	...	21(b)
III(¶5)	Failure to properly use cells (Various dates, 7/27/73 - 4/4/74)	...	303(b)	...	...	21(b)
(¶7)	Failure to use 6" cover (<u>id.</u>)	...	305(a)	...	...	21(b)
(¶8)	Litter not in containers or working face of fill area. (<u>id.</u>)	...	306	...	...	21(b)
(¶9)	Vectors (<u>id.</u>)	...	314(f)	...	...	21(b)
(¶10)	Failure to apply intermediate cover (<u>id.</u>)	...	305(b)	...	...	21(b)
(¶11)	Inadequate fire protection.	...	314(d)	...	...	21(b)
(¶12)	Access control (fence) inadequate	...	314(c)	21(b)
(¶13)	Noncompliance with special conditions of Agency permit (<u>id.</u>)	...	302	21(b)

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		<u>Old Rules</u> ¹	<u>New Regs</u> ²	<u>Air Regs</u> ³	<u>Water Regs</u> ⁴	<u>Act</u> ⁵
IV	Odor, Emission of Air Pollution (Various dates, 2/17/72 - 4/4/74)	...	312	9 (a), 21 (b)
V (¶5)	Leachate discharges (Various dates, 7/27/73 - 4/4/74)	...	313	...	...	21 (b), 12 (a)
(¶6)	Iron effluent levels excessive (<u>id.</u>)	...	...	...	203 (f)	12 (a)
(¶7)	Creation of water pollution hazard (<u>id.</u>)	...	...	...	...	12 (d)
VI (¶6)	Open burning (2/23/73)	3.05	...	502	...	9 (c), 21 (b)
(¶7)	Open burning without permit (12/15/73, 1/5/74)	...	311	502	...	9 (c), 21 (b)

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1. Rules and Regulations for Refuse Disposal Sites and Facilities of the Illinois Department of Public Health, continued in effect by Sec. 49(c) of the Environmental Protection Act, until July 27, 1973.
 2. PCB Regs, Ch.7: Solid Waste (1972).
 3. PCB Regs, Ch. 2: Air Pollution.
 4. PCB Regs, Ch. 3: Water Pollution.
 5. Illinois Environmental Protection Act, Ill.Rev.Stat., Ch. 111-1/2, §1001 et. Seq. (1973).

At a hearing held in Rock Island on November 8, 1974, the parties entered a Stipulation into the record. The Stipulation contains no admission of violation by Respondent Watts, but instead sets out abbreviated versions of testimony which would have been offered by various witnesses, and includes a series of exhibits which were also entered into the record at hearing. The parties also made allowance for entering into the record three evidentiary depositions, with attendant exhibits submitted by both the Agency and Watts.

BACKGROUND

The following general background of the subject solid waste management site and its operator, Watts, is taken from the Stipulation.

1. Respondent, an Iowa corporation, has owned and operated a refuse collection and/or disposal business at the subject site since October 27, 1971.

2. The following is a summary of deposits accepted at the site by Respondent (Stip., p.3):

	Apr. 71- Dec. 71 inc.	Jan. 72- Dec. 72 inc.	Jan. 73- Dec. 73 inc.	Jan. 74- May 74 inc.
Commercial & Industrial Sludge (yds.)	49,315	135,777	257,712	97,864
Residential (yds.)	16,454	19,735	74,486	26,050
Filtered Sludge (yds.)	5,823	3,876	8,537	3,627
Industrial Oils and Sludge (gallons)	224,000	401,100	396,000	62,000

Respondent's landfill should be able to accept refuse at its present rate for approximately 40 more years.

3. In response to an inquiry made by Respondent prior to acquisition of the landfill on July 22, 1971, an Agency reply of August 25, 1971, stated that a permit would be required for the subject site. A permit application for Respondent site was first received on January 18, 1972; that application was denied for insufficient information on February 17, 1972. Following additional submissions of information by Respondent on June 19, 1972, and September 6, 1972, the Agency on

December 12, 1972, granted Respondent an operating permit for the facility in issue here. A supplemental permit, allowing Respondent to accept chemical waste and brines, was issued by the Agency on August 20, 1973. A further supplemental permit, dated August 27, 1973, allows Respondent to accept empty solvent cans and contaminated clay dust.

