

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Petitioner, )  
 )  
 vs. ) No. PCB 00-212  
 )  
 KENNETH MORRISON, )  
 )  
 Respondent. )

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Brenda L. Zeitler, CSR-RPR, License No. 084-004062, a notary public within and for the County of DeWitt and State of Illinois, before Mr. Steven C. Langhoff, Hearing Officer, at the Livingston County Courthouse, Pontiac, Illinois, on the 27th day of June, 2001, A.D., scheduled to commence at 11:00 a.m.

HEARING TAKEN BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD  
MR. STEVEN C. LANGHOFF, Hearing Officer  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
(312) 814-4925

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## A P P E A R A N C E S:

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 On behalf of the Petitioner.

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1 HEARING OFFICER LANGHOFF: Good morning,  
2 everyone. My name is Steven Langhoff. I am the Illinois  
3 Pollution Control Board hearing officer who will be handling  
4 this matter. This is PCB-00-212: People of the State of  
5 Illinois versus Kenneth Morrison. For the record, it is  
6 Wednesday, June 27, 2001; and we are beginning at 11:04 a.m.

7 I want to note for the record that there are  
8 no members of the public present. Members of the public are  
9 encouraged and allowed to provide public comment if they so  
10 choose.

11 At issue in this case are allegations proven  
12 in a complaint filed by the people of the state of Illinois  
13 or "the State." The violations proven in the complaint are  
14 for failure to perform a corrective action pursuant to  
15 notice from the Illinois Environmental Protection Agency or  
16 "Agency" at a parcel of land located on Coalville Road,  
17 Streator, Livingston County, Illinois, or "the site."

18 These actions have been found by the Board to  
19 be a violation of Section 55.3 of the Environmental  
20 Protection Act or "Act". See 415 ILCS 5/55.3 (1998).

21 The Board has ordered Kenneth Morrison, or the  
22 respondent, to reimburse the agency in the amount of  
23 \$30,902.52. The State also seeks punitive damages pursuant  
24 to 55.3(g) of the Act. The Board has directed that a

1 hearing be held on the issue of whether and in what amount  
2 punitive damages should be imposed on the respondent.

3                   It is my responsibility to assess the  
4 credibility of any witnesses giving testimony today, and I  
5 will do so on the record at the conclusion of the  
6 proceedings.

7                   We will begin with opening statements from the  
8 parties and then will proceed with the State's case followed  
9 by Mr. Morrison having an opportunity to put on a case in  
10 his behalf. We will conclude with any closing arguments  
11 that the parties wish to make, and then we will discuss off  
12 the record a briefing schedule, which will be set on the  
13 record at the conclusion of the proceedings.

14                   For the record, the respondent, Kenneth  
15 Morrison, is not present today at this hearing.

16                   The Board's procedural rules in the Act  
17 provide that members of the public shall be allowed to speak  
18 or submit written statements at hearing. Any person  
19 offering such testimony today shall be subject to  
20 cross-examination by both of the parties. Any such  
21 statements offered by members of the public must be relevant  
22 to the case at hand. I will call for any statements from  
23 members of the public at the conclusion of the proceedings.

24

This hearing was noticed pursuant to the Act

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1 and the Board's rules and regulations and will be conducted  
2 pursuant to Sections 101.600 through 101.632 of the Board's  
3 procedural rules.

4 At this time I'll ask the parties to make  
5 their appearances on the record, beginning with the State.

6 MS. WALLACE: Elizabeth Wallace with the  
7 Illinois Attorney General's Office.

8 HEARING OFFICER LANGHOFF: Thank you.

9 Do we have any preliminary matters that we  
10 need to discuss on the record?

11 MS. WALLACE: No, we do not.

12 HEARING OFFICER LANGHOFF: Are there any  
13 outstanding or prehearing motions that the parties would  
14 like to present before we proceed?

15 MS. WALLACE: No.

16 HEARING OFFICER LANGHOFF: Thank you.

17 Would the State like to give a brief opening  
18 statement on behalf of their client, Ms. Wallace?

19 MS. WALLACE: Yes, I would.

20 OPENING STATEMENT

21 BY MS. WALLACE:

22 Good morning, Mr. Hearing Officer. Again, my

23 name is Elizabeth Wallace, and I'm a senior assistant  
24 attorney general representing the complainant in this

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1 action, the People of the State of Illinois.

2 We are here today pursuant to the Boards's  
3 order of January 18, 2001, directing that a hearing be held  
4 to determine whether and in what amount punitive damages  
5 should be imposed in this matter.

6 The State filed a complaint in this matter on  
7 May 31, 2000, against Kenneth Morrison seeking the  
8 reimbursement of costs incurred by the Illinois EPA to  
9 remove used and waste tires from property owned by Kenneth  
10 Morrison and for punitive damages.

11 For the record, Mr. Morrison has never  
12 responded to any of the pleadings in this matter nor has he  
13 participated in any telephone conferences with the Pollution  
14 Control Board hearing officer.

