

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2009

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 09-49
) (IEPA 103-09-AC)
AMEREN ENERGY RESOURCES) (Administrative Citation)
GENERATING COMPANY,)
)
Respondent.)

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

On May 29, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Ameren Energy Generating Company (AEG) and Jerry Simpson. *See* 415 ILCS 5/31.1(c) (2008)¹; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a sanitary landfill (the facility) operating under Agency Permit No. 2005-121-LF, and which is located at 17751 North Cilco Road, Canton, Fulton County. The property is designated with Site Code No. 0570255197. The site is commonly known to the Agency as Ameren Duck Creek Station LF.

On June 29, 2009, AEG and Jerry Simpson filed a “Motion to Dismiss Respondents and Substitute Parties” (Mot. to Substitute). The motion states that the Agency had incorrectly named them as respondents, and that the proper respondent was Ameren Energy Resources Generating Company (AERG). Mot. to Substitute at 1-2. The motion further states that AERG has discontinued the conduct that was subject of the administrative citation, and has paid the penalty for the alleged violations. Mot. to Substitute at 6-7.

The Board grants the “Motion to Dismiss Respondents and Substitute Parties”. The Board will amend the caption to reflect the proper parties. The Board also finds that AERG, the proper respondent in this matter, has violated Sections 21(o)(7), (9) and (11) of the Environmental Protection Act (Act) (415 ILCS 5/21(o)(7), (9) and (11) (2008)), and orders AERG to pay \$1,500 in civil penalties, if it has not already done so.

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); 35 Ill. Adm. Code 108.

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.

In this case, the Agency alleges that on April 9, 2009, the respondent violated Section 21(o)(7), (9) and (11) of the Act (415 ILCS 5/21 specify the provisions of (o)(7), (9), and (11) (2008)) by conducting a sanitary landfill in a manner which resulted in acceptance of wastes without necessary permits, deposition of refuse in an unpermitted portion of the landfill, and failure to submit reports required by permits or Board regulations. The Agency asks the Board to impose the statutory \$1,500 civil penalty on the respondent. As required, the Agency served the administrative citation on the 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).

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) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. In this case, any petition for review was due by July 5, 2009. AEG and Jerry Simpson did not request review in their Motion the Dismiss Respondents and Substitute Parties, and instead stated that AERG has already paid the penalty for the alleged violations. Accordingly, the Board finds that AERG violated Sections 21(o)(7), (9), and (11) 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) (2008); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(o) and no indication in the record that these are a second or subsequent adjudicated violation, the total civil penalty is \$1,500. 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 finding of fact and conclusions of law.

ORDER

1. The Board finds that respondent's name violated Sections 21(o)(7), (9), and (11) of the Environmental Protection Act (415 ILCS 5/21(o)(7), (9), and (11) (2008)).
2. If Ameren Energy Resources Generating Company (AERG) has not already done so, it must pay a civil penalty of \$1,500 no later than Tuesday, September 8, 2009 which is the first business day after 30th day after the date of this order. AERG 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 AERG's social security number or federal employer identification number must be included on the certified check or money order.
3. AERG 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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
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) (2008); *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 August 6, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board