

ILLINOIS POLLUTION CONTROL BOARD
June 3, 2010

PERRY COUNTY SOLID WASTE)	
MANAGEMENT DEPARTMENT,)	
)	
Complainant,)	
)	
v.)	AC 10-17
)	(PCSWMD 2010-1001:1450105039)
PERRY RIDGE LANDFILL, INC.)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On February 18, 2010, the Perry County Solid Waste Management Department (Perry County) timely filed an administrative citation against the Perry Ridge Landfill, Inc. (respondent or Landfill). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's facility located at 6305 Sacred Heart Drive in DuQuoin, Perry County. The facility is a permitted sanitary landfill commonly known to Perry County and the Illinois Environmental Protection Agency (IEPA) as the Perry County Landfill and is designated with Site Code LPC No. 1450105039. For the reasons below, the Board accepts for hearing respondent's April 15, 2010 petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), 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 IEPA or, if the IEPA has delegated the authority, by a unit of local government such as Perry County, 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); 35 Ill. Adm. Code 108.

In this case, Perry County alleges that on January 14, 2010, the Landfill violated Sections 21(o)(5) and (o)(12) of the Act (415 ILCS 5/21(o)(5), (o)(12) (2008)) by conducting a sanitary landfill in a manner which resulted in (1) uncovered refuse remaining from the previous operating day or at the conclusion of any operating day; and (2) failure to collect and contain litter by the end of each operating day. Perry County asks the Board to impose the statutory civil penalty of \$500 for each violation on respondent.

As required, Perry County served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by March 19, 2010. On March 3, 2010, Michael Whitlock, the Landfill's Chief Operator, timely filed a petition for review on behalf of the Landfill. *See* 415 ILCS 5/31.1(d) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition denies that the Landfill committed the alleged violations. *See* 35 Ill. Adm. Code 108.206.

By order of April 1, 2010, the Board accepts the March 3, 2010 petition as timely filed. However, the Board noted that its procedural rules state that persons other than individual must appear and file pleadings through a licensed attorney. *See* 35 Ill. Adm. Code 101.400(a)(2). As a corporation, the Landfill must have an attorney file any petition for review on its behalf, and the March 3, 2010 petition does not identify Michael Whitlock as an attorney. To avoid dismissal of its attempted appeal, the Board directed the Landfill to have a licensed a licensed attorney file an amended petition on or before May 6, 2010. The Landfill filed an amended petition by and through an attorney on April 15, 2010.

The Board accepts the amended petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2008). By contesting the administrative citation, The Landfill may have to pay the hearing costs of the Board and Perry County. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

The Landfill may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If the Landfill chooses to withdraw its petition, the Landfill must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the Landfill withdraws its petition after the hearing starts, the Board will require [the Landfill to pay the hearing costs of the Board and Perry County. *See id.* at 108.500(c).

The Landfill has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2008); 35 Ill. Adm. Code 108.400. If the Board finds that the Landfill violated Sections 21(o)(5) and (o)(12) of the Act (415 ILCS 5/21(o)(5), (o)(12) (2008)), the Board will impose civil penalties on the Landfill. The civil penalty for violating any provision of subsection (o) of Section 21 is \$500 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(a). However, if the Board finds that "has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2008); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 3, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board