15 On December 14, 2000, the State filed a motion  
16 for summary judgement, asking the Board to order Mr.  
17 Morrison to reimburse the Illinois EPA for costs incurred in  
18 removing used or waste tires from his property and for  
19 punitive damages.

20 On January 18, 2001, the Board entered partial  
21 summary judgment against Kenneth Morrison and ordered

22 Mr. Morrison to pay to the State the costs incurred for  
23 performing the tire removal at the site. The Board ordered  
24 Mr. Morrison to pay \$30,902.52 to the State of Illinois.

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1                   There's a section in the Illinois  
2 Environmental Protection Act, which I'll refer to as "the  
3 Act," Section 55.3(h), which allows the State to seek and  
4 obtain punitive damages if a person found liable under  
5 Section 55.3(g) of the Act failed to take corrective action  
6 pursuant to a notice sent by the Illinois EPA so long as the  
7 failure to act was without sufficient cause.

8                   Section 55.3(h) provides that punitive damages  
9 can be imposed in an amount at least equal to or not more  
10 than two times the costs incurred by the State.

11                   In the complaint, the State sought punitive  
12 damages for Mr. Morrison's failure to perform the corrective  
13 action pursuant to notice without sufficient cause.

14                   In the Board's order granting summary  
15 judgment, the Board declined to impose punitive damages for  
16 Mr. Morrison's failure to take corrective action pursuant to  
17 notice. The Board found that there was a question of fact  
18 as to whether Mr. Morrison had sufficient cause to fail to  
19 take such action. This is the only issue that we address at  
20 this hearing.

21 In order for the Board to impose punitive  
22 damages pursuant to Section 55.3(h), the Board must find  
23 three things, first, that a person received notice from the  
24 Illinois EPA to perform corrective action at their site,

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1 second, that that person is liable to the Illinois EPA under  
2 Section 55.3(g) of the Act for the costs incurred for  
3 corrective action or removal of the used or waste tires from  
4 the site and, third, that the person failed to take  
5 corrective action without sufficient cause.

6 Here, the Board has already found that  
7 Mr. Morrison received notice from the Illinois EPA and also  
8 that Mr. Morrison is liable under Section 55.3(g) to the  
9 Illinois EPA for the costs incurred.

10 Today at this hearing we will show that  
11 Mr. Morrison failed to take corrective action without  
12 sufficient cause and ask the Board to impose punitive  
13 damages pursuant to Section 55.3(h).

14 Testimony will be presented by Mr. Todd  
15 Marvel, manager of the used tire unit at the Illinois EPA,  
16 and Mr. Ken Keigley, a field inspector with the Illinois  
17 EPA who inspected the Morrison property and spoke with  
18 Mr. Morrison. This testimony will support the State's  
19 position that Mr. Morrison failed to take action to perform



20 corrective action without sufficient cause; and, for this  
21 reason, the Board should award punitive damages in the full  
22 amount provided by statute, which is \$61,805.04.

23 That's all.

24 HEARING OFFICER LANGHOFF: Thank you,

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1 Ms. Wallace. Please call your first witness.

2 MS. WALLACE: Before we get started, I'd like  
3 to have the Board's order granting summary judgment entered  
4 as part of the record.

5 So if you could mark this -- I've already  
6 marked it, actually -- Exhibit 1. And I move to enter the  
7 Board's order.

8 HEARING OFFICER LANGHOFF: So moved. Exhibit  
9 1 is accepted into evidence.

10 MS. WALLACE: I'd like to call Mr. Todd  
11 Marvel.

12 (Witness sworn.)

13 TODD MARVEL,  
14 called as a witness, after being first duly sworn, was  
15 examined and testified upon his oath as follows:

16 DIRECT EXAMINATION

17 BY MS. WALLACE:

18 Q Mr. Marvel, would you please state your name

19 for the record and spell it?

20           A           My name is Todd Marvel. The first name is  
21 T-o-d-d. Last name is M-a-r-v-e-l. And I'm the manager of  
22 the used tire unit with the Illinois Environmental  
23 Protection Agency.

24           Q           How long have you been employed there?

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1           A           I've been with the Illinois EPA since February  
2 of 1987.

3           Q           Could you briefly describe your positions at  
4 the Illinois EPA starting with your position when you first  
5 began there and finishing up with what your position is  
6 today?

7           A           I began in February of 1987 as a field  
8 inspector in our Maywood regional office, which is in the  
9 Chicago area. I primarily inspected hazardous and solid  
10 waste facilities in the Chicago area that were regulated  
11 under our statutes and regulations.

12                       In January of 1989, I moved to our  
13 headquarters in Springfield, Illinois, where I continued to  
14 be in the field operations section. However, I was a  
15 quality assurance/quality control person for the hazardous  
16 and solid waste programs, reviewing inspection reports,  
17 drafting and ensuring that policies and procedures were

18 followed.

