ILLINOIS POLLUTION CONTROL BOARD
March 5, 1998

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 97-8
	)	(Enforcement - Land)
CYBER AMERICA CORPORATION, f/k/a CANTON INDUSTRIAL CORPORATION,	)	
	)	
Respondent.	)	

THOMAS DAVIS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT;

MICHAEL GOLIGHTLY APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board on a complaint for cost recovery filed pursuant to Section 31 and Section 55.3(k) of the Environmental Protection Act (Act). 415 ILCS 5/31, 55.3(k) (1994). Complainant, the Illinois Attorney General's Office on behalf of the People of the State of Illinois and at the request of the Illinois Environmental Protection Agency (Agency), seeks costs in the amount of $326,154.09 for the monies expended by the Agency in removing tires at the facility owned and operated by respondent, Cyber America Corporation, f/k/a Canton Industrial Corporation (CIC).[1] Complainant also seeks punitive damages pursuant to Section 55.3(h) of the Act and attorney fees pursuant to Section 55.3(g) of the Act. 415 ILCS 5/55.3(g), (h) (1994).

The complaint in this matter was filed on July 11, 1996.[2] On March 12, 1997, then-Chief Hearing Officer Michael Wallace held a hearing. On April 11, 1997, complainant filed

[1] At hearing, counsel for respondent advised that the corporate name had been changed from Canton Industrial Corporation to Cyber America Corporation. The caption has been amended to reflect the name change. The Board will, however, refer to respondent as CIC in this opinion as the transcript and several exhibits refer to respondent by that name.

[2] Complainant notes that, in the Agency's storage site inspection reports dated April 17, 1995, and August 14, 1995, CIC committed numerous other violations of the Act and Board regulations. Complainant, however, did not set forth these allegations in the complaint. Accordingly, the Board will consider only those violations alleged in the complaint.

a post-hearing brief. On May 2, 1997, CIC filed a response to complainant's post-hearing brief. On June 3, 1997, complainant filed a reply to CIC's response.[3]

For the following reasons, the Board awards complainant costs in the amount of $326,153.74, and also orders CIC to forfeit $10,000, plus accrued interest in financial assurance, which it had previously paid into the Used Tire Management Fund to satisfy the total monetary judgment. The Board further finds that it cannot award attorney fees in this action, and that complainant has not shown that punitive damages are warranted.

PRELIMINARY MATTERS

At hearing, Chief Hearing Officer Wallace determined that certain evidence which CIC attempted to introduce at hearing was inadmissible on the basis of hearsay. Such evidence consisted of logs (Resp. Exh. 4 and 5), allegedly maintained by security guards(s) hired by CIC, which recorded the loads of tires removed from the facility by the State's contractor from October 6, 1995, through March 1, 1996. Tr. at 147, 161-162. Complainant objected to the admission of these exhibits, alleging that the records were not created in the normal course of business and that CIC had not established that the generator of these records was unavailable to testify at hearing. Tr. at 147-148, 162. Chief Hearing Officer Wallace concluded that the logs were inadmissible. Tr. at 153. Before the Board, CIC argues that the business records are admissible as exceptions to the hearsay rule and requests that the Board overturn the hearing officer's determination.

Section 103.208 of the Board's procedural rules provides:

> Any writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event. To be admissible the writing or record shall have been made in the regular course of any business, provided it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term "business", as used in this rule, includes business, profession, occupation, and calling of every kind. 35 Ill. Adm. Code 103.208.