Over the past several years, apparently as the result of heavy capital equipment purchases, Respondent Watts' financial position, has, in some ways, significantly deteriorated (Complaint's Depo. Ex. 1, 2, 3, 5; Respondent's Depo. Ex. 1-5; Anderson Depo. p.40; see generally, Depositions of Golden and Miller). Watts presently has an inverse current ratio, that is to say, its current liabilities exceed its current assets. Agency Deposition Exhibit 5 shows a continual worsening of the ratio of current liabilities to current assets, with the ratio being 1:2.4, 1:3.0, and 1:3.9, for years ending January 31, 1973, 1974, and 1975 (est.). During the same period of time, the "productivity ratio", the ratio of net income after taxes to average total assets has declined from 10.3% to 3.1%. Similarly, stockholder's investment returns have declined from 24.3% to 11.3%. The Respondent company has notes payable to its bank exceeding \$500,000; those borrowings, which have been used to finance capital equipment purchases, take the form of 90-day notes, which the bank may renew or call at its option. (It should be noted that the bank has consistently chosen to renew these notes, rather than foreclose.)

VIOLATIONS

The Stipulation and Exhibits in this matter support findings of violation with regard to the majority of the allegations in the Complaint. Respondent does not contest the majority of the allegations made by the Agency. Respondent has instead concentrated on, (a) its efforts to achieve compliance, and (b) its inability to pay any civil penalty which the Board might levy in this instance.

We shall limit our discussion to those allegations contested by Respondent (Ex. 15) as contained in the Agency's Complaint.

1. Count VI of the Complaint alleges open burning on February 23, 1973, in violation of old Rule 3.05, Air Regulation 502, and Sections 9(c) and 21(b) of the Act. Also alleged is open burning on December 15, 1973, and January 5, 1974, in violation of new Regulation 311, Air Regulation 502, and the same Sections of the Act. Paragraphs 7b(2)(r) through 7b(2)(t) of the Stipulation, with Exhibits 7(K), 7(R), 7(S), 12(B), and 12(C), would, if uncontested, support a finding

of violation. In Exhibit 15, (Statement of James Watts), Respondent sets out purported explanations for two fires. Respondent states that one fire was set by the accidental placement of hot refuse into an existing cell, and that another was set by a muffler on a truck unloading at the site. Respondent also sets out immediate actions that were taken to control these fires. However, Respondent states only that these statements are made "particularly, regarding the fires mentioned in the Complaint." Respondent does not attempt to relate the causes for the fires, as detailed in Exhibit 15, to the specific dates shown in the Complaint, and in the stipulated testimony. Further, Respondent has wholly failed to address at least one date of alleged violation.

In this respect, the Agency has carried its burden and shown violation of the open burning Regulation by a preponderance of the evidence. Respondent's response, by way of explanation, is insufficient to overcome the facts shown by the Agency. (We must, however, note that in reaching this decision we did not rely on the Agency's statement that the site was sealed, by the Agency, on January 5, 1974; that action may tell us the Agency's opinion of matters at the Watts site, but is not competent evidence of violation. But we may rely on the Agency's statement, also in Paragraph 7b(2)(s) that there were on that date uncontrolled fires at the site.)

2. Paragraph 11 of Count III, alleges inadequate fire protection at the Watts site, in violation of new Regulation 314(d) and Section 21(b) of the Act. Again, if uncontested, Paragraphs 7b(2)(i), 7b(2)(r), and 7b(2)(t) of the Stipulation would support a finding of violation in this regard. Respondent, however, states that it has taken considerable measures to protect against fires on the site. These have included the purchase of a pumper truck with a 3500 gallon water capacity, and the outfitting of all landfill equipment and trucks with fire extinguishers; in addition, the Andalusia Fire Protection District has provided help at the site at several occasions.

The weight of the evidence favors a finding of violation. New Regulation 314(d) requires "adequate measures for fire protection as approved by the Agency". We find, based on the stipulated facts and exhibits that the fires which have taken place on the Watts site are due, at least in part, to the inadequacy of daily and intermediate cover on the Watts site. While daily and intermediate cover on these sites are the subjects of separate, specific regulations, we find that they are also an integral part of a "adequate" set of measures for fire protection on a solid waste management site. That

being our finding of fact, which will itself support a finding of violation in this regard, we need not address the question of whether the fire protection measures taken by Respondent were timely, which is itself unclear.

