

ILLINOIS POLLUTION CONTROL BOARD

November 5, 2009

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 06-159
	)	(Enforcement - Land)
GARY SIMMONS, individually, and	)	
LAWRENCE COUNTY DISPOSAL	)	
CENTRE, INC., an Illinois corporation,	)	
	)	
Respondents.	)	

PHILLIP McQUILLAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

GARY SIMMONS APPEARED *PRO SE*.

OPINION AND ORDER OF THE BOARD (by S.D. Lin):

The Board today issues its final opinion and order in this matter, assessing penalties and attorney fees for the violations found in the Board’s July 23, 2009 interim order.

On April 17, 2006, the People of the State of Illinois (People or complainant) filed a six-count complaint against Gary Simmons and Lawrence County Disposal Centre, Inc. (Disposal Centre) (collectively, respondents) for alleged violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2008))<sup>1</sup> and the Board’s non-hazardous waste landfill regulations for operation, closure and post-closure care at the Lawrence County Disposal Facility (Landfill, a/k/a “Dowty Landfill”), located near Sumner, Lawrence County, Illinois.

The Board’s July 23, 2009 an interim opinion and order in summarized the evidence in the record in this matter as submitted at the October 29, 2008 hearing. People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159 (July 23, 2009). In that interim opinion and order, the Board made findings that the respondents violated the Act, Board rules, and respondents’ permits as the People had alleged in the complaint. *Id.*, slip op. at 1, 6-10. The Board determined the remedy for the found violations, after considering and discussing the factors of Sections 33(c) and 42 (h) of the Act, 415 ILCS 5/33(c) and 42(h), the Board assessed penalties against respondents. *Id.*, slip op. at 11-16.

---

<sup>1</sup> The pleadings in this case refer to both the 2004 and 2006 versions of the Illinois Compiled Statutes. As there is no difference in the relevant sections from the 2004 to the 2006 and to the 2008 compilation, the Board will consistently reference the 2008 edition.

The Board assessed civil penalties of \$1,000 against Gary Simmons individually and \$10,000 against Lawrence County Disposal Centre, Inc., to penalize the respondents for committing ongoing violations at the landfill, failing to exercise due diligence in curing the problems, and causing the Illinois Environmental Protection Agency (IEPA) to take necessary actions to remediate the site. People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159, slip op at 17-18 (July 23, 2009). The Board stated that it would also assess the time use value of \$118,421.90 against the Disposal Centre to recoup the economic benefit earned through non-compliance, following receipt of the People's calculations on this issue. *Id.*

The Board also found that awarding of attorney fees is appropriate, finding that respondents violations are "willful, knowing or repeated" within the meaning of Section 42(f) of the Act. 415 ILCS 5/42(f) (2008). People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159, slip op at 17-18 (July 23, 2009). The Board stated that it would issue a final opinion and order following Board consideration of any additional information filed on or before August 27, 2009 by complainant, and any responses filed by respondents within 21 days of service of the information. People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159, slip op at 17-18 (July 23, 2009).

The People timely filed supplemental information, to which the respondents have made no response. The Board accordingly issues its final determinations. For the reasons set forth below, the total penalty assessed against the Disposal Center is \$42,164 and against Simmons is \$4,573. The Board further orders the respondents to jointly and severally pay \$1,540 in attorney fees to the People.

### **SUMMARY OF VIOLATIONS**

The Board found that the respondents committed all violations as alleged in the complaint. Some violations began as early as 1999 and some continued through 2007. People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159, slip op. at 1, 6-10 (July 23, 2009). In that interim opinion and order, the Board made findings that the respondents violated the Act, Board rules, and respondents' permits as the People had alleged in the complaint. A short summary of the found violations follows:

Count I of the complaint alleges, and the Board found, various post-closure care violations, and that the respondents violated Sections 22.17(a) and (b) of the Act, (415 ILCS 5/22.17(a) and (b) (2008)) and Section 811.312(c) of the Board's landfill regulations (35 Ill. Adm. Code 811.312(c)).

