

ILLINOIS POLLUTION CONTROL BOARD  
December 7, 2017

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 18-3
	)	(IEPA No. 160-17-AC)
DARREN A. & CYNTHIA J. BAILEY	)	(Administrative Citation)
TRUST,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by C.M. Santos):

On October 10, 2017, the Illinois Environmental Protection Agency (IEPA) timely filed an administrative citation against the Darren A. & Cynthia Bailey Trust (Trust). *See* 415 ILCS 5/31.1(c) (2016); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns farm property owned by the Trust located at 4133 Old Highway 50 in Xenia, Clay County. The property is commonly known to IEPA as the “Xenia/Bailey Darren A. & Cynthia J. Trust” site and is designated with Site Code No. 0258035005. For the reasons below, the Board finds that the Trust violated the Environmental Protection Act (Act) (415 ILCS 5 (2016)) and orders the Trust to pay \$3,000 in civil penalties.

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 IEPA or, if IEPA has delegated the authority, by a unit of local government, and only for limited types of alleged violations. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2016); 35 Ill. Adm. Code 108.

In this case, IEPA alleges that on August 17, 2017, the Trust violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(7) (2016)) by causing or allowing the open dumping of waste in a manner resulting in litter and deposition of general construction or demolition debris or clean construction or demolition debris. IEPA asks the Board to impose the statutory \$1,500 civil penalty per violation on the Trust, for a total civil penalty of \$3,000. As required, IEPA served the Trust with the administrative citation on October 12, 2017, which is within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2016); *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) (2016); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by November 16, 2017. The Trust

failed to timely file a petition. Accordingly, the Board finds that the Trust violated Sections 21(p)(1) and 21(p)(7) of the Act.

The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2016); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no indication in the record that either of these is a second or subsequent adjudicated violation, the total civil penalty is \$3,000. 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 the Darren A. & Cynthia J. Bailey Trust violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(7) (2016)).
2. The Darren A. & Cynthia J. Bailey Trust must pay a civil penalty of \$3,000 no later than Monday, January 8, 2018, which is the first business day following the 30th day after the date of this order. The Darren A. & Cynthia J. Bailey Trust must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, the case name, and the Darren A. & Cynthia J. Bailey Trust's social security number or federal employer identification number must be included on the certified check or money order.
3. The Darren A. & Cynthia J. Bailey Trust 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) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
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) (2016); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Darren A. & Cynthia J. Bailey Trust 6121 Xenia Iola Rd. Xenia, Illinois 62899	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Illinois Environmental Protection Agency Attn: Michelle M. Ryan, Assistant Counsel 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 7, 2017, by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board