3. Respondent states that it has, on many different occasions, used portable fencing to control litter on the site. That fact, in conjunction with the policy of manual policing of the area, (which Respondent claims is allowed under the Regulations), is simply insufficient to overcome the bulk of stipulated facts and evidence indicating violation of old Rule 5.04, new Regulation 306, and Section 21(b) of the Act. While the record is replete with matters which would support a finding of violation in this regard, the reader is specifically directed to Exhibits 7(e), (f), (g), (h), (k), (o), (p), (q), (t), (u), and 10 and 11, which are photographs submitted by the Agency and citizen witnesses.

4. Respondent has also contested the Agency's allegation that the site was operated without a permit in violation of Section 21(e) of the Act. Again, the Stipulation and Exhibits would, if uncontested, support a finding of violation. (Stip. para. 7; Ex. 1-3,8). In this instance, Watts' defense consists of a boldly made statement that the company had oral permission from individuals within the Agency to operate without a permit. This simple allegation, however, is insufficient as a defense, and a finding of violation is mandated.

5. In Counts II and III the Agency has alleged inadequate fencing to control access on the Watts site, in violation of old Rule 4.03(a), new Regulation 314(c), and Section 21(b) of the Act. To support these allegations, the Agency has entered stipulated testimony to the effect that the site was "not completely fenced", and that "access to the site was not adequately controlled" (Stip. para. 7(b)(2)(c)). Neither Rule 4.03(a) nor new Regulation 314(c) requires that a site be completely fenced. Rule 4.03 requires that a site be "adequately" fenced, and the new Regulation requires fencing, gates, or other measures to control access. (emphasis added) Therefore, in light of the contrary testimony presented in Exhibit 15, to the extent that the site was inaccessible to vehicular traffic, and regarding the addition of a 30 foot high berm in areas without fencing, the Agency's presentation is inadequate to support a finding of violation. The Agency's statement that "access to the site was not adequately controlled" is conclusory, and cannot, alone, support a violation.

6. In paragraph 9 of Count II, the Agency alleged violations of old Rule 5.03 and Section 21(b) of the Act, claiming that Watts had accepted sewage liquids and hazardous substances without approval, as required in old Rule 5.08. The specific dates alleged for such violations were October 27, 1971, February 8, 1972, April 11, 1972, May 10, 1972, August 7, 1972, September 1, 1972, and November 17, 1972.

While the Agency has in fact shown that sewage liquids, etc., (Stip. para. 7b(2)(d), were disposed of at the site, the stipulated testimony fails to show that permission for such disposition of those materials on the site had not been obtained by Watts. Although Exhibit 8 does show that no such permission had been received on the October 27, 1971 date, that fact is lacking for the remainder of the dates for which violation is charged. While we doubt that Watts subsequently received such permission, we cannot find violations, based on the record before us, for the remaining dates. Violation, then, will be found only in this regard for October 27, 1971.

7. The remaining alleged violations have been proved up by the Stipulation and exhibits, and were not controverted by the Respondent:

a. Failure to apply adequate daily or intermediate cover, in violation of old Rule 5.07(a), a new Regulation 305(a), 305(b), and Section 21(b) of the Act, is shown both by Exhibits 7, 10 and 11 photographs and paragraph 7b and 7d of the Stipulation.

b. Failure to properly use cells for disposal on the site, in violation of new Regulation 303(b) and Section 21(b) of the Act, is shown in paragraph 7b(2)(e) of the Stipulation.

c. Inadequate vector control in violation of new Regulation 314(f) and Section 21(b) of the Act is shown by paragraph 7b(2)(g) of the Stipulation, and is not refuted in Exhibit 15.

d. Paragraph 7b(2)(j), the testimony of an Agency employee, shows violation of the special conditions in the Permits entered as Exhibits 1, 2, and 3, in violation of new Regulation 302 and Section 21(b) of the Act.

e. Odor and air pollution violations are shown by Stipulation paragraphs 7b(2)(k), 7d(1), 7d(2) and 7d(4), supporting findings of violation with regard to new Regulation 312 and Sections 9(a) and 21(b) of the Act.

f. Violations of Sections 12(a), 12(d) and 21(b) of the Act, and Water Regulation 203(f), relating to leachate and water pollution problems were proved by paragraphs 7b(2)(1), 7b(2)(c), 7b(2)(g), 7d(i) and 7d(3), and exhibits 4, 5(a)-5(j), 6(a)-6(c) and 9.