Count II alleges of the complaint alleges, and the Board found, various site security and maintenance violations that the respondents violated Sections 811.109(a) and (b) of the Board's landfill regulations (35 Ill. Adm. Code 811.109(a) and (b)), and Sections 811.111(c)(1)(A), (c)(2), and (c)(5) of the Board's landfill regulations (35 Ill. Adm. Code 811.111(c)(1)(A), (c)(2), and (c)(5)).

Count III alleges, and the Board found, that the respondents violated Section 21(d)(1) of the Act (415 ILCS 5/21 (d)(1) (2008)) by violating a dozen various provisions of the Dowty Landfill's permit.

Count IV alleges, and the Board found, various groundwater monitoring violations, and that the respondents violated Section 21(d)(1) of the Act (415 ILCS 5/21 (d)(1) (2008)), Section 811.320(d)(1) of the Board's landfill regulations (35 Ill. Adm. Code 811.320(d)(1)), Section 813.502(a) of the Board's landfill regulations (35 Ill. Adm. Code 813.502(a)), Section 22.17(a) of the Act (415 ILCS 5/22.17(a) (2008)), and Section 21(d)(1) of the Act (415 ILCS 5/21 (d)(1) (2008)).

Count V alleges, and the Board found, various landfill gas monitoring violations, that the respondents violated Section 21(d)(2) of the Act (415 ILCS 5/21 (d)(2) (2008)), Section 811.312(c) of the Board's landfill regulations (35 Ill. Adm. Code 811.312(c)), Section 811.310(c) of the Board's landfill regulations (35 Ill. Adm. Code 811.310(c)), Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)), and Section 22.17(a) of the Act (415 ILCS 5/22.17(a) (2008)).

Count VI alleges, and the Board found, air pollution violation through releases of landfill gas, and that the respondents violated Section 811.312(c) of the Board's landfill regulations (35 Ill. Adm. Code 811.312(c)), Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)), and Section 9(a) of the Act (415 ILCS 5/9(a) (2008)).

## **ATTORNEY FEES**

### **Legal Standard**

Section 42(f) of the Act provides:

Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a willful, knowing or repeated violation of the Act. 415 ILCS 5/42(f) (2008).

Under the language of Section 42(f) (415 ILCS 5/42(f) (2006)) and long-standing court precedent (Kaiser v. MEPC American Properties, Inc., 164 Ill. App. 3d 978, 983, 518 N.E.2d 424, 427 (1st Dist. 1987), citing Fiorito v. Jones, 72 Ill. 2d 73, 377 N.E.2d 1019 (1978); Leader v. Cullerton, 62 Ill. 2d 483, 343 N.E.2d 897 (1976); In re Estate of Healy, 137 Ill. App. 3d 406, 484 N.E.2d 890 (2nd Dist. 1985)), only "reasonable" fees are allowed. "The trial court will award only those fees that are reasonable, consisting of reasonable charges for reasonable services." Mountbatten Surety Co., Inc. v. Szabo Contracting, Inc., 349 Ill. App. 3d 857, 873, 812 N.E.2d 90, 104 (2nd Dist. 2004), citing Kaiser, 164 Ill. App. 3d at 983. Determining the reasonableness of the requested fees is "left to the sound discretion of the trial court." Kaiser,

164 Ill. App. 3d at 983, 518 N.E.2d at 427, citing Fiorito; Leader; and Board of Education v. County of Lake, 156 Ill. App. 3d 1064, 509 N.E.2d 1088 (2nd Dist. 1987); *see also* Mountbatten Surety, 349 Ill. App. 3d at 873, 812 N.E.2d at 104; Pietrzyk v. Oak Lawn Pavilion, Inc., 329 Ill. App. 3d 1043, 1046, 769 N.E.2d 134, 137 (1st Dist. 2002).

