ILLINOIS POLLUTION CONTROL BOARD
August 24, 2000

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-27
	)	(Enforcement – Land, RCRA, Water)
JAMES and CAROL GILMER,	)	
	)	
Respondents.	)	

JAMES L. MORGAN, SENIOR ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANTS.

JAMES A. MARTINKUS APPEARED ON BEHALF OF RESPONDENTS.

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

On August 12, 1998, the Attorney General of Illinois filed a four-count complaint[1] on behalf of the People of the State of Illinois (complainant). The complaint alleged that James and Carol Gilmer (respondents) violated Sections 12(a), 21(d)(1), (2), 21(f)(2), and 22.17 of the Environmental Protection Act (Act) (415 ILCS 5/12(a), 5/21(d)(1) and (2), 5/21(f)(2), and 5/22.17 (1998)) and 35 Ill. Adm. Code 620.114, 620.301(a), 620.405, 620.410(a), (b), and (d), 725.190(a) and (b), 725.191(c), 725.192(a)-(d), 807.305, 807.306, 807.502(a) and (b), 807.506(a), 807.313(b), 807.314(e), and 807.623. Hearing was held on May 31, 2000, before Chief Hearing Officer John Knittle in Villa Grove, Illinois. The parties chose not to file briefs in this matter.

For the reasons discussed below, the Board finds that respondents violated the Act and Board rules as set forth in the four-count complaint filed on August 12, 1998. The Board will assess a civil penalty of $40,000 and order the respondents to cease and desist from further violations of the Act and Board regulations.

ALLEGED VIOLATIONS

The four-count complaint filed on August 12, 1998, sets forth numerous alleged violations of the Act and Board regulations. Count I of the complaint alleges that from June 9, 1995, and continuing to the present, respondents failed to submit a revised current cost estimate and have violated Section 21(d)(1) and (2) of the Act (415 ILCS 5/21(d)(1) and (2)(1998)) and 35 Ill. Adm. Code 807.623. Comp. at 5. Count I further alleges that respondents violated the permit, Sections 21(d)(1) and (2) of the Act and 35 Ill. Adm. Code 807.506(a) by failing to initiate closure in accordance with the closure plan within 30 days of June 9, 1995. *Id.* Finally, under count I, the complainant alleges that respondents violated Sections 21(d)(1) and (2) of the Act and 35 Ill. Adm. Code 807.502(a) and (b) by failing to close the landfill in a manner which minimizes the need for further maintenance and eliminates the release of waste constituents into surface waters and groundwaters. *Id.*

Count II of the complaint alleges that since the abandonment of the landfill by Multi-County Landfill, Inc. (Multi-County Landfill), the respondents have become responsible for operation and closure of the landfill. Comp. at 9. The allegations in count II also state that since June 9, 1995, contaminants from the landfill have entered the groundwater resulting in concentrations for several constituents (including boron, iron, and sulfate) in excess of the limits set forth in 35 Ill. Adm. Code 620.410(a), (b), and (d). *Id.* By failing to control the leachate at the landfill,

[1] The complaint will be cited as "Comp. at"; the stipulation of facts will be cited as "Stip. at"; and the transcript will be cited as "Tr. at".

count II alleges that respondents violated Section 12(a) of the Act (415 ILCS 5/12(a) (1998)) and 35 Ill. Adm. Code 620.114, 620.301(a), 620.405, and 620.410(a), (b), and (d). *Id.*

Count III alleges that by failing to maintain a compacted layer of suitable material on fill areas from June 9, 1995, to the present, respondents violated the permit, Sections 21(d)(1) and (2) of the Act and 35 Ill. Adm. Code 807.305. Comp. at 11. Further by failing to collect litter from June 9, 1995, to the present, respondents violated the permit, Sections 21(d)(1) and (2) of the Act and 35 Ill. Adm. Code 807.306. Comp. at 11-12. Count III also alleges that respondents caused or allowed leachate to discharge from the fill area at the landfill from June 9, 1995, to the present and violated Section 12(a), 21(d)(1) and (2) of the Act and 35 Ill. Adm. Code 807.313(b) and 807.314(e). Comp. at 12.