§33(c) CONSIDERATIONS

Turning to consideration of those factors mandated by §33(c) of the Act, we find that, except as noted above, all of the violations alleged by the Agency can be found here. Particularly in the stipulated citizen testimony (Stip. para. 7d), and in the remaining stipulated testimony and exhibits, it is plain that operation of Respondent's site has resulted in significant interference with both the citizens' enjoyment of life and property and the quality of the environment. Operation on the Watts site has resulted in significant emissions of odor, smoke from open burning, and leachate discharges. Further, operation of such a large site (see Table, supra) without the necessary permits and permissions, presents a serious challenge to the permit system which the Board has instituted to protect against just such interference. The Respondent's failure to observe substantive rules designed to protect citizens and the environment presents a clear danger to our regulatory system.

As noted in the Agency's opening argument, (March 19, 1975), there can be no question of the fact that the Watts operation does have social and economic value. But a portion of that value is predicated upon the sheer size of this site; that value must then be weighed against the damage which so large a site may result in, to both the rights of citizens and to the environment.

The suitability of the site here has never been an issue. As was pointed out by the Agency, a potentially suitable landfill site, if operated contrary to the Board's Rules and Regulations, remains unsuitable for such use.

As regards priority of location, we note that the Respondent became owner of the site in 1971. Since that time, regarding waste disposal on the site, (see Table, supra), Watts has significantly increased the level of activity on the site. Such a change in the magnitude of operations on the site is a factor which should be weighed in determining the effects of any violations found, and the effect of a landfill site's priority in location, in reaching our determination as to such violations. Here, Respondent's site priority in location cannot excuse the violations which we find.

The technical practicability and economic reasonableness of compliance with Board Regulations have not been questioned here. Respondent Watts has, as part of the Stipulation, submitted a comprehensive plan to achieve compliance on its site. As part of its agreement with the Agency, these actions, for the most part, have already been undertaken by Respondent. If carefully followed, the provisions of Paragraphs 6 and 9 of the Stipulation, and Respondent's commitments in Exhibits 14 and 15 should result in full compliance. It is our feeling, however, in finding a violation, that such compliance could have been achieved earlier, so that the violations found here need not have occurred.

In applying these same factors to the imposition of a penalty, we reach Respondent's major contention: it cannot presently afford to pay a penalty. Although the Agency has nominally requested a penalty of \$619,000, based on the number of violations, and the number of days those violations continued, the thrust of its argument, including testimony by an accountant, (Depo. Anderson), has been that a penalty of \$15,000 would be reasonable for the violations shown, and can be reasonably assessed against a company of Watts' size. Complainant's Exhibit 2, comprising Watts' financial statements for the period ending January 31, 1973, (unaudited), shows net assets exceeding \$600,000, and total income of approximately \$648,000. Net earnings for that year were shown as \$59,493.33, with retained earnings at the end of the year exceeding \$200,000. The July 31, 1974 unaudited balance sheet shows total assets of \$1,439,950, and total revenue for the six months ending July 31, 1974, of \$712,000 (Complainant's Dept. Ex. 3). Weighing these figures, along with the potential dangers which may arise from violations of the sort proved, at a landfill of this size, we agree that a penalty of \$15,000 is justified. While the Board sympathizes with Respondent's present cash-short financial condition, we do not feel that this would justify a failure to impose such a penalty.

In fact, were it not for Respondent's present cash strain, as well as Respondent's apparent (but unproven in the record) acquisition of some capital assets as part of a plan to achieve compliance with the solid waste Regulations, a higher penalty might be justified in this situation. The types and numbers of violations found, especially when seen next to the potentially damaging types of materials accepted at the landfill site, certainly justify a penalty of \$9,000. In reaching this decision, we have also measured Respondent's apparent good faith, seen in its commitment to achieve future compliance as expeditiously as possible. Respondent's

plan for diking to prevent leachate run-off, and the plans shown in Exhibit 14, will prevent future violations of the same nature.