The courts lack the power, however, to simply award costs and attorney fees on equitable grounds. *See* Vicencio v. Lincoln-Way Builders, Inc., 204 Ill. 2d 295, 300, 789 N.E.2d 290, 293-94 (2003); City of Springfield v. Beck, 34 Ill. App. 3d 784, 785, 340 N.E.2d 350, 351 (4th Dist. 1976). Rather, the prevailing party must come within the terms of the fee-shifting statutory provision, which must be narrowly construed, as statutes allowing such recovery are in derogation of the common law. *See* Vicencio, 204 Ill. 2d at 300, 789 N.E.2d at 293-94; *see also* Carson Pirie Scott & Co. v. Illinois Dept. of Employment Security, 131 Ill. 2d 23, 49, 544 N.E.2d 772, 784 (1989) (“[S]ince the common law prohibits a prevailing party from recovering attorney fees, statutes which allow for such awards must be strictly construed.”); Gonzales-Blanco v. Clayton, 120 Ill. App. 3d 848, 850, 458 N.E.2d 1156, 1158 (1st Dist. 1983) (same regarding attorney fees and costs); Helland v. Helland, 214 Ill. App. 3d 275, 277, 573 N.E. 2d 357, 359 (2nd Dist 1991) (“[c]ontractual provisions for attorney fees must be strictly construed”); Negro Nest, LLC v. Mid-Northern Management, Inc., 362 Ill. App. 3d 640, 651, 839 N.E. 2d 1083, 1092 (4th Dist. 2005) (“Illinois law requires strict construction” of “statutory and contractual cost and fee-shifting provisions”).

The party seeking the fees:

always bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness. Kaiser, 164 Ill. App. 3d at 983, 518 N.E.2d at 427, citing Fiorito; Heckmann v. Hospital Service Corp., 104 Ill. App. 3d 728, 432 N.E.2d 891 (1st Dist. 1982); Ealy v. Peddy, 138 Ill. App. 3d 397, 485 N.E.2d 1182 (5th Dist. 1985); *see also* Weidner v. Szostek, 245 Ill. App. 3d 487, 493, 614 N.E.2d 879, 883 (2nd Dist. 1993), citing Kaiser, 164 Ill. App. 3d at 983; Fitzwilliam v. 1220 Iroquois Venture, 233 Ill. App. 3d 221, 235, 598 N.E.2d 1003, 1012 (2nd Dist. 1992), citing Kaiser, 164 Ill. App. 3d at 983.

The reasonableness of fees “cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees.” Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 427, 8.

### **The People’s Affidavit Claiming Attorney Fees**

On August 27, 2009, the People timely mailed an affidavit of attorney fees (Affid. Fees) requesting \$1,540.00 for 10 hours of work at a billing rate of \$140.00. The Board received and docketed the timely filing on August 31, 2009. *See* the Board’s “mailbox rule” at 35 Ill. Adm. Code 101.300(b)(2). Any timely response was due to be filed on or before September 21, 2009. Respondents have made no response. *See* 35 Ill. Adm. Code 101.500(d).

In the affidavit (Affid. Fees, p.1, para.3), the Assistant Attorney General McQuillan detailed the work for which fees are claimed as follows:

Date Description of Work Hours at \$140.00/hr. Amount

02/08/06	Draft Complaint	3.5 hrs.	\$490.00
08/03/07	Deposition of Mr. Simmons	1.0 hr.	\$140.00
10/29/08	Hearing	2.0 hrs.	\$280.00
12/04/08	Begin Complainant's Brief	2.0 hrs.	\$280.00
12/09/08	Complete Complainant's Brief	<u>2.5 hrs.</u>	<u>\$350.00</u>
		11	Total \$1,540.00

Mr. McQuillan further attested that "the work performed was necessary and reasonable." Affid. Fees, p.1, para.4.

**Board Analysis and Ruling**

As detailed in the Board's interim opinion and order, People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159, slip op. at 1, 6-10, (July 23, 2009), the People prevailed on all counts of a six-count complaint involving multi-year violations of the Act and Board rules. The proven violations involve requirements for post closure care, site security and maintenance, and groundwater and gas monitoring violations. Respondents also violated various permit conditions imposing recordkeeping, reporting, and operational requirements. Finally, the respondents also committed air pollution through failure to correctly manage landfill case.

In its interim opinion and order, the Board also found that awarding of attorney fees is appropriate, finding that respondents violations are "willful, knowing or repeated" within the meaning of Section 42(f) of the Act. People of the State of Illinois v. Gary Simmons and Lawrence County Disposal Centre, Inc., PCB 06-159, slip op. at 17-18 (July 23, 2009). The questions remaining for disposition then are whether the work performed, and the hourly rate requested, was necessary and reasonable.