Count IV alleges that respondents failed to implement a system capable of determining the landfills' impact on groundwater in violation of Section 21(f)(2) of the Act (415 ILCS 5/21(f)(2) (1998)) and 35 Ill. Adm. Code 725.190(a) and (b). Comp. at 16. Allegations under count IV also include that respondents failed to put in place cement surface seals on many of the wells at the site in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.191(c). *Id.* Lastly, count IV alleges that respondents failed to create a formal sampling and analysis plan for Resource Conservation and Recovery Act (RCRA), failed to list groundwater quality parameters, and failed to provide statistical determinations and complete lists of required parameters in violations of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.192(a), (b), (c), and (d). *Id.*

LEGAL FRAMEWORK

Section 12 of the Act, provides:

No person shall:

a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

Section 21 of the Act provides, in pertinent part:

No person shall:

a. Cause or allow the open dumping of any waste.

* * *

d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored,

treated, or disposed within the site where such wastes are generated, or (ii) a facility located in a county with a population over 700,000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris;

2. in violation of any regulations or standards adopted by the Board under this Act;

* * *

f. Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

2. in violation of any regulations or standards adopted by the Board under this Act.

Section 22.17 provides, in part:

a. The owner and operator of a sanitary landfill site . . . shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.

b. The owner and operator . . . shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a).

As indicated above, the complaint also alleges violations of several provisions of the Board regulations. Rather than repeat all the relevant sections here, the Board notes that the alleged violations of the regulations are in the areas of groundwater contamination and monitoring, closure and closure cost-estimates, water pollution, improper leachate control, and litter.

FACTS

At hearing on this matter, a stipulation of facts (Stip.) was submitted. The following is a summary of that stipulation.

Respondents live at Rural Route #1, Villa Grove, Illinois. Respondents also own as joint tenants the property located in the southwest quarter of Section 1, Township 16 North, Range 9 East, Douglas County, near the City of Villa Grove, Illinois. It was this property that the respondents chose to enter into a lease agreement with Multi-County Landfill. Stip. at 1.

Multi-County Landfill obtained two permits from the Illinois Environmental Protection Agency (Agency). The first permit allowed them to function as a sanitary landfill (No. 1975-188-OP), and the second, issued on June 8, 1989, gave them the right to accept non-hazardous waste produced by CL Industries, Inc., of Georgetown, Illinois. Stip. at 1. However, CL Industries sent hazardous wastes to the landfill between the periods of June 8, 1989, to October 1989. Stip. at 1.

On approximately July 1, 1990, Multi-County Landfill discontinued its acceptance of waste on site and soon after left the site without the knowledge of the respondents. Stip. at 2. On June 9, 1995, the Douglas County Circuit Court granted a motion for summary judgment against Multi-County Landfill. People of the State of Illinois v. Multi-County Landfill, Inc., 93-MR-21. In that order, the Douglas County Circuit Court found that Multi-County Landfill had violated the Act and imposed a penalty of $350,000 and enjoined Multi-County Landfill from further violations of the Act and Board regulations. Stip. at 2.

Respondents did not initiate closure within 30 days after June 9, 1995. Stip. at 2. However, in October of 1997, the Agency commenced closure of the landfill. Stip. at 2. The Agency spent approximately $4.1 million on

these activities, with all but approximately $625,000 being funded by the Agency. *Id.* The Agency had to truck in approximately 140,000 cubic yards of suitable soil and clay from off-site sources in order to close the landfill. *Id.* The landfill contours had to be reconfigured and stabilized. *Id.* A cell that had been developed, and not used for waste, had to be dewatered and partially backfilled. *Id.* The Agency completed these activities in 1999. Stip at 2.

Since June 9, 1995, until the present, respondents have not submitted a revised current cost estimate for closure and did not close the landfill in a manner which minimized the need for further maintenance. Stip at 2. Respondents have not performed any groundwater monitoring nor have respondents implemented a system capable of determining the landfill's impact on groundwater. Stip. at 3. The respondents have not created a formal sampling and analysis plan for RCRA. *Id.* The respondents have not placed cement surface seals on any of the wells at the site. *Id.* Finally, from the period June 9, 1995, until the Agency completed its closure actions, respondents failed to maintain a compacted layer, failed to collect litter, and failed to control leachate. Stip. at 3.

ISSUE

The major issue to be decided in this case is whether respondents are liable for compliance with the Act and Board regulations as a result of their ownership of the former Multi-County Landfill. If the respondents are liable, then the respondents must be found in violation of the Act and various Board regulations because of the admissions made in the stipulation.