19                   And then, in approximately 1993, I became the  
20 RCRA coordinator. RCRA is R-C-R-A. It stands for the  
21 Resource Conservation and Recovery Act. I became the RCRA  
22 coordinator for the Bureau of Land, which basically means I  
23 was the liaison between the Illinois EPA and the United  
24 States Environmental Protection Agency on matters related to

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1 the RCRA Subtitle C program, which is the federal hazardous  
2 waste management program.

3                   We have operated under a grant with USEPA, and  
4 we have certain commitments that we have to follow. We have  
5 to maintain our authorization as a hazardous waste program  
6 and just general communication with USEPA on those matters.

7                   Then, in 1997, I was promoted to manager of  
8 the used tire unit. And I also have retained my duties as  
9 RCRA coordinator. It was in November of 1997 that I assumed  
10 these additional responsibilities. And I'm also the  
11 assistant manager of our field operations section. And I  
12 have served in that capacity since November of 1997.

13               Q       As manager of the used tire unit, could you  
14 generally describe what your duties are?

15               A       Our used tire program is a two-phased program.  
16 We have a clean-up program, and we have a regulatory

17 program. Under the Environmental Protection Act and the  
18 funding that we receive from the used tire management fund,  
19 well over 90 percent of the activities and resources that we  
20 dedicate in our program are for those two activities, the  
21 clean-up and regulatory programs.

22 I manage staff of approximately 15 people  
23 throughout the state. And we do clean-ups at used and waste  
24 tire facilities. We do several forms of clean-ups. We have

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1 a network of contractors that we work with to conduct the  
2 clean-ups. And then we have a regulatory program where we  
3 do inspections at used tire handlers. We initiate  
4 enforcement actions, recommend enforcement actions, where  
5 appropriate, and then work with our legal staff and local  
6 state's attorneys and the Attorney General's office on those  
7 enforcement matters.

8 Q Why is it necessary to have these regulations  
9 for tire facilities?

10 A Well, the regulations were adopted in response  
11 to the Used Tire Management Act, which was legislation that  
12 was passed, I believe, in 1992, which gave the Illinois  
13 EPA the authority to adopt the regulations.

14 The statutes themselves first were adopted  
15 primarily because of the presence of the Asian Tiger

16 Mosquito in the state of Illinois and its proliferation over  
17 the years throughout the state -- throughout the country  
18 and, of course, throughout the state of Illinois.

19                   At the beginning of the program, we estimated  
20 that there were approximately 15 million used and waste  
21 tires in stockpiles throughout the state of Illinois that  
22 posed several threats, primarily the threat of the Asian  
23 Tiger Mosquito, which carries the encephalitis virus and  
24 other viral diseases.

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1                   And these stockpiles also presented a fire  
2 hazard. And then the ensuing runoff from putting water on  
3 these fires can contaminate waters of the state and the  
4 land. These stockpiles also presented a -- they generally  
5 resulted in the dumping of other materials besides tires at  
6 these locations.

7                   And the legislature also stated that the used  
8 tires that were in these stockpiles presented a resource  
9 through energy recovery or other recycling methods. And  
10 that was primarily the reason for the adoption of the  
11 legislation that was passed, the Used Tire Management Act,  
12 and then the regulations ensued.

13                   We wanted to provide for an opportunity to  
14 clean up these stockpiles and also to establish standards

15 for the current generation of used tires throughout the  
16 state so that they would not end up in stockpiles.

17 Q So the stockpiled tires present a threat to  
18 human health and the environment if they are left unattended  
19 and stockpiled?

20 A That is correct.

21 Q You talked earlier about the clean-up  
22 component of the used tire program?

23 A Yes.

24 Q Could you take us through a clean-up process

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1 starting with when you find a facility that's not in  
2 compliance and then until the time that the Illinois  
3 EPA goes in and conducts a clean-up? What is the process  
4 that you go through?

5 A We have two different definitions of -- well,  
6 I'll say "used tires." We have a definition of a used tire,  
7 which is a tire that's a worn, damaged, or defective tire  
8 that is not on a vehicle wheel rim. And then we have a  
9 "waste tire." A waste tire is a used tire that's been  
10 improperly disposed of.

11 When we find a tire that's been improperly  
12 disposed of or, in other words, dumped, we have several  
13 different options. We have what's called a consensual

14 removal program, which is a provision under the Act that  
15 allows the State of Illinois to use the Used Tire Management  
16 Fund and our contractors to remove up to 1,000 used or waste  
17 tires from an individual's property. This is a one-time  
18 clean-up action, and the property owner has to sign a  
19 consensual removal agreement. And we do look into that  
20 option.

21                   However, obviously, there are many times there  
22 is much more than 1,000 tires at a site in which case we  
23 have options involving a tire removal agreement, which we  
24 may or may not go with, depending on the threat that the

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1 tires pose and the past actions of the property owner.

2                   Then we have this provision under --

3           Q       Excuse me. I'm sorry to cut you off.

4                   Is the tire removal agreement -- that's an  
5 agreement with the owner operator of the tires?

6           A       That's correct, the property owner.

7           Q       And under that agreement, they would remove  
8 the tires?

9           A       That's correct. And there are specific  
10 provisions in the Act and the regulations addressing the  
11 tire removal agreement.

