

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 10-2
)	(IEPA No. 157-09-AC)
CITY OF SALEM, JOHN PRUDEN, JASON)	(Administrative Citation)
BRUCE, and LEE OWENS,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

On July 31, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation (AC) against the City of Salem, John Pruden, Jason Bruce, and Lee Owens (respondents). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' sanitary landfill located at 101 South Broadway, Marion County. The property is commonly known to the Agency as the "Salem Community Landfill #2" and is designated with Site Code No. 1218130007. For the reasons below, the Board dismisses the administrative citation.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2008)¹; 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on May 18, 2009, respondents violated Sections 21(o)(5) and 21(o)(12) of the Act (415 ILCS 5/21(o)(5), (12) (2008)) by conducting a sanitary landfill in a manner which resulted in uncovered refuse remaining from the previous operating day or at the conclusion of any operating day, and which resulted in failure to collect and contain litter by the end of each operating day. AC at 1. The Agency asks the Board to impose the statutory \$1,000 civil penalty on respondents.

Under Section 31.1(b) of the Act (415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b)), the Agency is required to issue and serve an administrative citation upon the party in violation within 60 days after the date of the observed violation. In this case, the Agency alleges that on May 18, 2009, the Agency conducted a site inspection at the Salem

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

Municipal Landfill #2. The Board notes that the inspection report indicates that the Agency conducted the inspection on June 18, 2009, rather than May 18, 2009 as asserted in the administrative citation. With respect to the contradicting dates, the date provided in the administrative citation, remittance form and the affidavit is May 18, 2009. Therefore the Board concludes that the date of the inspection was May 18, 2009 rather than June 18, 2009. The Agency served the administrative citation on respondents on July 29, 2009. Therefore the Agency failed to serve the administrative citation within 60 days after the date of the observed violation. The Board accordingly dismisses the administrative citation as to each respondent.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 5, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

JUL 31 2009

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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AC 10-2
(IEPA No.157-09-AC)

ORIGINAL

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2006).

FACTS

1. That the City of Salem is the permitted owner, John Pruden is the permitted operator, Lee Owens is the Chief Operator, and both John Pruden and Jason Bruce are the Certified Operators (collectively "Respondents") of a facility located at 101 South Broadway, Marion County, Illinois.

2. That said facility is a sanitary landfill, initially operating under Illinois Environmental Protection Agency Permit No. 1995-178-LFM, and most recently operating under Illinois Environmental Protection Agency Permit No. 2008-187. The facility is designated with Site Code No. 1218130007 and commonly known to the Illinois Environmental Protection Agency as Salem Community Landfill #2.

3. That Respondents have owned/operated said facility at all times pertinent hereto.

4. That on May 18, 2009, John S. Senjan of the Illinois Environmental Protection Agency's Collinsville Regional Office inspected the above-referenced facility. A copy of his inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on July 29, 2009, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 3020 0002 3214 3770.

VIOLATIONS

Based upon direct observations made by John S. Senjan during the course of his May 18, 2009 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondents have violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents conducted a sanitary landfill in a manner which resulted in uncovered refuse remaining from the previous operating day or at the conclusion of any operating day, a violation of Section 21(o)(5) of the Act, 415 ILCS 5/21 (o)(5) (2006).
- (2) That Respondents conducted a sanitary landfill in a manner which resulted in failure to collect and contain litter by the end of each operating day, a violation of Section 21(o)(12) of the Act, 415 ILCS 5/21 (o)(12) (2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), Respondents are subject to a civil penalty of Five Hundred Dollars (\$500.00) for each of the violations identified above, for a total of One Thousand Dollars (\$1,000.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than October 1, 2009, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect to contest this Administrative Citation by petitioning the Illinois Pollution

Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2006), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the One Thousand Dollar (\$1,000.00) statutory civil penalty for each violation.

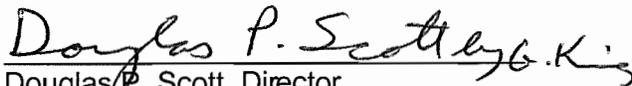
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondents shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondents from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2006). If Respondents elect to contest this Administrative Citation, then Respondents shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondents.


Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 7/29/09

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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JUL 31 2009

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
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(IEPA No.157-09-AC)

FACILITY: Salem/Salem Municipal Landfill 2
SITE CODE NO.: 1218130007
COUNTY: Marion
CIVIL PENALTY: \$1,000.00
DATE OF INSPECTION: May 18, 2009

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) is a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.