In a relatively and extensive recent opinion and order in an enforcement case requiring respondents to pay the People \$30,225 in attorney fees, the Board found that some of the requested attorney fees were reasonable and that some were not. People of the State of Illinois v. Skokie Valley Asphalt, Inc., Edwin L. Frederick, Jr., and Richard J. Frederick, PCB 96-98 (November 7, 2008). The Board stated that:

In determining the reasonableness of the requested fees, the Board may consider a number of factors: such as the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428, citing Ashby], and whether there is a reasonable connection between the fees and the amount involved in the litigation [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428, citing Estate of Healy; In re Marriage of

Ransom]. *See also First Midwest Bank*, 289 Ill. App. 3d at 263, 682 N.E.2d at 381, citing Kaiser, 164 Ill. App. 3d at 984.

The Board again remarks that, by failing to file any response to the People's motion, the respondents have waived objection to the reasonableness of the requested fees. *See* 35 Ill. Adm. Code 101.500(d).

Based on the Board's experience in attorney fee cases, as well as respondents' waiver of objection the Board finds that the modest 11 hours claimed for the tasks performed is reasonable. As to the hourly rate, the Board finds that the \$140.00 figure requested is also reasonable, noting that the Board has granted fee requests from the People as low as \$120.00, and as high as \$150.00. *See Skokie Valley*, slip op. at 25-26 (\$150.00 hourly fee), citing, *inter alia*, *People of the State of Illinois v. Panhandle Eastern Pipe Line Company*, PCB 99-191, slip op. at 35 (and cases cited therein) (Nov. 15, 2001) (\$120.00 hourly fee) and *People v. J & F Hauling, Inc.*, PCB 02-21, slip op. at 2 (May 1, 2003), (\$150.00 hourly fee).

The Board accordingly assesses attorney fees in the amount of \$1,540, finding respondents jointly and severally liable for their payment.

### **TIME USE VALUE OF \$118, 421.90**

#### **The People's Calculations**

Contemporaneously with the filing of the attorney fees affidavit docketed August 31, 2007, the complainant moved for an extension of time to file calculations on the time use value of \$118,421.90. Noting that respondents had made no responses to the motion, by order of September 15, 2009 the hearing officer granted the requested extension until September 26, 2009.

On September 25, 2009, the People timely mailed a supplement to its brief (Supp. Br.) concerning the time use value of \$118,421.90. The Board received and docketed the timely filing on September 29, 2009. *See* the Board's "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2). Any timely response was due to be filed on or before October 21, 2009. Respondents have made no response. The Board again remarks that, by failing to file any response to the People's motion, the respondents have waived objection to the reasonableness of the requested fees. *See* 35 Ill. Adm. Code 101.500(d).

In its most recent filing, the People state that they had originally argued that respondents saved approximately \$118,421.90 which represents the costs for closure of the Dowty Landfill that IEPA incurred and paid out of the financial assurance bond proceeds (paid for by respondents, but collected from the surety by the IEPA). Supp. Br. at 2. Complainant argued that respondents' savings amount to the time uses value of the money over an approximate six year time period, and that the interest value of this money should be assessed against respondents as a penalty. The People originally suggested that the interest should be computed by using the

maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003. *Id.* The complainant now states that:

Upon further reflection Complainant believes that the time use value of the money saved is more analogous to pre-judgment interest. The Interest Act, 815 ILCS 205/0.01 *et seq.* [2008] (Interest Act), at Section 2 states:

Creditors shall be allowed to receive at the rate of five (5) per centum per annum for all monies after they become due on any bond, bill, promissory note, or other instrument of writing; on money lent or advanced for the use of another; on money due on the settlement of account from the day of liquidating accounts between the parties and ascertaining the balance; on money received to the use of another and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment. In the absence of an agreement between the creditor and debtor governing interest charges, upon 30 day's written notice to the debtor, an assignee or agent of the creditor may charge and collect interest as provided in this Section on behalf of a creditor. Supp. Br. at 2.

