

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-31
)	(IEPA No. 71-08-AC)
UPPER ROCK ISLAND COUNTY)	(Administrative Citation)
LANDFILL, INC. and DAVE GEIER,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

In a September 4, 2008 order, the Board dismissed an administrative citation filed by the Illinois Environmental Protection Agency (Agency) on June 3, 2008 against Upper Rock Island County Landfill, Inc. and Dave Geier (respondents). The Board dismissed the administrative citation because as of September 4, 2008, the Agency had not filed proof with the Board that the Agency served the administrative citation on respondents. On October 14, 2008, the Agency filed a motion asking the Board to reconsider the September 4, 2008 order. Today the Board grants the Agency's motion to reconsider and, based on new evidence of service, vacates the September 4, 2008 order and enters a default order against respondents. Below, the Board provides background before turning to the issues.

BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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) (2006); 35 Ill. Adm. Code 108. The Act requires the Agency to serve the administrative citation on the respondent "within not more than 60 days after the date of the observed violation" and to file a copy of the administrative citation with the Board "no later than 10 days after the date of service." 415 ILCS 5/31.1(b), (c) (2006). The respondent has "35 days from the date of service" to file a petition with the Board to contest the administrative citation. 415 ILCS 5/31.1(d)(1) (2006).

In this case, the administrative citation filed on June 3, 2008, concerns a sanitary landfill facility located at 17201 20th Avenue, North, in Rock Island, Rock Island County. According to the citation, Upper Rock Island County Landfill, Inc. is the permitted owner and operator, and Dave Geier is the certified operator in responsible charge, of the sanitary landfill, which is

commonly known to the Agency as “Upper Rock Island County Landfill.” The site is designated with Site Code No. 1618100014 and is operating under Agency Permit No. 1995-008-LF.

The Agency alleges in the administrative citation that respondents violated Sections 21(o)(5) and (o)(12) of the (415 ILCS 5/21(o)(5), (o)(12) (2006)) on April 22, 2008, by conducting a sanitary landfill in a manner resulting in (1) uncovered refuse remaining from the previous operating day or at the conclusion of any operating day, and (2) the failure to collect and contain litter by the end of each operating day. The Agency seeks the statutory penalties of \$500 for each alleged violation, totaling \$1,000. *See* 415 ILCS 5/42(b)(4) (2006). The sixtieth day after April 22, 2008, was June 21, 2008, a Saturday. Accordingly, the deadline for Agency service of the administrative citation was the next business day, *i.e.*, June 23, 2008. *See* 35 Ill. Adm. Code 101.300(a).

On September 4, 2008, the Board dismissed the June 3, 2008 administrative citation because the Agency had failed to file proof of service of the administrative citation on respondents. Without proof of service, the Board was unable to determine whether it had jurisdiction over the case. *See* 415 ILCS 5/31.1(b), (c) (2006). As the Board noted, failure to serve the citation within the 60-day period deprives the Board of jurisdiction. Likewise, compliance with the Act’s 10-day filing requirement is also a jurisdictional prerequisite for the Board to hear or enter a default judgment on an administrative citation. *See* IEPA v. Upper Rock Island County Landfill, Inc. and Dave Geier, AC 08-31, slip op. at 1-2 (Sept. 4, 2008).

MOTION TO RECONSIDER

On October 14, 2008, the Agency filed a motion for reconsideration (Mot.) of the Board’s September 4, 2008 order. *See* 35 Ill. Adm. Code 101.520. Any response from respondents was due by October 28, 2008. *See* 35 Ill. Adm. Code 101.520(b). The Board received no response and respondents are therefore deemed to have waived any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

A motion to reconsider may be brought “to bring to the [Board’s] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board’s] previous application of existing law.” Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. In addition, a motion to reconsider may specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004). The Agency’s motion “requests that the Board reconsider its September 4, 2008 order based on the new evidence herein contained.” Mot. at 3. As described below, the new evidence concerns service of the administrative citation on respondents. The Board accordingly grants the motion to reconsider.

In the motion, the Agency states that on May 29, 2008, the Agency sent the administrative citation to respondents by certified mail, return receipt requested, as indicated in the certificate of service attached to the administrative citation filed with the Board. Mot. at 1. The certified mail numbers were 7004 2510 0001 8618 8210 and 7004 2510 0001 8618 8234.

Id. However, the Agency never received the green “return receipt” cards back from either respondent. *Id.* A review by the Agency of the “electronic information available via internet indicates that neither of these two Certified Mail numbers were recorded within the U.S. Postal Service system.” *Id.* at 1-2. The Agency asserts therefore that “[d]ue to the failure of documentation within the U.S. Postal Service,” there is “no traditional evidence regarding date of service.” *Id.* at 2.

Instead, the Agency asks that the Board rely on both (1) respondent Dave Geier’s recollection of having been served within the 60-day period, and (2) the fact that the Agency received payment in full of the civil penalty from respondents within the 60-day period. *Mot.* at 2. Specifically, during a telephone conversation between Dave Geier and Agency personnel, Geier indicated that he received the administrative citation on June 3, 2008. *Id.* The Agency sent the administrative citation to Geier at the operating address for Upper Rock Island County Landfill, Inc. *Id.* The Agency also states that it received payment of the \$1,000 civil penalty “from Respondents” on or about June 9, 2008. *Id.* The Agency’s attorney certifies that the statements made in the motion are true and correct. *Mot.*, Certification. The Agency asks that the Board issue a default order against respondents based on this new evidence. *Mot.* at 3.

