

ILLINOIS POLLUTION CONTROL BOARD  
January 16, 1973

ENVIRONMENTAL PROTECTION AGENCY )

v. )

#72-348

JAMES R. HUTTON and PAUL E. CRABTREE )

Thomas A. Cengel, Assistant Attorney General, on behalf of Environmental Protection Agency

John A. Mann on behalf of Respondent James R. Hutton

Opinion and Order of the Board (by Mr. Lawton):

Complaint was filed on August 22, 1972 charging Respondents Hutton and Crabtree, owners and operators of a landfill located about five miles North of Jacksonville, Illinois, with causing or allowing numerous violations of the Illinois Environmental Protection Act, hereinafter referred to as the "Act", Ill. Rev. Stat., Ch. 111½ (1971), and the Rules and Regulations for Refuse Disposal Sites and Facilities, hereinafter referred to as the "Rules", at the site on many separate occasions from January 15, 1971 through June 29, 1972. Public Hearing was held in Jacksonville on October 16, 1972.

At the outset, Respondent Crabtree, appearing pro se, admitted that he had been in partnership with Respondent Hutton when the site was acquired in January, 1971, but that he had sold out nine months later, on September 30, 1971 (R.11). His responsibility and liability for violations at the site, if any, would therefore extend through the date he terminated the partnership agreement.

The record developed at the hearing revealed that the site has been run in an extremely sloppy fashion, and that the owners and operators have bordered on negligence in their conduct of business at the landfill. Convincing, and relatively un rebutted evidence was introduced to support many of the allegations of violation contained in the complaint, and we specifically find the following violations did occur as charged:

- 1) Open Dumping of Garbage in violation of Section 21(a) of the Act, on March 4, 1971 (R.33-34) and May 28, 1971 (R.43-44);
- 2) Open Dumping of Refuse in violation of Section 21(b) of the Act and Rule 3.04 of the Rules, on March 4, 1971 (R.33-34); May 28, 1971 (R.43-44); August 24, 1971 (R. 53-54); September 29, 1971 (R. 78-79); October 15, 1971 (R. 79); October 18, 1971 (R. 83); October 20, 1971 (R. 89-90); October 26, 1971 (R.90-91); October 27, 1971 (R.91); December 9, 1971 (R.159-160); January 7, 1972 (R. 160); January 27, 1972 (R. 175); April 12, 1972 (R. 177); May 15, 1972 (R. 179); June 27, 1972 (R. 181); and June 29, 1972 (R. 182);

- 3) Open Burning in violation of Section 9 (c) of the Act and Rule 3.05 of the Rules, on January 15, 1971 (R.18); August 24, 1971 (R. 53-56); October 15, 1971 (R. 79-80); October 20, 1971 (R. 89); October 26, 1971 (R. 90); January 7, 1972 (R. 160-161) and January 27, 1972 (R. 175);
- 4) Failing to Prevent Blowing Litter in violation of Rule 5.04 of the Rules, on April 16, 1971 (R. 36); May 28, 1971 (R.44); August 24, 1971 (R. 53-54); September 29, 1971 (R. 78-79); October 18, 1971 (R. 83); October 20, 1971 (R. 89); October 26, 1971 (R. 90); December 9, 1971 (R. 160); January 7, 1972 (R. 161);
- 5) Failing to Properly Spread and Compact Refuse in violation of Rule 5.06 of the Rules, on May 28, 1971 (R. 44-45); August 24, 1971 (R. 53-54); September 29, 1971 (R. 78-79); October 15, 1971 (R. 80); October 18, 1971 (R. 83); October 20, 1971 (R. 89); October 26 and 27, 1971 (R. 90-91, EPA Ex. # 7, 7A through L); December 9, 1971 (R. 160); January 7, 1972 (R. 160-161); January 27, 1972 (R. 175); April 12, 1972 (R. 177); May 15, 1972 (R. 179); June 27, 1972 (R. 181) and June 29, 1972 (R. 182);
- 6) Failing to Provide Proper Daily Cover in violation of Rule 5.07 (a) of the Rules, on May 28, 1971 (R. 44-45); August 24, 1971 (R. 53-67); October 26, 1971 (R. 90); October 27, 1971 (R. 91); December 9, 1971 (R.160); January 27, 1972 (R. 175) and April 12, 1972 (R. 177);
- 7) Failing to Provide Proper Final Cover in violation of Rule 5.07 (b) of the Rules, on May 28, 1971 (R. 43); June 30, 1971 (R. 45-46); October 15, 1971 (R. 79-80); October 18, 1971 (R. 83); October 26 and 27, 1971 (R.90-91); April 12, 1972 (R. 177); May 15, 1972 (R.179); June 27, 1972 (R. 181) and June 29, 1972 (R. 182);
- 8) Deposition of Liquids or Hazardous Materials Without Written Approval from Agency in violation of Rule 5.08, on January 15, 1971 (R. 17, 25-26). A City Alderman, who identified himself as Chairman of Municipal Services, testified that he had ordered sludge from the Jacksonville Treatment Plant to be taken to the site and dumped there not knowing that to do so without authorization constituted a violation (R. 27-28). He added that since he had not been explicitly told not to do so, he assumed that no harm would be done (R. 134). Not only were his assumptions inaccurate and unsupported, but they also did not serve to excuse the owners and operators of the landfill site from responsibility for what was deposited there. They were in control of the facility and should have prevented the sludge from being dumped there until a permit to do so had been obtained.