The People argue that Section 42(h)(3) of the Act, 415 ILCS 5/42(h)(3), provides a statutory basis for assessing the time use value of money not expended for required maintenance work at the closed Dowty Landfill.<sup>2</sup> The People believe that the most objective measure of the time use value of the \$118,421.90 not expended is simple interest. Supp. Br. at 2-3. Supp. Br. at 3. The People urge that, because there was a closure permit and because respondents received numerous written inspection reports and letters constituting notices of violations, respondents' failure to perform the maintenance work was "unreasonable and vexatious" within the meaning of the Interest Act, noting that there is wide latitude in classifying what constitutes "unreasonable and vexatious" delay. *Id.*; see Marcheschi v. Illinois Farmers Insurance Company, 298 Ill.App.3d 306, 698 N.E.2d 683 (1998).

The People calculated interest, stating as follows:

On February 27, 2001, Bob Gher, Ambraw Valley Solid Waste Management Agency, sent a Violation Notice, L-2001-LWOOI, to Respondents. Interest computations should begin 30 days thereafter. By allowing seven days for delivery of the notice, interest should begin 30 days thereafter on April 7, 2001, and should continue until to March 20, 2007. (Environmental Restoration, LLC prepared an invoice with a 30 day net payment term which ended on April 20, 2007.) Supp. Br. at 3.

The calculations follow. Calculation expressions were modified from those contained in the People's brief (Supp. Br. at 3-4), but there is no change in numerical values from those reached by the People:

---

<sup>2</sup> The People acknowledge that, prejudgment interest could not be awarded at common law, and can only be awarded if there is a statutory basis for such award. Supp. Br. at 3, citing Wilson v. Cherry, 244 Ill.App.3d 632, 612 N.E. 2d 953(1993).

Interest from April 7, 2001 to December 31, 2001

Step 1: Daily interest--Step I:  $\$118,421.90 \times 0.05 = \$5,921.10$  per annum;  
 $\$5,921.10$  divided by 365 days=  $\$16.22$  per day.

Step 2: April 7 to 30, 2001-- 23 times $\$16.22$	= $\$373.06$	
May 1 to 31, 2001-- 31 times $\$16.22$	= $\$502.82$	
June 1 to 30, 2001-- 30 times $\$16.22$	= $\$486.60$	
July 1 to 31, 2001--31 times $\$16.22$	= $\$502.82$	
August 1 to 31, 2001--31 times $\$16.22$	= $\$502.82$	
Sept 1 to 30, 2001-- 30 times $\$16.22$	= $\$486.60$	
Oct 1 to 31, 2001-- 31 times $\$16.22$	= $\$502.82$	
Nov 1 to 30, 2001--30 times $\$16.22$	= $\$486.60$	
Dec 1 to 31, 2001-- 31 times $\$16.22$	= $\$502.82$	
Total interest for 2001		= $\$4,346.96$

Interest for 2002= $\$118,421.90 \times 0.05$	= $\$5,921.10$
Interest for 2003= $\$118,421.90 \times 0.05$	= $\$5,921.10$
Interest for 2004= $\$118,421.90 \times 0.05$	= $\$5,921.10$
Interest for 2005= $\$118,421.90 \times 0.05$	= $\$5,921.10$
Interest for 2006= $\$118,421.90 \times 0.05$	= $\$5,921.10$

Interest for 2007	
Jan 1 to 31, 2007--31 times $\$16.22$	= $\$502.82$
Feb 1 to 28, 2007--28 times $\$16.22$	= $\$454.16$
Mar 1 to 31, 2007--31 times $\$16.22$	= $\$502.82$
April 1 to 20, 2007--20 times $\$16.22$	= $\$324.40$
Total interest for 2007	= $\$1,784.20$

**Total interest April 7, 2001 to April 20, 2007** = **$\$35,736.66$**

The People conclude that

Respondents owe the sum of  $\$35,736.66$  for the time use value on  $\$118,421.90$  for Respondents' unreasonable and vexatious delay in performing maintenance work at Respondents' closed sanitary landfill. Claimant requests that ten percent of this sum be assessed against Respondent Gary Simmons and ninety percent of this sum be assessed against Respondent Lawrence County Disposal Centre, Inc. Supp. Br. at 5.