The Board’s procedural rules call for administrative citations to be served “personally, by registered or certified mail, or by messenger service.” 35 Ill. Adm. Code 101.304(c). Further, “[p]roof of service of . . . administrative citations must be filed with the Board upon completion of service.” *Id.* For service by registered mail, certified mail, or messenger service, “service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt.” 35 Ill. Adm. Code 101.300(c).

The Agency initiated service by the requisite certified mail, return receipt requested, but was unable to provide signed and dated certified mail receipts. However, under the unique circumstances of this case, the Board finds that the Agency has provided adequate proof of service. The Board finds that respondents’ payment of the \$1,000 civil penalty is compelling evidence that respondents were served with the administrative citation. As stated above, based on the April 22, 2008 inspection date, the Agency was required to serve the administrative citation by June 23, 2008. On or about June 9, 2008, respondents paid the penalty. Further, the Agency’s June 3, 2008 filing of the administrative citation was no later than ten days after the date of service. The Board finds that the Agency timely served and filed the administrative citation. With the satisfaction of these jurisdictional prerequisites (415 ILCS 5/31(b), (c) (2006)), the Board will enter a default order against respondents. The Board therefore vacates its September 4, 2008 order based on the new evidence presented by the Agency.

DEFAULT

As discussed above, to contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due on or about July 8, 2008. Neither respondent has filed any petition with the Board. The administrative

citation is therefore “non-contested.” *See* 35 Ill. Adm. Code 108.406. Accordingly, the Board finds that respondents violated Sections 21(o)(5) and (o)(12) of the Act.

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)(2006); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(o), the total civil penalty is \$1,000. As discussed above, the Agency has already received payment of the \$1,000 civil penalty from respondents. The Act requires, however, that when a respondent fails to timely file a petition for review, the Board “shall adopt a final order, which . . . shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.” 415 ILCS 5/31.1(d)(1) (2006); *see also* 35 Ill. Adm. Code 108.406, 108.500(a). The Agency’s motion to reconsider similarly states that because the case is non-contested, the Board “should issue an order assessing penalties.” Mot. at 3.

Consistent with the Act and the Agency’s request, the order below imposes the \$1,000 civil penalty on respondents. Of course, as reflected in this order, respondents are not required to pay a civil penalty that has already been paid. *See County of Vermilion, Illinois v. Rex Greene*, AC 08-33, slip op. at 2 (July 21, 2008) (after representation that penalty had been paid, Board ordered respondent to pay the civil penalty “[u]nless the penalty has already been paid.”); *IEPA v. Harold Graves*, AC 06-23 (Sept. 6, 2007) (same); *IEPA v. Olen G. Parkhill*, AC 00-16 (Feb. 3, 2000) (same). Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

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

ORDER

1. The Board grants the Agency’s motion to reconsider and vacates the Board’s September 4, 2008 order.
2. The Board finds that respondents violated Sections 21(o)(5) and (o)(12) of the Environmental Protection Act (415 ILCS 5/21(o)(5), (o)(12) (2006)).
3. Unless the civil penalty has already been paid, respondents must pay a civil penalty of \$1,000 no later than January 5, 2009, which is the first business day following the 30th day after the date of this order.
 - a. Respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and each respondent’s social security number or federal employer identification number must be included on the certified check or money order.
 - b. Respondents must send the certified check or money order and the remittance form to:


Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 4, 2008, 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

JUN 03 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

UPPER ROCK ISLAND COUNTY
LANDFILL, INC. and DAVE GEIER,

Respondents.

) ORIGINAL

) AC 08-31
) (IEPA No. 71-08-AC)

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 Upper Rock Island County Landfill, Inc. is the permitted owner and operator, and Dave Geier is the certified operator in responsible charge (collectively "Respondents") of a facility located at 17201 20th Avenue, North, Rock Island, Rock Island County, Illinois.

2. That said facility is a sanitary landfill, operating under Illinois Environmental Protection Agency Permit No. 1995-008-LF, and is designated with Site Code No. 1618100014. The facility is commonly known to the Illinois Environmental Protection Agency as Upper Rock Island County Landfill.

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

4. That on April 22, 2008, Ronald E. Mehalic of the Illinois Environmental Protection Agency's Peoria 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.

VIOLATIONS

Based upon direct observations made by Ronald E. Mehalic during the course of his April 22, 2008 inspection of the above-referenced facility, the Illinois Environmental Protection Agency has determined that Respondents 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) of the Act, 415 ILCS 5/42(b)(4) (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 July 15, 2008, 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 statutory civil penalty.

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 a finding of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondents' 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 5/29/08

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

ORIGINAL

REMITTANCE FORM

RECEIVED
CLERK'S OFFICE

JUN 03 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Complainant,)

v.)

UPPER ROCK ISLAND COUNTY)
LANDFILL, INC. and DAVE GEIER,)

Respondents.)

AC 08-31
(IEPA No. 71-08-AC)

FACILITY: Upper Rock Island County LF

SITE CODE NO.: 1618100014

COUNTY: Rock Island

CIVIL PENALTY: \$1000.00

DATE OF INSPECTION: April 22, 2008

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) if 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.