ILLINOIS POLLUTION CONTROL BOARD
September 19, 2002

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 98-80
	)	(Enforcement - Land)
CRAIG LINTON, an individual, and RANDY ROWE, an individual,	)	
	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by C.A. Manning):

On December 9, 1997, the People of the State of Illinois (complainant) filed a complaint on behalf of the Illinois Environmental Protection Agency (Agency) against Craig Linton and Randy Rowe (respondents). Complainant seeks reimbursement of $46,215.01 for costs incurred by the Agency in the cleanup of an accumulation of used and waste tires at a site in Ottawa, LaSalle County, and pursuant to Section 55.3 of the Environmental Protection Act (Act) (415 ILCS 5/55.3 (2000)). Complainant also seeks punitive damages pursuant to Section 5/55.3(g) of the Act (415 ILCS 5/55.3(g) (2000)).

This case is before the Board today on a motion for summary judgment filed by the People on July 1, 2002. Respondents filed a motion to strike and dismiss complainant's motion for summary judgment, to which complainant filed a response in opposition, on July 23, 2002. For the reasons stated below, the Board denies both parties' motions. The Board orders the case to hearing for full development of the facts in this case.

BACKGROUND

The Board has ruled on two earlier motions for summary judgment filed by complainant. On August 6, 1998, and on December 3, 1998, the Board denied complainant's motions for summary judgment. In the order dated August 6, 1998, the Board found that facts admitted by the respondents, in attachments to the motion for summary judgment, were insufficient by themselves to establish liability. People v. Linton and Rowe, PCB 98-80, slip op. at 1 (Aug. 6, 1998). In an order dated December 3, 1998, the Board again denied complainant's motion for summary judgment. The Board stated:

> To prevail on its claims, complainant must establish that the respondents were owners and/or operators of a site from which used or waste tires were removed. Geyer states in her affidavit that on May 20, 1991, respondents Craig Linton and Randy Rowe admitted that they owned and operated respectively a site at which used and waste tires were disposed. Complainant has also proffered, as Exhibit C to its motion, a quitclaim deed purportedly conveying a parcel of land in LaSalle

> County to Randall Rowe and Craig Linton as tenants in common. This deed is dated June 19, 1990. Neither of these documents establishes that Linton or Rowe owned or operated the site in March of 1996 when, according to the contractor's invoice appended as Exhibit I to complainant's motion, the tires were removed. Furthermore, in their responses, both Linton and Rowe deny owning the property as joint tenants. While these denials are subject to multiple interpretations, for the purposes of this motion the Board must construe them strictly against complainant and liberally in favor of respondents. Viewed in this way, the Board cannot find that there is no material issue as to the status of respondents as owners or operators of the site at the time liability would have been incurred, *i.e.*, in March of 1996. People v. Linton and Rowe, PCB 98-80, slip op. at 3 (Dec. 3, 1998).

On July 1, 2002, complainant filed the instant motion for summary judgment.[1] Complainant states that it is an uncontested fact that respondents owned or operated the site. Mot. S. J. at 3. Complainant attaches to its motion for summary judgment an affidavit of Shaun Newell, an employee of the Illinois Environmental Protection Agency (Agency), dated July 1, 2002. Mot. S. J. Exh. D. The affidavit states that Shaun Newell "over saw the work performed by the contractor in removing the used and waste tires from the [s]ite owned and/or operated by the [r]espondents." Mot. S. J. Exh. D. at 1.

On July 23, 2002, respondents filed a motion to strike and dismiss complainant's motion for summary judgment, suggesting that the Board's denial of the previous motions for summary judgment establish the law of the case and collaterally estop complainants from raising the issue again.[2] Attached to the motion are the Board's August 6, 1998 order and an affidavit by respondent Randy Rowe. Mr. Rowe states in his affidavit that the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, entered a judgment of foreclosure on July 14, 1993, and the site sold on October 27, 1993. Mot. to Strike, Aff. at 1-2.

In its July 23, 2002 response, complainant argues that its new motion for summary judgment is proper, as it is accompanied by a new affidavit. Complainant argues that summary judgment is proper because the response and its attached Rowe affidavit does not contradict its motion and the Newell affidavit identifying the respondents as liable parties.

DISCUSSION

Complainant asks the Board to grant it summary judgment, finding that respondents owned or operated the site, and requiring respondents to reimburse the Agency for its costs incurred in the cleanup of the used and waste tires at the site. Summary judgment is appropriate where the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to

---

[1] The Board cites complainant's motion for summary judgment as "Mot. S. J. at _."

[2] The Board cites respondents' motion to strike and dismiss complainant's motion for summary judgment as "Mot. to Strike at _."

judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment "is a drastic means of disposing of litigation," and therefore it should only be granted when the movant's right to the relief "is clear and free from doubt." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Putrill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis, which would arguable entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

First, the Board denies respondents' motion to strike and dismiss this latest motion for summary judgment. In the concluding sentence of the August 6, 1998 order attached to the respondents' motion, the Board stated that the complainant could "renew the motion with proper supporting affidavits".

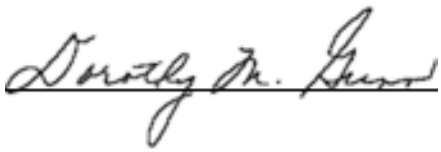
Next the Board turns to the merits of the complainant's latest motion for summary judgment. The Board finds that the facts as stated in the parties' affidavits are contradictory in some respects. First, complainant states that respondents owned or operated the site. Mot. S. J. at 3. Complainant does not prove when respondents owned or operated the site. The affidavit of the Agency's Shaun Newell states only that he "over saw the work performed by the contractor in removing the used and waste tires from the [s]ite owned and/or operated by the [r]espondents," referring to his March 8, 2002 memorandum attached to the affidavit. Mot. S. J. Exh. D. at 1. Neither the affidavit not its attached memorandum establishes that respondents owned or operated the site in March 1996 when the tires were removed. On the other hand, respondent Randy Rowe states in an affidavit that the site was foreclosed and sold in 1993, and that respondents had no right of entry whatsoever. Resp.,Rowe Affid., para 3,7.

Yet, the filings also indicate that Mr. Rowe had some continued interest in the site. The Agency's Mr. Newell states in his memorandum that Mr. Rowe: (1) was notified in advance of the removal of tires from the respondents' Ottawa site by the Agency's contractor Waste Recovery, Inc. (WRI) to its site in Dupo; (2) was asking questions at the WRI Marseilles office about the quantity of tires removed from the site by the location of tire shreds; and (3) drove by the site several times, although he did not speak to Newell.

The Board finds that there are genuine issues of material fact that preclude summary judgment. The Board therefore denies complainant's motion, and directs this matter to hearing for development of a full factual record.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2002, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board