12                   When a stockpile of tires poses a threat to

13 human health or the environment, we have the authority under  
14 Section 55.3(d) of the Act to issue a notice to the owner or  
15 operator of the site. And this notice gives them -- we have  
16 to give them the opportunity to perform the clean-up action  
17 themselves. It's basically a notice that formalizes our  
18 opinion that the tires pose a threat to human health and the  
19 environment.

20                   Once that notice is issued, they can submit a  
21 clean-up plan in some instances. Otherwise, we will give  
22 them a deadline to remove the tires, depending on how many  
23 tires are there.

24                   And then, if they submit a clean-up plan, we

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1 can establish a tire removal agreement under that notice.  
2 If there's no response, then we have the authority under the  
3 Act to go in and take preventative and corrective actions to  
4 mitigate the threat. And we use a contractor to do that.

5                   After that's done, then we have the statutory  
6 authority to pursue recovery of our costs and then the  
7 punitive damages, as well.

8           Q           So during that process, it sounds like there's  
9 different opportunities for the owner operator of these  
10 tires that are disposed of improperly, in violation of the  
11 law, to get assistance from the Illinois EPA to remove those



12 tires?

13           A           That is correct. It is fairly unusual for us  
14 to go straight to a 55.3(d) notice without first trying to  
15 reach some kind of agreement with the property owner, either  
16 through a tire removal agreement or a consensual removal  
17 agreement.

18           Q           In the consensual removal agreement, the  
19 Illinois EPA does the removal; and do you do cost recovery  
20 against the owner operator in that case?

21           A           There are no cost recovery provisions under  
22 the consensual removal agreement. It would be only under  
23 55.3(d) outside of that consensual removal agreement.

24                       However, the consensual removal agreement is

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1 designed for individuals who had tires on their property at  
2 the time that the Used Tire Management Act was enacted.  
3 It's not used for any business that generates used tires or  
4 for anyone who has dumped used tires on a property  
5 improperly, particularly since the passage of the Act.

6           Q           And if an owner operator of the tires wanted  
7 some time to do a clean-up because they didn't have the  
8 money to do it all at one time, would the Illinois EPA work  
9 with that party to allow them to take some time to do the  
10 clean-up?

11 A Yes, we would.

12 Q You mentioned a notice that went out to  
13 parties to notify them of this situation. Is that a notice  
14 under Section 55.3(d) of the Act?

15 A Yes, that's correct. We commonly refer to it  
16 as a "55.3(d) Notice." I think the formal name is "a notice  
17 pursuant to Section 55.3(d) of the Act."

18 Q And, generally, what does a 55.3(d) notice  
19 say?

20 A Generally, the Section 55.3(d) notice will  
21 state that the Illinois EPA believes that this accumulation  
22 of tires poses a threat to human health or the environment.

23 There is a section -- I believe it's entitled  
24 "Identified Response Action" -- that gives the owner of the

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1 site an opportunity to remove the tires either by a  
2 specified deadline or the opportunity to submit a clean-up  
3 plan. And it also includes a requirement that they maintain  
4 records, primarily receipts from the disposal of the tires,  
5 for our inspection to demonstrate that the tires were  
6 properly disposed of.

7 And then the notice also provides the --  
8 reiterates the statutory provisions for cost recovery and  
9 punitive damages. And it also specifies the different

10 corrective and preventative actions that the agency may take  
11 under the notice.

12 I wanted to add from your earlier question  
13 that we are statutorily obligated to allow the property  
14 owner to remove the tires themselves before we remove the  
15 tires with our contractor.

16 Q Do you generally receive responses to these  
17 55.3(d) notices?

18 A We do receive responses in some instances.  
19 However, there are a significant -- there is a significant  
20 percentage of the notices that we issue that do not solicit  
21 a response.

22 Q If you got a response and, again, someone  
23 needed some time, would you allow them time? Would you  
24 assist them in allowing them to clean up the tires

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1 themselves?

2 A Yes, we would. There are certain provisions  
3 in a clean-up plan or in a response that we look for: A  
4 fair amount of detail as to the rate of clean-up, either on  
5 a weekly or monthly basis, and what transporter they're  
6 going to use and where the tires are going to go to.

7 If a response doesn't include that type of  
8 detail, then we will work with and talk to the property

9 owner and issue a letter that clarifies the agreement. We  
10 won't just reject it because it doesn't meet all of our  
11 requirements. We will work with the property owner to reach  
12 a modified agreement that will have the level of detail that  
13 we're looking for.

14 Q I've got Exhibit 2, which I've already marked.  
15 Mr. Marvel, I am showing you a document that is marked  
16 Exhibit 2. Would you please take a look at that?

17 Can you tell us what that document is?

18 A This document is a notice pursuant to Section  
19 55.3(d) of the Environmental Protection Act, which is issued  
20 under our authority under Section 55.3(d) of the Act.

