

ILLINOIS POLLUTION CONTROL BOARD

DAVID C. MILLER, MARK G. MILLER)
LISA E. MILLER, MICHELLE A. PAGE,)
ANTHONY L. PAGE, RICHARD A.)
KINTER, STACY L. KINTER, WALTER G.)
FLESER, AND TAMMY JOHNSON,)
)
Complainants,)
)
v.) **PCB 16-55**
) **(Citizens Enforcement – Noise)**
SUGAR CAMP ENERGY, LLC,)
)
Respondent.)

JOINT MOTION TO DISMISS

COME NOW Complainants David C. Miller, Mark G. Miller, Lisa E. Miller, Michelle A. Page, Anthony L. Page, Richard A. Kinter, Stacy L. Kinter, Walter G. Fleser, and Tammy Johnson (“Complainants”); and Respondent, Sugar Camp Energy, LLC (hereinafter “Sugar Camp”), by and through its attorneys, and hereby request that the above-referenced matter be dismissed with prejudice. In support, the Parties state as follows:

1. Sugar Camp owns and operates a coal mining facility located at 11351 N. Thompsonville Road, near Macedonia, Illinois (the “Site”).
2. Complainants filed a Formal Complaint before the Illinois Pollution Control Board on October 6, 2015, alleging that noise generated by a supplemental bleeder shaft fan at the site that was located adjacent to County Rd 850 N, Macedonia, IL (“Fan”) violated Pollution Control Board rules.
3. Sugar Camp answered the Complaint on November 24, 2015, denying all liability.
4. On May 27, 2017, Sugar Camp permanently turned off the Fan.

5. On July 25, 2017, the parties participated in a telephonic status conference. Complainant David Miller ("Mr. Miller") and Sugar Camp appeared. No other Complainant appeared.

6. During the status conference, counsel for Sugar Camp informed Hearing Officer Carol Webb and Mr. Miller that the Fan had been permanently turned off. In response, Mr. Miller stated that the Complaint was moot and that Complainants had no objection to dismissing the Complaint with prejudice.

7. On July 26, 2017, Hearing Officer Webb circulated an order to all parties, noting that the Fan had been turned off and that the parties planned to file a joint motion to dismiss. Hearing Officer Webb further scheduled a telephonic status conference on September 6, 2017.

8. On August 17, 2017, Sugar Camp prepared and then circulated a draft Joint Dismissal to all parties for review and comment.

9. Mr. Miller requested a few edits to the draft Joint Dismissal, and Sugar Camp agreed to these edits. No other Complainant provided any comments.

10. On September 1, 2017, Sugar Camp circulated a revised draft of the Joint Dismissal, which incorporated Mr. Miller's edits, to all parties. Mr. Miller returned a signed copy of the Joint Dismissal on September 30, 2017. A true and accurate copy of the Joint Dismissal signed by Mr. Miller is attached hereto as Exhibit A.

11. On September 6, 2017, Mr. Miller and Sugar Camp participated in the previously scheduled telephonic status conference. No other Complainant participated.

12. During our telephonic status conference, Hearing Officer Webb stated that any Complainant who was unable or unwilling to sign the Joint Dismissal should contact the Hearing Officer by September 30, 2017. Hearing Officer Webb further scheduled a telephonic status

conference for October 16, 2017. An order to this effect was circulated to all parties later that day on September 30.

13. No Complainant contacted the Hearing Officer or Sugar Camp by the September 30 deadline.

14. On October 16, 2017, Mr. Miller and Sugar Camp participated in the previously scheduled telephonic status conference. No other Complainant participated.

15. During the telephonic status conference, Mr. Miller again stated that Complainants did not object to dismissing the Complaint, but the other Complainants appeared unwilling to return their signature pages.

16. Hearing Officer Webb set a new deadline of October 31, 2017 for each Complainant to return signature pages to the Joint Dismissal and noted that if any remaining Complainants were unwilling to sign the Joint Dismissal by October 31, 2017, Hearing Officer Webb would recommend that the Board dismiss these Complainants for failure to pursue this action.

17. No other Complainant returned the signature page by October 31, nor have any other Complainants contacted Hearing Officer Webb or Sugar Camp regarding the Joint Dismissal.

18. Therefore, the Parties request that the Board enter an order dismissing the Complaint with prejudice in a form substantially similar to the Joint Dismissal attached hereto as Exhibit A.

WHEREFORE, the Parties hereby request that all claims asserted by Complainants against Respondent be dismissed, with prejudice, with each party to bear its own costs and attorneys' fees.

SUGAR CAMP ENERGY, LLC,

By Counsel



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PROOF OF SERVICE

The undersigned hereby certifies that on December 11, 2017, a copy of the foregoing *Joint Motion to Dismiss* was served via email and by depositing a copy in an envelope with proper postage prepaid and deposited in a U.S. Mail Box in Charleston, WV, addressed to the following parties at their designated mailing address as set forth below:

David C. Miller
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EXHIBIT A

ILLINOIS POLLUTION CONTROL BOARD

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JOINT DISMISSAL WITH PREJUDICE

Complainants, David C. Miller, Mark G. Miller, Lisa E. Miller, Michelle A. Page, Anthony L. Page, Richard A. Kinter, Stacy L. Kinter, Walter G. Fleser and Tammy Johnson (hereinafter “Complainants”), and Respondent, Sugar Camp Energy, LLC (hereinafter “Respondent”), hereby stipulate that the subject fan at issue in the Complaint has been turned off and will not be turned on again in the future, that, as a result, all matters between Complainants and Respondent have been resolved in the above-referenced matter, and that any and all claims filed by Complainants, either individually or jointly, against Respondent are therefore dismissed with prejudice, with each party to bear their own costs and attorneys’ fees. This dismissal with prejudice is limited solely to those claims asserted by Complainants in the Complaint filed in the above-referenced matter.

The parties agree that this document may be transmitted between them by facsimile machine or PDF scan and email. The parties intend that faxed signatures, or signatures scanned to a PDF image and emailed, constitute original signatures and are binding on the parties. Each party shall promptly forward to the other party(ies) the original signature pages containing such

party's original ink signature. This document may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Accordingly, the Court hereby **DISMISSES** all claims asserted by Complainants against Respondent in the above-referenced matter **WITH PREJUDICE**. Each party shall bear its own costs and attorneys' fees.

It is so ORDERED.

ENTERED this the ____ day of September, 2017.

Hearing Officer

COMPLAINANTS:



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