In summary, the complaint charged some 87 separate violations of the Act and Rules and we have found that the evidence supports 67 of the charges. In addition, similar offenses were shown to have occurred on other dates not specified in the complaint. The overall picture painted by all of these violations is that of an extremely sloppily run operation. By and large, the evidence indicates that the majority of the items improperly dumped, inadequately spread, compacted or covered, consisted of combustibles, bricks, wires, concrete, lumber, trees, brush and demolition materials. Respondent Hutton stated that the site receives about 1,000 cubic yards per day (R. 196-197) and that it was not "feasible" or "possible" to spread and compact the materials as soon as they came into the site. He added that he simply could not handle both residential refuse and demolition materials adequately, so he normally just piled it up until he had enough time to get to it (R. 206).

While we applaud Respondent's apparent attitude to do whatever he can to comply with the rules and regulations governing this type of operation, we find it difficult to reconcile with his obvious failure to cope with a situation clearly of his own making: an inability to properly handle the volume of materials being sent to the site. Since Respondent has control of his operation, he must be the one responsible to regulate the flow of materials into the site, and when the volume simply becomes too great to properly handle according to law, it is Respondent's obligation to cease accepting more, or permitting more to be dumped there. This he has failed to do.

For the many violations we have found herein, we will require payment of a penalty in the amount of \$1,500, which amount might easily have been more but for the fact that testimony revealed that significant steps have already been taken to improve conditions at the site. We feel that this good faith attitude should not be unrecognized. We will also order Respondent to do all that he reasonably and practicably can do to see that the disgraceful conditions found to have been prevalent at the site in the past do not recur. As far as apportionment of the penalty between the two Respondents is concerned, we will hold Respondent Crabtree liable for only \$250.00 of the entire amount and Respondent Hutton for the remainder, approximating the proportion of time both were involved in the ownership and operation of the facility when the violations were occurring, and applying that proportion to the entire penalty.

#### ORDER

1. Respondent Hutton shall pay to the State of Illinois by January 23, 1973, the sum of \$1,250.00, and Respondent Crabtree shall pay to the State of Illinois by January 23, 1973, the sum of \$250.00, as penalties for the violations found in this proceeding. Payment shall be made by checks or money orders payable to the

State of Illinois, and shall be sent to Fiscal Services Division, Environmental Protection Agency, 2100 Churchill Road, Springfield, Illinois 62706.

2. Respondent Hutton shall forthwith cease and desist all violations of the Act and Rules at said landfill site and shall take all necessary steps to see that such violations as found herein do not recur in the future.

I, Christian Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 16th day of January, 1973, by a vote of 3 to 0.

Christian S. Moffett