ARGUMENTS

Respondent's Arguments

The respondents admit that they have not performed any closure or post-closure care activities at the site. Respondents also admit that they have performed no groundwater monitoring at the site. However, in defense of the alleged violations, respondents offer three arguments. The first argument is that the respondents are not the operators and thus not liable. The second argument is that even if the respondents are the operators, the alleged violations in the first two counts of the complaint occurred prior to the respondents becoming the operators. Third, respondents maintain that Section 58.9 of the Act[2] "protect[s] individuals, like the Gilmers, who are simply landlords" at a site. Tr. at 12.

In its first argument, respondents assert that the first two counts of the complaint are premised on the respondents being the operators of the facility. Tr. at 10. The basis for this premise, according to respondents, is a reading of 35 Ill. Adm. Code 807.104 which provides, in part, that "the 'owner' is the 'operator' if there is no other person who is conducting a waste treatment, waste storage or waste disposal operation." 35 Ill. Adm. Code 807.104; Tr. at 10-11. Respondents maintain that the evidence in this case does not support the complainant's application of 35 Ill. Adm. Code 807.104. Tr. at 11. Respondents assert that there is nothing in 35 Ill. Adm. Code 807.104 which talks about the owner becoming the default operator if the operator ceases operations. Tr. at 11.

The second argument that respondents provide in defense of the alleged violations is that the allegations surrounding Counts I and II of the complaint occurred prior to June 1, 1990. Tr. at 56. June 1, 1990, is the first date by which the respondents could have been considered operators, according to respondents. Tr. at 56. Therefore, respondents assert that there is no basis to impose penalties upon respondents for violating the Act prior to the time that respondents could have been considered operators. Tr. at 56-57.

Regarding Counts III and IV of the complaint, respondents assert that Section 58.9 of the Act, which was added in 1996, "drastically and dramatically" changed law. Tr. at 12. Respondents argue that the change was

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[2] Section 58.9 of the Act is a part of the proportionate share liability program and provides in part that the State of Illinois cannot require remedial action of, or seek recovery of costs for remedial activity from, a person beyond the remediation of releases that may be attributed to being proximately caused by that person or beyond that person's proportionate degree of responsibility. 415 ILCS 5/58.9 (1998).

intended "to protect individuals, like the Gilmers, who are simply landlords who have no knowledge or participation in any of the illegal conduct" for which claims arise. Tr. at 12. Respondents also maintain that case law cited by the complainant is over 22 years old and was prior to Section 58.9 of the Act being passed. Tr. at 57. Respondents argue that Section 58.9 of the Act was passed to protect the landlord if the landlord did not know of the acts or omissions. Tr. at 57-58.

Complainant's Arguments

The complainant asserts that it is clear that Multi-County Landfill did not close the landfill. The complainant argues that at that point, the respondents, as owners of the landfill, became responsible for closure. Tr. at 52. In support of this position, the complainant argues that the Board has previously ruled that under similar circumstances the owner is required to step into the role of operator. Tr. at 53. Complainant cites People v. John Prior (July 7, 1995), PCB 93-248 as authority for this position. Tr. at 7.

Regarding the allegations that respondents caused or allowed water pollution, the complainant cites two cases. Complainant states that in those two cases, Meadowlark Farms v. Pollution Control Board, 17 Ill. App. 3d 851, 308 N.E.2d 829 (5th Dist. 1974) and Freeman Coal Mining Corporation v. Pollution Control Board, 21 Ill. App. 3d 157, 313 N.E.2d 616 (5th Dist. 1974), the landowner assumed ownership of the site after the conditions contributing to the pollution had occurred. Tr. at 53. The court affirmed the Board's decision that the current owner could be held responsible for further discharge of contaminates in violation of the Act and Board regulations. *Id.*

Complainant acknowledges that the respondents were "left with a mess" at the site. Tr. at 54. However, under the Act and the Board regulations they are responsible for preventing "that mess from threatening public health or the environment." *Id.* Therefore, complainant argues the respondents can be found in violation and ordered to cease and desist from further violations.

With regard to respondents' arguments that Section 58.9 of the Act limits respondents' liability in this case, complainant points out that this is not remedial action as defined under Section 58.2 of the Act (415 ILCS 5/58.2 (1998)). Tr. at 62. Rather, the liability of the respondents in this case flows from the failure to perform closure, the violation of the groundwater standards and the failure to comply with RCRA standards. Tr. at 62.

DISCUSSION

There are no facts at issue in this matter. Respondents admit the underlying facts which would lead to a finding of violation on all four counts of the complaint. However, respondents argue that as a matter of law they are not liable, because even though they own the site, they are not the operator of the landfill. The Board can find nothing in respondents' arguments to support respondents' position.

