

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2008

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

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

On June 3, 2008, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Upper Rock Island County Landfill and Dave Geier (respondents). *See* 415 ILCS 5/31.1 (2006); 35 Ill. Adm. Code 108. In today's order, the Board dismisses this case because the Agency has failed to file proof of service of the administrative citation on respondents.

The administrative citation concerns a sanitary landfill facility located at 17201 20th Avenue, North, Rock Island, Rock Island County. The property is commonly known to the Agency as "Upper Rock Island County Landfill" and is designated with Site Code No. 1618100014. The Agency alleges that respondents violated Sections 21(o)(5) and (o)(12) of the Environmental Protection Act (Act) (415 ILCS 5/21(o)(5), (o)(12) (2006)) at the site 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 fixed statutory penalties of \$500 for each alleged violation, totaling \$1,000. *See* 415 ILCS 5/42(b)(4) (2006).

Section 31.1(b) of the Act requires the Agency to serve an administrative citation on a respondent "within not more than 60 days after the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). Failure to timely serve the citation deprives the Board of jurisdiction. *See, e.g., County of LaSalle v. Harriet and John Baugher*, AC 05-73, slip. op. at 1 (June 16, 2005) (dismissal for lack of jurisdiction after citation served on 64th day after site inspection). Additionally, the Agency is required 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(c) (2006); *see also* 35 Ill. Adm. Code 108.202(c). 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, e.g., County of Perry v. Mike Tilley*, AC 07-3, slip. op. at 1 (Aug. 17, 2006) (dismissal for lack of jurisdiction after citation was filed with the Board more than 10 days after date of service).

Here, the administrative citation filed by the Agency on June 3, 2008, did not include the requisite proof of service. The Board has received no petition from respondents contesting the administrative citation. Despite repeated requests by the Clerk's Office over the last three months, the Agency has not yet filed proof that the administrative citation was served on respondents. Further, over 60 days has passed since the filing of the citation, thus, timely service and the timely requisite proof of service are unlikely to be had. *See* 415 ILCS 5/31.1(b), (c) (2006); *see also* 35 Ill. Adm. Code 108.202(b), (c). Due to the Agency's failure to file proof of service, the Board cannot determine whether it has jurisdiction over this case. *See* 415 ILCS 5/31.1(b), (c) (2006). Under these circumstances, the Board dismisses the administrative citation and closes the docket. *See* 35 Ill. Adm. Code 108.402.

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 order on September 4, 2008, by a vote of 4-0.



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.