21 Q Who is that particular notice directed to?

22 A It's directed to Kenneth Morrison.

23 Q Would you please turn your attention to the  
24 proof of service which is attached towards the back of the

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1 document.

2 HEARING OFFICER LANGHOFF: Go off the record  
3 for just a second.

4 (Discussion held off the record.)

5 A Yes, I see the proof of service.

6 Q Thank you. And who was this document served  
7 on, according to this proof of service?

8           A           It was served on Mr. Kenneth Morrison.

9           Q           What date was it mailed to Mr. Morrison?

10          A           The document was mailed on August 11, 1998.

11          Q           Do you know who Mr. Kenneth Morrison is, why

12 he received this?

13          A           Mr. Kenneth Morrison is the owner of the

14 property where the used tires were located that is the

15 subject of the 55.3(d) notice.

16          Q           Can you generally describe what this document

17 says?

18          A           The notice itself?

19          Q           The notice, yes.

20          A           Well, the notice states that Mr. Kenneth

21 Morrison has caused or allowed the open dumping at this

22 particular site that this document is reference to and that

23 the Illinois EPA finds that it's a threat to the

24 environment.

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1                   We have made some determinations, as I said

2 before, that the site presents a threat to public health or

3 the environment. And then we, under the identified response

4 action, which I referenced earlier, we direct Mr. Morrison

5 to remove all used and/or waste tires located at the site by

6 or before October 1, 1998, and for Mr. Morrison to make all

7 business records and receipts available for our inspection.

8 And then the rest of the notice is our  
9 standard legal and statutory language pursuant to Section 55  
10 of the Act.

11 Q Does the notice warn Mr. Morrison that he  
12 would be responsible for costs incurred by the State and  
13 also for punitive damages?

14 A Yes, it does.

15 Q Do you know if this notice was prepared by a  
16 person with knowledge of or made from information given by a  
17 person with knowledge of the information appearing on it?

18 A Yes, it was.

19 Q Is it the regular practice of the Illinois  
20 EPA to make this type of document?

21 A Yes, it is.

22 Q Was this document prepared in the course of a  
23 regularly conducted business activity?

24 A Yes, it was.

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1 MS. WALLACE: Mr. Hearing Officer, I move to  
2 admit Exhibit Number 2 into evidence.

3 HEARING OFFICER LANGHOFF: Exhibit Number 2 is  
4 admitted.

5 BY MS. WALLACE:

6 Q Mr. Marvel, I'd like to direct your attention  
7 to the last two pages of the document.

8 A Okay.

9 Q Could you please tell us what those are?

10 A Pages 3 and 4 of the notice?

11 Q The last two pages that are attached to the  
12 document.

13 A Yes. This notice is, as a matter of practice,  
14 sent certified mail. And the last two documents are what we  
15 refer to as the "white card" and the "green card" that's  
16 used in sending certified mail. It documents who the notice  
17 was addressed to. It contains an article number, which is a  
18 tracking number, on what we call the "green card" or the  
19 Receipt for Certified Mail. And then it's got the signature  
20 of the addressee upon delivery and date of delivery and a  
21 stamp from the post office.

22 Q And who was this green card addressed to?

23 A It was addressed to Mr. Kenneth Morrison.

24 Q Is it signed by Mr. Morrison?

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1 A Yes, it is.

2 Q Does it have a date of delivery?

3 A Yes, it does.

4 Q What is that date?

5 A August 17, 1998.

6 Q Did the Illinois EPA receive a response to  
7 this notice from Mr. Morrison?

8 A No, we did not.

9 Q If you had received a response, would there  
10 have been an opportunity for Mr. Morrison to come in and  
11 work with you to clean up his tires from his site?

12 A Yes, there would have been.

13 Q I have exhibit number --

14 A I just would add that it's not only a common  
15 practice of ours, but it's also a statutory obligation to  
16 allow the property owner to conduct whatever preventive or  
17 corrective action is needed.

18 Q I have Exhibit Number 3, which I have already  
19 marked.

20 Mr. Marvel, I'm showing you a document that's  
21 been marked as Exhibit 3. Would you please take a look at  
22 that.

23 A Okay.

24 Q Can you tell us what that is?

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1 A This is letter that, as a normal course of  
2 business, I send to the property owner which is the subject  
3 of the notice. And it's just a reiteration that we've



4 issued a notice to you and that we've received no response  
5 and that we will be removing the tires.

6                   There is no statutory obligation to send this  
7 letter. However, as a common business practice, we do so to  
8 reiterate what actions have taken place and what our  
9 intentions are.

10           Q        What date did this letter go out?

11           A        This letter was sent on October 26, 1998.

12           Q        Who was it sent to?

13           A        It was sent to Mr. Kenneth Morrison.

14           Q        And who prepared this letter?

15           A        I prepared this letter.

16           Q        And, again, it references the notice, the  
17 55.3(d) notice, that already had gone out to Mr. Morrison?