In Prior, PCB 93-248, the circumstances were similar. In Prior, the operator had left the landfill site and the Act and Board regulations required that the landfill be closed. The Board found that the owner was the operator when there was no operator at the landfill site, based on the Board's regulations at 35 Ill. Adm. Code 807.104. Prior, PCB 93-248 slip. op. 13. "Owner" is defined in part to include that: "The 'owner' is the 'operator' if there is no other person who is conducting a waste treatment, waste storage or waste disposal operation." 35 Ill. Adm. Code 807.104. The instant case is not factually distinguishable, and the Board finds that the respondents are the operators.

Further, both the Meadowlark Farms 17 Ill. App. 3d 851 and Freeman Coal 21 Ill. App. 3d 157 cases are the first in a long line of well settled environmental law standing for the proposition that the owner of a pollution source is liable for any ongoing violation of the Act and Board regulations. See also, Russell Perkinson v. Pollution Control Board, 187 Ill. App. 3d 689, 543 N.E.2d 901 (3rd Dist 1989). Therefore, regarding the allegations of ongoing pollution, particularly water pollution, the Board finds the respondents are liable and can be ordered to cease and desist.

With regards to respondents' argument that the alleged violations surrounding Counts I and II of the complaint occurred prior to June 1, 1990, the Board disagrees. The complaint specifically states under Counts I and

II that the allegations are from June 9, 1995, to the present. Comp. at 5 and 9. Therefore, the alleged violations did not occur prior to June 1, 1990.

Finally, the Board finds that respondents' argument that the proportionate share liability portions of the Act (Section 58.9) limit the respondents' liability under this complaint is misplaced. The allegations in this complaint flow from respondents' responsibility under the Act to close a landfill in a manner specified by the Act and Board regulations. Section 58.1 of the Act (415 ILCS 5/58.1) is the applicability section for the proportionate share liability program. Section 58.1(a)(2) excludes from proportionate share liability "a treatment, storage or disposal site for which a permit has been issued, or that is subject to closure requirements under federal or State solid or hazardous waste laws." Further, the Board's rules implementing the proportionate share liability program codify this exclusion. See 35 Ill. Adm. Code 741.105(f)(4). Thus, closure activities at the Multi-County Landfill site are excluded from proportionate share liability, and Section 58.9 of the Act therefore does not limit respondents' liabilities.

In conclusion, the Board finds that respondents are operators, as well as owners, for the purpose of closing the former Multi-County Landfill site.

SUMMARY OF VIOLATIONS

The Board finds that because respondents are both operators and owners, the respondents have violated the Act and Board regulations as delineated under all four counts of the complaint. Having found the respondents violated the Act and Board regulations, the Board will now determine the appropriate penalty.

PENALTY

Having found violation, the Board must now determine the penalty to be assessed. In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act. People v. Berniece Kershaw and Darwin Dale Kershaw d/b/a Kershaw Mobile Home Park (April 20, 1994), PCB 92-164; IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock (May 10, 1990), PCB 88-71. The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Kershaw PCB 92-164, slip. op. at 14; Barry PCB 88-71, slip. op. at 62-63.

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." Barry, PCB 88-71, slip. op. at 72. The formula for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act 415 ILCS 5/42(a) and (b) (1998). Section 42(a) provides for a civil penalty not to exceed $50,000 for violating a provision of the Act and an additional civil penalty not to exceed $10,000 for each day during which the violation continues. By multiplying the number of sections of the Act and Board regulations that respondents are alleged to have violated (over 20) a potential civil penalty of $1,000,000 is reached. Add to that sum, a civil penalty of $10,000 a day for each day of noncompliance with those sections (over 1,800 days), the total maximum penalty that could be assessed against respondents is over $19,000,000. The complainant requests an imposition of civil penalties in the amount of $10,000 for each count of the complaint for a total of $40,000. Tr. at 63.

Section 33(c) Factors

Section 33(c) sets forth five factors that the Board must consider in making its determinations:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

5. any subsequent compliance.

The Character And Degree Of Injury To, Or Interference With The Protection Of The Health, General Welfare And Physical Property Of The People.

The potential for pollution of waters of the State, both groundwater and surface water, at this site establishes an interference with the protection of health for the people. In addition, the failure to properly close a landfill could cause additional injury to the health and welfare of the people. This factor must be weighed against the respondents.

The Social And Economic Value Of The Pollution Source.

The Board finds that this factor does not affect the violations in this case. The landfill is no longer accepting waste.

