

ILLINOIS POLLUTION CONTROL BOARD
August 19, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-7
)	(IEPA No. 347-04-AC)
EDWARD and BETTY JO CAIN and)	(Administrative Citation)
EDWARD CAIN d/b/a CAIN ROOFING)	
COMPANY,)	
)	
Respondents.)	

ORDER OF THE BOARD (by A.S. Moore):

On July 19, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Edward and Betty Jo Cain and Edward Cain d/b/a Cain Roofing Company (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). For the reasons below, the Board accepts respondents' petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), 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 Illinois Environmental Protection Agency (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, 4(r), 21(o), (p), 31.1, 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

The Agency alleges that respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2002)). According to the Agency's administrative citation, respondents violated these provisions of the Act by causing or allowing the open dumping of waste resulting in (1) litter; (2) open burning; and (3) the deposition of general or clean construction or demolition debris at respondents' site. Respondents' site is allegedly located at 1102 North County Road 900 N, Tolono, Champaign County. The Agency asks the Board to impose a \$4,500 civil penalty on respondents for these three alleged violations.

As required, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). On August 9, 2004, respondents timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). Respondents state that the alleged violations were not caused or allowed by respondents or, alternatively, resulted from uncontrollable circumstances. In support, respondents allege that

their past employees' lack of fluency in English "caused misunderstandings to occur in the manner of disposal of debris." Petition at 1. The Board accepts the petition for hearing.

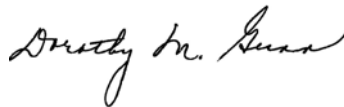
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, respondents may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

Respondents may withdraw their petition to contest the administrative citation at any time before the Board enters its final decision. If respondents choose to withdraw their petition, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If respondents withdraw their petition after the hearing starts, the Board will require respondents to pay the hearing costs of the Board and the Agency if the Agency prevails. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that the Agency violated Sections 21(p)(1), (p)(3), and (p)(7), the Board will impose civil penalties on respondents. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) that is a respondent's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that a respondent "has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2002); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 19, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board