18           A        Yes, it does.

19           Q        Is it the regular practice of the Illinois  
20 EPA to make this type of document?

21           A        Yes, it is.

22           Q        Was this document prepared in the course of a  
23 regularly conducted business activity?

24           A        Yes, it was.

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1                   MS. WALLACE: Mr. Hearing Officer, I move to  
2 admit Exhibit Number 3 into evidence.

3 HEARING OFFICER LANGHOFF: Exhibit 3 is  
4 admitted.

5 BY MS. WALLACE:

6 Q Mr. Marvel, to your knowledge, has  
7 Mr. Morrison ever responded to any notices or letters that  
8 the Illinois EPA sent him regarding these tires?

9 A To my knowledge, no, there has been no  
10 response to any notice regarding the tires.

11 Q To your knowledge, did Mr. Morrison ever make  
12 any effort to remove the waste tires on his facility?

13 A To my knowledge, there has been no effort to  
14 do so.

15 MS. WALLACE: Thank you, I have nothing  
16 further.

17 HEARING OFFICER LANGHOFF: Thank you. You may  
18 step down.

19 Next witness, Ms. Wallace.

20 MS. WALLACE: I'd like to call Mr. Kenneth  
21 Keigley.

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(Witness sworn.)

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KENNETH KEIGLEY,

called as a witness, after being first duly sworn, was  
examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MS. WALLACE:

Q Mr. Keigley, would you please state your name  
for the record and spell it?

A Kenneth Keigley, K-e-n-n-e-t-h K-e-i-g-l-e-y.

Q Where are you currently employed?

A I work for the Illinois Environmental  
Protection Agency in the Champaign region, Champaign,  
Illinois.

Q How long have you been there?

A Approximately five years.

Q Can you briefly describe what your job  
responsibilities have been, starting with when you started  
with the Illinois EPA and finishing with what you are  
currently doing there now?

A Sure. When I started out, I was primarily  
inspecting used tire sites to determine the regulatory  
status and their compliance status. I did this until about  
two years ago, and then I started inspecting RCRA sites.

Q What are your job responsibilities right now?

1           A       Right now, I inspect RCRA sites, hazardous  
2 waste sites.

3           Q       And are used tire facilities part of that  
4 program?

5           A       Not part of that program, but if I happen on  
6 to waste tires that are a problem, I go ahead and perform  
7 those inspections, too.

8           Q       So you go out of the office to the sites in  
9 different facilities and inspect them for compliance?

10          A       Yes, I do.

11          Q       Are you familiar with the property owned by  
12 Mr. Kenneth Morrison?

13          A       Yes, I am.

14          Q       And how did you become familiar with that  
15 property?

16          A       I inspected that property in March of 1998.

17          Q       Do you recall whether you spoke to  
18 Mr. Morrison during that inspection in March of 1998?

19          A       Mr. Morrison wasn't present during that  
20 inspection -- was not present.

21          Q       What did you see on the site when you  
22 inspected the facility?

23          A       Used tires scattered throughout the site and  
24 waste consisting of broken furniture, cloth, plastic,

1 dimensional lumber scattered around the site.

2 Q You say you went there in March of 1998 to  
3 perform an inspection there?

4 A Yes.

5 Q Did you ever have occasion to go back to that  
6 site after the first inspection that you made?

7 A Yes. Later in the year -- and I'm not certain  
8 exactly what month -- I went out to meet the USEPA site  
9 manager that was overseeing hazardous waste clean-up at the  
10 site.

11 Q Were the tires still on the property at that  
12 time?

13 A Yes, they were.

14 Q And during that visit, do you recall whether  
15 or not you met Mr. Morrison?

16 A I did meet Mr. Morrison on that visit.

17 Q And did you speak to him?

18 A Yes, I did.

19 Q Can you tell us what you said to him and what  
20 he said to you?

21 A Yes. I told him that the Illinois  
22 Environmental Protection Agency was in the process of  
23 setting things up to remove the tires as a threat to the  
24 environment. And he asked me at the time if he could remove

1 the tires before we did. And I told him that, yes, he  
2 could. It was a fairly short conversation.

3 Q So based on your conversation, do you believe  
4 that Mr. Morrison knew that the Illinois EPA was going to  
5 come in and do a tire removal at this property?

6 A Yes, he did know that.

7 Q I have Exhibit 4, which I've already marked.  
8 Mr. Keigley, I'm handing you a document that we've marked as  
9 Exhibit 4. Would you please take a moment and look at that.

10 Have you seen that document before?

11 A Yes, I have.

12 Q Can you tell us what it is?

13 A It's a violation notice that is issued  
14 pursuant to Section 31 of the Act, the Illinois  
15 Environmental Protection Act.

16 Q Who did this violation notice go to?

17 A Mr. Kenneth Morrison.

18 Q Can you tell me who signed this letter, which  
19 is the violation notice?

20 A Richard Gerard, my supervisor.

21 Q Do you know whether he prepared this violation  
22 notice?

23 A I prepared the violation notice.

24 Q You prepared the violation notice. Well, why

1 did he sign it and not you?