### **Board Analysis and Ruling**

The Board has no reason to dispute the People's reasoning or calculations, and respondents have waived any right to do so. See 35 Ill. Adm. Code 101.500(d).



While the Board notes that complainant had originally suggested that the entirety of the time use value of \$118,421.90 should be assessed against the corporate respondent alone, the Board will accede to the People's most recent request. Rounding \$35,736.66 to the nearest dollar (\$35,737), the Board assesses \$3,573 (10%) against Simmons, and \$32,164 against the Disposal Centre.

The total penalty assessed against the Disposal Center is accordingly \$42,164 and against Simmons is \$4,573.

Finally, the Board further orders the respondents to jointly and severally pay \$1,540 in attorney fees to the People.

### **CONCLUSION**

The Board finds that Gary Simmons and Lawrence County Disposal Centre, Inc. violated numerous provisions of the Act, Board regulations, and permit terms before and after the Landfill closed. The failure to properly close, care for, and monitor the Landfill was unreasonable because the violations risked public health and welfare, and the closure and post-closure procedures under the Act are technically feasibility and economically reasonable. Further, the ongoing nature of the violations, the absence of due diligence on behalf of the respondents, the economic benefits accrued by the respondents as a result of non-compliance, and the need for deterrence support the imposition of a substantial penalty.

The Board assesses the requested civil penalties of \$10,000 against Lawrence County Disposal Centre, Inc., and \$1,000 against Gary Simmons individually. The Board also orders the Disposal Centre to pay an additional \$32,164 which is the time use value of \$118,421.90 to recoup the economic benefit earned through non-compliance. The Board also orders the Gary Simmons to pay an additional \$3,573 which is the time use value of \$118,421.90 to recoup the economic benefit earned through non-compliance.

The total penalty assessed against the Disposal Center is accordingly \$42,164 and against Simmons is \$4,573.

Finally, the Board further orders the respondents to jointly and severally pay \$1,540 in attorney fees to the People.

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

### **ORDER**

1. The Board finds that the respondents, Gary Simmons (Simmons) and Lawrence County Disposal Centre, Inc. (Disposal Center), violated the Act, Board regulations, and terms of its permit, as alleged in the complaint. The Board's July 23, 2009 interim opinion and order is incorporated by reference herein as if fully set forth.

2. The Board hereby assesses civil penalties of \$10,000 against the Disposal Centre, Inc., and \$1,000 against Gary Simmons individually. The Board also orders the Disposal Centre to pay an additional \$32,164 which is the time use value of \$118,421.90 to recoup the economic benefit earned through non-compliance. The Board also orders the Gary Simmons to pay an additional \$3,573 which is the time use value of \$118,421.90 to recoup the economic benefit earned through non-compliance. The Board assesses attorney fees of \$1,540 against both respondents, for which they are jointly and severally liable.
3. Respondent Disposal Centre must pay a total civil penalty of \$42,164 no later than Thursday, December 10, 2009, which is the first business day after 35 days from the date of this order. Such payment must be made by certified check, money order, or electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and Disposal Centre's federal employer identification number must be included on the certified check or money order.
4. Respondent Simmons must pay a civil penalty of \$4,573 no later than Thursday, December 10, 2009, which is the first business day after 35 days from the date of this order. Such payment must be made by certified check, money order, or electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and Simmons' federal employer identification number or Social Security number must be included on the certified check or money order.
5. Respondents Disposal Centre and Simmons must jointly and severally pay a total of \$1,540 in attorney fees no later than Thursday, December 10, 2009, which is the first business day after 35 days from the date of this order. Such payment must be made by certified check, money order, or electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and respondents' federal employer identification number(s) or Social Security number must be included on the certified check or money order.
6. Respondents must each send their certified checks, money orders, or confirmation of electronic funds transfers to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
7. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

8. Respondents must renew their closure permit for the Landfill, and perform post-closure maintenance and monitoring of the facility as required by the closure permit and Board rules.
9. The respondents must also cease and desist from violations of the Act and the Board's regulations.

IT IS SO ORDERED.

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.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board