

October 1, 1998. Comp. at 1-2; Exh. 2 at 2.² Since Morrison did not respond, the Agency notified Morrison on October 26, 1998, that it would perform a corrective action by removing the tires from the site. *Id.*, Exh. 3 at 1. Between December 16 and December 23, 1998, the Agency removed 101.97 tons of used or waste tires from the site, incurring costs in the amount of \$30,902.52. *Id.* at 2-3. The Agency sent a letter to Morrison on February 4, 1999, demanding reimbursement, to which Morrison did not respond. *Id.* at 3.

In its January 18, 2001 interim opinion and order, the Board granted the People's motion for summary judgment for reimbursement of the Agency's clean-up costs pursuant to Section 55.3(k) of the Act (415 ILCS 5/55.3(k) (2000)). On the issue of punitive damages, the Board directed the matter to hearing because a genuine issue of material fact remained as to whether Morrison had sufficient cause to fail to take the clean-up action as required under Section 55.3(d) of the Act.

The Board held a hearing on punitive damages on June 27, 2001 before Hearing Officer Steven Langhoff. Todd Marvel (Marvel), Manager of the Agency's Used Tire Unit, and Kenneth Keigley (Keigley), Agency field inspector, testified on behalf of the People. Morrison did not attend the hearing, nor did he file a post-hearing brief. The People filed a post-hearing brief on August 6, 2001.

DISCUSSION

The issue before the Board today is whether Morrison should pay punitive damages in the amount of \$61,805.04, as the People request. The Board first examines Morrison's liability for punitive damages pursuant to Section 55.3(h) of the Act (415 ILCS 5/55.3(h) (2000)). The Board then addresses whether to impose punitive damages, and if so, in what amount.

Liability for Punitive Damages

The People ask the Board to assess punitive damages against Morrison in the amount of \$61,805.04 pursuant to Section 55.3(h) of the Act. Section 55.3(h) provides that:

Any person liable to the Agency for costs incurred under subsection (g) of this Section may be liable to the State of Illinois for punitive damages in an amount at least equal to, and not more than 2 times, the costs incurred by the State if such person failed without sufficient cause to take preventive or corrective action pursuant to notice issued under subsection (d) of this Section. 415 ILCS 5/55.3(h) (2000).

The People must prove three factors under Section 55.3(h) of the Act. First, the People must show that Morrison failed to take preventive or corrective action pursuant to notice issued by the Agency under Section 55.3(d) of the Act. Second, the People must show that Morrison is liable for costs incurred by the Agency under Section 55.3(g) of the Act (415 ILCS 5/55.3(g)

² References to the People's exhibits are cited as "Exh. ____ at ____."

(2000)). Third, the People must show that Morrison lacked sufficient cause for his failure to take corrective action. *See* People v. Rogers, PCB 00-127, slip op. at 3 (Aug. 9, 2001).

With respect to the first two factors, the Board has already found that Morrison failed to take corrective action in response to the Agency's notice, thereby requiring the Agency to pay for the tire removal in the amount of \$30,902.52. People v. Morrison, PCB 00-212, slip op. at 3 (Jan. 18, 2001). The January 18, 2001 interim opinion and order found Morrison liable for costs incurred by the Agency for corrective action pursuant to Section 55.3(g) of the Act. *Id.*

The third factor, which is at issue today, is whether Morrison failed to take corrective action without sufficient cause. On August 11, 1998, the Agency sent Morrison a notice pursuant to Section 55.3(d) of the Act directing Morrison to remove and properly dispose of the used or waste tires at the site by October 1, 1998. Exh. 2 at 2. The notice included the language concerning punitive damages under Section 55.3(h) of the Act. *Id.* at 4. On October 26, 1998, the Agency sent Morrison a letter stating that Morrison had not responded to the Agency, and without further notice, the Agency would remove the tires. Exh. 3 at 1. This letter also advised Morrison of the Agency's right to request punitive damages pursuant to Section 55.3(h) of the Act. *Id.* On December 8, 1998, Morrison initiated a telephone conversation with Keigley during which Morrison asked if he could remove the tires before the Agency conducted its removal. Tr. at 32.³ Keigley responded that Morrison could haul the tires, and Keigley sent him an application to be a used tire transporter. *Id.* The Agency sent a letter to Morrison on December 10, 1998, memorializing the conversation. *Id.*; Exh. 5 at 1. Marvel and Keigley both testified that Morrison took no further action to remove the tires. Tr. at 25, 33.