2 A He reviews and approves all the documents that  
3 are sent out of the Champaign region.

4 Q Can you generally describe the information  
5 which is in the violation notice?

6 A It's notifying Mr. Morrison that the agency  
7 believes that there are violations of the Environmental  
8 Protection Act for regulations on property controlled or  
9 owned by him and lists the violations and the reason why we  
10 believe they are violations and provides corrective actions  
11 and deadline dates for correcting the problems.

12 Q And where did you get the information to put  
13 into this violation notice?

14 A The information I got either from the Illinois  
15 Environmental Protection Act or 35 Illinois Administrative  
16 Code.

17 Q What about the factual information about the  
18 particular violations? Where did you get that information?

19 A Well, actually from the inspection, observing  
20 the violations personally on the site.

21 Q And that was the inspection that took place  
22 when?

23 A In March of 1998.

24 Q Does this violation notice talk about tires

1 being at the facility?

2 A Yes, it does.

3 Q I'd like to direct your attention to the last  
4 two pages of this document. Does the notice direct  
5 Mr. Morrison to remove the tires?

6 A Yes, it does.

7 Q And does it give a date by which Mr. Morrison  
8 should remove those tires?

9 A Yes, it does.

10 Q Is it the regular practice of the Illinois  
11 EPA to prepare and send out these violation notices?

12 A Yes, it is.

13 Q Was this document prepared in the course of  
14 regularly conducted business activity?

15 A Yes.

16 MS. WALLACE: Mr. Hearing Officer, I move to  
17 admit Exhibit Number 4 into evidence.

18 HEARING OFFICER LANGHOFF: Exhibit Number 4 is  
19 admitted.

20 BY MS. WALLACE:

21 Q I have Exhibit Number 5, which is marked. Mr.  
22 Keigley, I'm showing you a document that's been marked  
23 Exhibit Number 5. Would you please take a look at that.

24 Have you seen that document before?



1 A Yes, I have.

2 Q Can you tell us what it is?

3 A It's a letter prepared by me and signed by my  
4 supervisor to Mr. Morrison memorializing the conversation I  
5 had with him on December the 8th of '98 over the telephone.

6 Q And who did you say prepared this letter?

7 A I prepared the letter.

8 Q Again, it was signed by your supervisor?

9 A Yes.

10 Q Do you know whether the information in the  
11 letter is accurate?

12 A Yes, it is accurate.

13 Q And, again, could you describe what is the  
14 contents of this letter?

15 A Mr. Morrison had called the office and asked  
16 if he would be allowed to remove the tires before the agency  
17 conducted their removal. I told him that he would be  
18 allowed to do that, and I furnished him with an application  
19 to apply to be a used tire transporter so that he could haul  
20 the tires himself.

21 Q I believe you said the date of the letter, but  
22 I don't recall.

23 A It's December 10, 1998.

24 Q Is it the regular practice of the Illinois

1 EPA to write such letters?

2 A Yes, it is.

3 Q Was this letter prepared in the course of a  
4 regularly conducted business activity?

5 A Yes, it was.

6 MS. WALLACE: Mr. Hearing Officer, I move to  
7 admit Complainant's Exhibit Number 5 into evidence.

8 HEARING OFFICER LANGHOFF: Exhibit Number 5 is  
9 admitted.

10 BY MS. WALLACE:

11 Q Did the Illinois EPA receive a response to  
12 this letter from Mr. Morrison?

13 A No, we didn't.

14 Q To your knowledge, did Mr. Morrison ever make  
15 any effort to remove any of the used or waste tires from his  
16 property?

17 A No, he did not.

18 MS. WALLACE: I have nothing further. Thank  
19 you.

20 HEARING OFFICER LANGHOFF: Thank you,  
21 Ms. Wallace. Do you have anything further?

22 MS. WALLACE: No. We have no more witnesses.

23 HEARING OFFICER LANGHOFF: I'd like to go off

24 the record for just a moment, please.

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1 (Discussion off the record.)

2 HEARING OFFICER LANGHOFF: We've just had an  
3 off-the-record discussion regarding the filing of post  
4 hearing briefs. The parties and the hearing officer have  
5 agreed to a briefing schedule. Before we get into closing  
6 arguments, I will go ahead and read that schedule into the  
7 record.

8 The transcript of these proceedings should be  
9 available from the court reporter by July 10, 2001. I will  
10 establish a short public comment period of seven days. The  
11 parties know to talk to the court reporter following the  
12 hearing regarding the availability of the transcript.

13 The State's brief will be due by August 9,  
14 2001. The mailbox rule will not apply. The Respondent's  
15 brief, if any, will be due August 23, 2001. And the mailbox  
16 rule will not apply.

17 The transcript is usually put on the Board's  
18 website within a few days of the availability. I would just  
19 like to note that our website address is  
20 [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

21 All post hearing comments must be filed in  
22 accordance with Section 101.628 of the Board's procedural

23 rules. Public comments must be filed within seven days.

