ILLINOIS POLLUTION CONTROL BOARD September 19, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant)	
Complainant,		
v.)	PCB 14-8
)	(Enforcement - Land)
ISAAC CAPPS,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On July 17, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Isaac Capps (Respondent). The complaint concerns respondent's property located at 4804 East Dundas Lane, Dundas, Effingham County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violate sections 9(a), 9(c), 21(a), 21(k), 21(p)(1), 21(p)(3), 55(a), 55(a)(4), 55(c), 55(d), 55(e) and 55.6 of the Act (415 ILCS 5/9(a), (c) 21(a), (k), (p)(1), (p)(3), 55(a), (a)(4), (c), (d)(1), (e) (2010)) and Section 848.202(b)(2), 848.202(b)(5), 848.202(c)(1)-(3) of the Board's Regulations (35 Ill. Adm. Code 848.202(b)(2), (b)(5), (c)(1)-(3)) by:

- 1. causing or allowing used or waste tires to be stored at a distance of less than 25 feet from any building and 50 feet from vegetative growth;
- 2. causing or allowing tires to be stored in a manner that did not prevent water from accumulating in the tires;
- 3. failing to maintain a contingency plan for the site which contains at least 500 used tires;
- 4. failing to maintain proper record keeping and reporting requirements;
- 5. causing or allowing the operating of a tire storage site in a manner not in compliance with Board regulations;
- 6. causing or allowing the operation of a tire storage site without recording and submitting the required registration and notification information to the IEPA;

- 7. causing or allowing the storage, disposal, treatment, or processing of any used or waste tire in violation of any regulations or standard adopted by the Board;
- 8. failing to timely pay to the IEPA the annual tire storage fee;
- 9. failing or refusing to timely pay a fee imposed under the Act; and
- 10. causing or allowing the open dumping of waste in a manner which has resulted in litter and open burning at the site.

On July 17, 2013, the People and respondent filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2012)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2012)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 III. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in *Effingham Daily News* on August 9, 2013. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2012); 35 III. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2012)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent admits the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2012)), which may mitigate or aggravate the civil penalty amount. Respondent agrees to pay a civil penalty of \$2,000. The People and respondent have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

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

ORDER

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Isaac Capps (respondent) must pay a civil penalty of \$2,000 no later than October 21, 2013, which is the first business day following the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and

respondent's federal tax identification number must appear on the face of the certified check or money order.

3. Respondent must submit payment of the civil penalty to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

Respondent must send a copy of the certified check or money order and any transmittal letter to:

Amanda Kimmel Environmental Bureau Illinois Attorney General's Office 500 South Second Street Springfield, Illinois 62706

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
- 5. Respondent must cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

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) (2012); *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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2013 by a vote of 4-0.

ohn T. Therrian

John T. Therriault, Clerk Illinois Pollution Control Board