The Board finds that Morrison failed to take corrective action without sufficient cause. Morrison was notified of potential punitive damages. He had opportunity, but failed to take corrective action, nor did he offer any reason for failing to comply with Section 55.3 of the Act. Accordingly, the Board has discretion to impose punitive damages against Morrison pursuant to Section 55.3(h) of the Act. The Board will now address whether to impose punitive damages against Morrison, and if so, in what amount.

Imposition of Punitive Damages

In Rogers, the Board stated the following purpose of punitive damages:

The Board finds that the complete failure to abide by Section 55.3 of the Act, pay for corrective action, and participate in any way in the proceedings before the Board is the type of conduct that punitive damages are designed to punish and prevent. "The purpose in awarding punitive damages is to punish an individual responsible for the wrongful conduct, to teach the individual not to repeat the wrongful conduct, and to deter others from similar conduct." Rogers, PCB 00-127, slip op. at 5, *quoting* Page v. City of Chicago, 299 Ill. App. 3d 450, 463, 701 N.E.2d 218, 227 (1st Dist. 1998).

³ References to the transcript are cited as "Tr. at ____."

By this standard, punitive damages are appropriate because Morrison failed to take financial responsibility for corrective action, nor did he participate in Board proceedings to show cause for his failure to remove the tires. Punitive damages will punish Morrison for his lack of cooperation, and deter others from the same conduct. *See Rogers*, PCB 00-127, slip op. at 5. If the Board does not assess punitive damages against Morrison, future violators may be encouraged to ignore the Agency's notices, require the Agency to incur cleanup costs, and defer reimbursing costs until the Agency expends additional time and resources in litigating the case. *See id.* Without a penalty, Morrison would pay the same costs for refusing to clean the site as he would pay if he cooperated with the Agency and assumed that responsibility. *See id.* Finding punitive damages appropriate in this case, the Board will next determine the amount of those damages.

Pursuant to Section 55.3(h) of the Act, the Board may impose punitive damages ranging from the amount of the Agency's actual cost of corrective action up to twice that amount. In this case, the applicable penalty range is \$30,902.52 to \$61,805.04. The People argue for the maximum punitive damage award because Morrison, other than one telephone call, ignored the Agency's warnings, failed to take any corrective action, and did not participate in these proceedings. Comp. Br. at 5.⁴

The maximum punitive damage amount is appropriate for violators who are unresponsive and uncooperative with the Agency. Morrison's single telephone call to the Agency on December 8, 1998, does not constitute a cooperative response, as Morrison did not follow up with any action despite encouragement from the Agency. Morrison did not respond to the complaint, contest the People's motion for summary judgment, appear at hearing, or file a post-hearing brief. Morrison has not presented any evidence to show cause for his failure to take corrective action, nor has he asserted any argument to offset the maximum punitive damage award allowed pursuant to Section 55.3(h). Accordingly, the Board finds that Morrison is liable for the maximum amount of punitive damages, \$61,805.04.

CONCLUSION

The Board finds that Morrison is liable for punitive damages, and awards the People \$61,805.04 in punitive damages pursuant to Section 55.3(h) of the Act. This amount constitutes twice the amount of the Agency's actual costs for removing accumulated waste and used tires from the site.

The Board incorporates by reference its January 18, 2001 interim opinion and order. This final opinion and order constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board grants the motion for summary judgment filed by the People of the State of Illinois (People) for the cost of corrective action. Respondent Kenneth

⁴ References to the People's post-hearing brief are cited as "Comp. Br. at ____."

Morrison (Morrison) must reimburse the Illinois Environmental Protection Agency in the amount of \$30,902.52 for costs incurred in the clean up of accumulated used and waste tires at the site located at or near Coalville Road, Streator, Livingston County, Illinois.

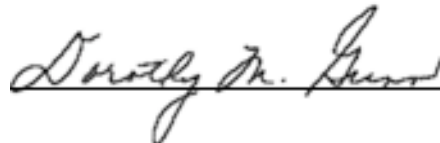
2. The Board finds that Morrison is liable to the People for punitive damages pursuant to Section 55.3(h) of the Act (415 ILCS 5/55.3 (2000)). Morrison must pay \$61,804.04 in punitive damages to the Used Tire Management Fund
3. Morrison must pay the costs and damages under paragraphs one and two of this order no later than October 20, 2001, which is the 30th day after the date of this order. Morrison must pay the costs and damages by certified check or money order, payable to the Used Tire Management Fund, in accordance with Section 55.6(a) of the Act (415 ILCS 5/55.6(a) (2000)). The case number, case name, and Morrison's social security number or federal employer number must also be included on the certified check or money order.
4. Morrison 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

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) (2000); *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 above opinion and order was adopted on September 20, 2001, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board