24 The mailbox rule set forth at 35 Ill. Adm.

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1 Code 101.102 will apply to any post hearing filings. I  
2 don't know if I said that earlier, but the mailbox rule will  
3 apply to any post hearing comments by the public.

4 At this time I would like to ask: Are there  
5 any members of the public present that want to make  
6 statements on the record? For the record, there is one  
7 member of the public present. Do you want to make any kind  
8 of a statement, sir?

9 AUDIENCE MEMBER: No. Thank you.

10 HEARING OFFICER LANGHOFF: Seeing none, we  
11 will move to the State's closing argument. Ms. Wallace?

12 MS. WALLACE: Thank you. Mr. Morrison had  
13 ample opportunity and notice to perform a removal of the  
14 waste and used tires from his property.

15 On June 24, 1998, the Illinois EPA sent him a  
16 violation notice giving him until September 1, 1998, to  
17 remove the tires. Mr. Morrison did not respond. On August  
18 11, 1998, the Illinois EPA sent a notice pursuant to Section  
19 55.3(d) of the Act, again advising Mr. Morrison to remove  
20 the tires on his site, this time by October 1, 1998. Again,  
21 Mr. Morrison did not respond.

22                   On October 26, 1998, the Illinois EPA sent  
23 another letter to Mr. Morrison warning him that the Illinois  
24 EPA would be removing the tires from his site and that he

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1 would be responsible for the costs incurred and also for  
2 punitive damages. No response.

3                   Kenneth Keigley, an Illinois EPA inspector who  
4 testified here today, said he spoke with Mr. Morrison at the  
5 Morrison facility regarding the tires on the site. Again,  
6 Mr. Morrison took no action.

7                   Finally, the Illinois EPA sent a letter to  
8 Mr. Morrison on December 10, 1998, stating that if  
9 Mr. Morrison wanted to, he could remove the tires himself  
10 and also putting him on notice that the Illinois EPA would  
11 perform the removal as soon as a contractor could be  
12 scheduled. Mr. Morrison took no steps to remove the tires.

13                   The Act provides that punitive damages may be  
14 assessed if a person failed to take corrective action  
15 without sufficient cause. As the record shows, Mr. Morrison  
16 ignored the Illinois EPA's notices and letters regarding the  
17 ongoing violation except for one telephone call he  
18 apparently made to the Illinois EPA.

19                   Mr. Morrison showed a complete disregard for  
20 compliance with the law by ignoring the numerous warnings

21 sent by the Illinois EPA. The Board should not allow Mr.  
22 Morrison's nonresponsiveness to be a reason for not imposing  
23 punitive damages. He cannot be allowed to benefit because  
24 he chose not to respond to the many notices sent by the

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1 Illinois EPA.

2 Penalties were included in the statute to  
3 encourage cooperation and clean-up of waste and used tires.  
4 If the Board does not impose penalties in this case, it will  
5 send the wrong message to those people who fought the law by  
6 illegally disposing of waste and used tires and then  
7 ignoring the Illinois EPA when it comes time to clean them  
8 up.

9 Mr. Morrison was given ample notice and  
10 opportunity to clean up his site prior to the Illinois  
11 EPA going in and doing the clean-up. He refused to clean up  
12 his own site. The facts show that Mr. Morrison failed by  
13 choice and without sufficient cause to take corrective  
14 action pursuant to notice, and the Board should impose the  
15 maximum penalty allowed by law in the amount of \$61,805.01.  
16 Thank you.

17 HEARING OFFICER LANGHOFF: Thank you,  
18 Ms. Wallace.

19 I'm required to make a statement as to the

20 credibility of witnesses testifying during this hearing.  
21 The statement is to be based on my legal judgment and  
22 experience. And, accordingly, I state that I have found all  
23 the witnesses testifying today to be credible. Credibility  
24 should not be an issue for the Board to consider in

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1 rendering a decision in this case.

2 At this time, I would like to conclude the  
3 proceedings. It is Wednesday, June 27, 2001, at  
4 approximately 11:52 a.m. And we stand adjourned.

5 I thank you all for your participation.

6

7 (HEARING CONCLUDED.)

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1 COUNTY OF DeWITT )  
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2 STATE OF ILLINOIS )

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CERTIFICATE OF REPORTER

5

6 I, BRENDA L. ZEITLER, CSR-RPR, Notary Public in  
7 and for the County of DeWitt, State of Illinois, DO HEREBY  
8 CERTIFY that the foregoing transcript, consisting of pages 1  
9 through 38, both inclusive, constitutes a true and accurate  
10 transcript of the original stenographic notes recorded by me  
11 of the foregoing proceedings in the case of People of the  
12 State of Illinois versus Kenneth Morrison before Steven  
13 Langhoff, Hearing Officer, on the 27th Day of June, 2001.

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Dated this 5th day of July, 2001.

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BRENDA L. ZEITLER, CSR-RPR  
Notary Public

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