In arriving at that penalty figure, we have examined each of the many violations found here, and determined the amount appropriate under our mandate in the Act. Specifically, the penalty is broken down as follows:

- a. Count I, (permit violations): \$ 500
- b. Counts II, III, (land pollution):

Certain of those violations are substantive, and have resulted in actual and potential harm to both the land and the public health. Those violations are as follows:

- 1. Count II, ¶7, (cover violations under the old Regulations and the Act): \$ 500
- 2. Count III, ¶5, (failure to properly use cells at the landfill site): \$ 500
- 3. Count III, ¶7, (inadequate daily cover, in violation of the newer Board Regulations, taking note of the problems caused by such failure to apply daily cover, and the potential problems therefrom): \$ 1,000
- 4. Count III, ¶9, (vectors): \$ 250
- 5. Count III, ¶10, (intermediate cover violations): \$ 250

For the remaining violations found under Counts II and III of the Complaint, largely housekeeping-type violations: \$ 1,000

- c. Counts IV, VI, (odor, air pollution violations): \$ 1,500
- d. Count V, (various water pollution, leachate discharge violations; we note that this site accepted hazardous materials, and that downstream users have been harmed, including farmers and livestock): \$ 3,500

TOTAL PENALTIES: \$ 9,000

This Opinion constitutes the findings 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 Watts Trucking Service, Inc., is found to have violated the following statutory and regulatory provisions:

a. Environmental Protection Act: Sections 9(a), 9(c), 12(a), 12(d), 21(b) and 21(e).

b. Rules and Regulations for Refuse Disposal Sites and Facilities of the Illinois Department of Public Health, continued in effect by Section 49(c) of the Environmental Protection Act until July 27, 1973: 5.07(a), 4.03(a), 5.08.

c. Pollution Control Board Rules and Regulations, Chapter 7: Solid Waste: Rules 302, 303(b), 305(a), 305(b), 306, 311, 312, 313, 314(d) and 314(f).

d. Pollution Control Board Rules and Regulations, Chapter 2: Air Pollution: Rule 502.

e. Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution: Rule 203(f).

The dates for the above violations are as shown in the Complaint in this matter, received April 4, 1974, except as shown in the accompanying Opinion.

2. For the violations found above, Respondent Watts Trucking Service, Inc., shall pay a penalty of \$9,000, payment to be made within 45 days of date of this Order by certified check or money order, to:

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

3. Respondent Watts Trucking Service shall comply with all provisions for present and future compliance as specified in Paragraphs 6 and 9 of the Stipulation submitted in this matter, and Exhibits 14 and 15 thereto. Except in so far as additional time may be provided therein to achieve compliance, as noted in paragraph 9 of the Stipulation, Respondent shall immediately cease and desist all such violations of the Environmental Protection Act and the Pollution Control Board Rules and Regulations as shown above.

4. The following charges are dismissed:

a. Alleged violation of Rules 4.03(a), on Feb. 17, 1972, Apr. 11, 1972, May 10, 1972, Aug. 7, 1972, Sept. 21, 1972, Nov. 17, 1972, Feb. 16, 1973, Feb. 23, 1973, Mar. 27, 1973, Mar. 30, 1973, May 18, 1973, and June 25, 1973, for failure to have adequate fencing; and 5.03, on Feb. 8, 1972, Apr. 11, 1973, May 10, 1972, Aug. 7, 1972, Sept. 1, 1972, and Nov. 17, 1972, for disposal of sewage liquids and hazardous wastes without proper written permission, of the old Rules and Regulations for Refuse Disposal Sites and Facilities of the Illinois Department of Public Health.

b. Alleged violations of Rule 314(c), on Aug. 9, 1973, Aug. 30, 1973, Aug. 31, 1973, Sept. 17, 1973, Oct. 4, 1973, Oct. 10, 1973, Oct. 29, 1973, Nov. 14, 1973, Nov. 17, 1973, Dec. 11, 1973, Dec. 15, 1973, Dec. 17, 1973, Jan. 2, 1974, Jan. 3, 1974, Jan. 5, 1974, Jan. 7, 1974, Jan. 8, 1974, Jan. 9, 1974, Jan. 10, 1974, Jan. 16, 1974, Mar. 19, 1974 and Mar. 20, 1974, for failure to control access to the site, of Chapter 7: Solid Waste of the Pollution Control Board Rules and Regulations.

c. Alleged violations of Section 21(b) of the Environmental Protection Act on the dates and for the reasons shown above in Order paragraphs 4a and 4b.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 29th day of September, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board