

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2005

| | | |
|--------------------------------|---|---------------------------|
| 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. |) | |

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

Today the Board accepts a proposed settlement and dismissal of this administrative citation enforcement action. By way of background, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondents Edward and Betty Jo Cain and Edward Cain d/b/a Cain Roofing Company on July 19, 2004. The Agency alleged that respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2002)) by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The violations allegedly took place at respondents' facility located at 1102 North County Road 900 N, Tolono, in Champaign County. The Agency site code number for the facility is 0191005010.

Respondents timely filed a petition to contest the administrative citation, which the Board accepted on August 19, 2004. On April 6, 2005, the parties filed a "stipulation of settlement and dismissal of respondent's petition for administrative review." Under its terms, respondents admit they violated Section 21(p)(3) of the Act by causing or allowing the open dumping of waste resulting in open burning, and agree to pay the statutory civil penalty of \$1,500 for this violation. Stipulation at 2. Respondents also agree to the dismissal of their petition contesting the administrative citation. *Id.* at 3. The stipulation further states that the waste that was the subject of the administrative citation has been removed and properly disposed. *Id.* In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a criminal or civil enforcement action. *Id.*

The Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2002)), the Board therefore finds that respondents violated Section 21(p)(3) of the Act. Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2002)) establishes a civil penalty of \$1,500 for this violation. The Board accordingly assesses a civil penalty of

\$1,500. To effectuate the parties' intent that respondents pay a total civil penalty of \$1,500, the Board dismisses the alleged violations of Sections 21(p)(1) and (p)(7) of the Act.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that respondents violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2002)) by causing or allowing the open dumping of waste resulting in open burning.
3. Respondents must pay a total civil penalty of \$1,500 by May 23, 2005, which is the first business day following the 30th day after the date of this order. Payment must be made by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondents' federal employer identification numbers or social security numbers must be included on the certified check or money order.
4. Respondents must send the certified check or money order to:

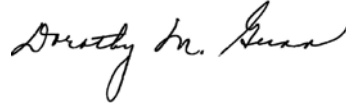
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
6. The Board dismisses the alleged violations of Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2002)) and respondents' petition to contest the administrative citation.

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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 21, 2005, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board