The Suitability Or Unsuitability Of The Pollution Source To The Area In Which It Is Located, Including The Question Of Priority Of Location In The Area Involved.

This factor also has no affect on the penalty amount in this case. The landfill was sited many years ago and now that it is not accepting waste, the Board will not revisit the suitability of its location.

The Technical Practicability And Economic Reasonableness Of Reducing Or Eliminating The Emissions, Discharges Or Deposits Resulting From Such Pollution Source.

Proper closure of a landfill, including groundwater monitoring and leachate collection is technically practicable and economically reasonable. Therefore, the Board finds that this factor aggravates the violation.

Any Subsequent Compliance.

The record does not indicate that any steps have been taken to achieve compliance with the Act and Board regulations. This factor weighs against respondents.

Section 42(h) Factors

Section 42(h) of the Act sets forth factors to be considered in determining the appropriate amount of the civil penalty. Those factors are:

1. the duration and gravity of the violation;

2. the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the violator because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the

violator and other persons similarly subject to the Act; and

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In looking to the factors set forth in Section 42(h) of the Act, the Board notes that the violations have gone on since at least June of 1995 to the present. However, the respondents seem to have believed they were not responsible for these activities, therefore, the record lacks sufficient information to discuss the diligence on the part of the violator. The record also lacks information on the economic benefits that respondents may have incurred; except for the information that the Agency has spent $4.1 million on the closure of the landfill. This is money the respondents should have expended. The record contains no history of past violations by respondents.

Penalty Discussion

The complainant asks for a penalty in the amount of $40,000. The respondents argue that such a penalty is excessive and a violation of the Eighth Amendment of the U.S. Constitution. U.S. Const. Amend. VIII. The respondents argue that they would be unable to pay such a fine as their only assets are an "IRA and their home." Tr. at 59. The record contains no additional information on the financial status of the respondents.

The Board has previously penalized two dollars for each dollar gained through noncompliance with the Act and Board regulations. ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996); People v. ESG Watts (February 5, 1998), PCB 96-233, People v. ESG Watts (February 19, 1998), PCB 96-237. The penalties assessed in those cases ranged from $60,000 in ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996) to $680,200 in People v. ESG Watts (February 5, 1998), PCB 96-233. Thus, if the Board assumes that $4.1 million spent by the Agency was money gained by noncompliance, the fine could be $8.2 million. The Board will not assess such a fine in this case; however we are not persuaded that the fine requested by the complainant is "excessive" under the Eighth Amendment of the U.S. Constitution.

In viewing the facts of this case, the Board is convinced that a fine of $40,000 is appropriate. The complaint in this proceeding alleges violation of eight different sections of the Act and over 12 different sections of the Board's regulations. Further, the Agency has spent $4.1 million to close the landfill, but additional work is necessary. Thus, in addition to the fine the Board will order that the respondents cease and desist from further violations.

ATTORNEY FEES AND COSTS

Complainant has requested attorney fees and costs in accordance with Section 42(f) of the Act (415 ILCS 5/42(f) (1996)), that provides in relevant part:

> Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board . . . 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.

From the facts found above, the Board cannot find that the violations in this proceeding meet the provisions of Section 42(f) of the Act. The respondents believed that they were not responsible for closure of the landfill. Therefore, the request for attorney fees is denied.

CONCLUSION

The Board finds that the respondents violated the Act and Board regulations as alleged in the four-count complaint. The Board finds that a fine of $40,000 is necessary to aid in the enforcement of the Act and is reasonable under these facts. The Board will also order the respondents to cease and desist from further violations of the Act.

The Board has determined that the award of attorney fees is not warranted in this proceeding.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board finds that respondents, James and Carol Gilmer, have committed the violations as alleged in Counts I, II, III, and IV of the complaint.

2. The Board hereby assesses a penalty of forty thousand dollars ($40,000) against respondents.

3. Respondents shall pay forty thousand dollars ($40,000) within 60 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

   Illinois Environmental Protection Agency
   Fiscal Services Division
   1021 N. Grand Avenue East
   P.O. Box 19276
   Springfield, IL 62702

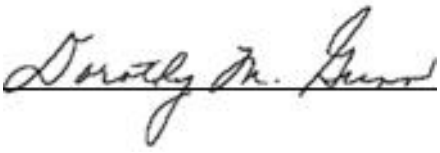
   Respondent shall also write their federal employer identification number or social security number on the certified check or money order. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

4. Respondents shall cease and desist from violations of the Act and the Board's regulations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 24th day of August 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board