Section 103.208 was modeled after Illinois Supreme Court Rule 236(a). See 145 Ill. 2d R. 236(a). The rationale for the business record exception to the hearsay rule is based on

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[3] The March 12, 1997, hearing transcript will be cited as Tr. at __; complainant's April 11, 1997, brief will be cited as Comp. Br. at __; CIC's May 2, 1997, response will be cited as Resp. Br. at __; complainant's June 3, 1997, reply will be cited as Comp. Reply Br. at __; complainant's exhibits will be cited as Comp. Exh. at __; CIC's exhibits will be cited as Resp. Exh. at __.

the notion that in carrying on the proper transaction of business, such records are useless unless accurate. See Birch v. Township of Drummer, 139 Ill. App. 3d 397, 407, 487 N.E.2d 798, 805 (4th Dist. 1985). Moreover, "[t]he credibility of any business record depends upon the regular, prompt and systematic nature of the entry and the fact that it is relied on in the operation of a business." People v. Turner, 233 Ill. App. 3d 449, 507, 599 N.E.2d 104, 108 (4th Dist. 1992), quoting People v. Mormon, 97 Ill. App. 3d 556, 564, 422 N.E.2d 1065, 1071 (1st Dist. 1981).

The Board finds that Chief Hearing Officer Wallace properly denied the admission of CIC's exhibits 4 and 5. As noted, in order for records to be admitted under the business exception to the hearsay rule, the records had to have been routine and kept in the normal course of respondent's business. In this case, it was CIC's business to operate a tire recycling facility. The records at issue here, however, were kept merely to ascertain how many tires were removed by the State's contractor. As such, the records were not made in the normal course of CIC's business and do not constitute reliable evidence. Accordingly, the Board will not overturn the hearing officer's decision in this matter.

FINDINGS OF FACT

In 1992, the Agency issued a registration to CIC to initiate a used tire recycling business at 260 East Elm, Canton, Fulton County, Illinois. Tr. at 20, 130. To comply with its registration, CIC established financial assurance in February 1993 by paying $10,000 into the Used Tire Management Fund. Tr. at 6. The facility is located in the center of Canton in a series of old buildings, containing wooden supports, once owned and used by International Harvester. Tr. at 19.

CIC planned to shred used tires it purchased from various suppliers into chips and sell the tire chips for profit. Tr. at 132. CIC contracted with Mi-Jack Products, Inc. (Mi-Jack) in December 1992 to lease a tire shredder capable of producing 1" by 1" tire chips. Tr. at 132. The tire shredder delivered by Mi-Jack failed to perform as represented and, as a result, CIC was unable to shred and dispose of the tires at the facility. Tr. at 131-133. CIC's efforts to resolve the equipment failure with Mi-Jack were unsuccessful.[4] Tr. at 131-133. CIC continued to accept tires until September 1993 when it voluntarily ceased operations until new equipment could be provided. Tr. at 134.

Upon determining that the tires posed a health and fire hazard, complainant filed a complaint on October 23, 1993, in the circuit court of Fulton County, pursuant to Section 43(a) of the Act (415 ILCS 5/43(a) (1992)). Tr. at 27. Complainant sought and obtained an

[4] Due to the equipment failure, CIC filed suit in the United States District Court for the Central District of Utah against Mi-Jack on July 14, 1995, for breach of contract. Tr. at 131. That court dismissed the action on jurisdictional grounds. Tr. at 131. CIC refiled a new suit in the circuit court of Cook County, Law Division, on January 10, 1997. Tr. at 131. At hearing, the hearing officer stated that the Board will take judicial notice of this lawsuit. Tr. at 132.

injunction on October 23, 1993, ordering CIC to remove used tires that had accumulated in and outside the buildings at the facility. Tr. at 27, 70.

Complainant and CIC further entered into an agreement on February 2, 1993, prohibiting CIC from accepting any additional tires and requiring CIC to properly manage the tires at the facility until removal could be effectuated. The Fulton County Circuit Court entered an interim consent order on March 24, 1994, requiring CIC to remove at least 20,000 tires per month and to deposit $140,000 in an escrow account (subject to forfeiture) as a performance bond. Comp. Exh. 1.

On April 17, 1995, the Agency inspected the facility to ensure compliance with the March 24, 1994, interim consent order. Tr. at 21; Comp. Exh. 1. At that time, the Agency observed at least 500,000 tires, the majority of which were located in a building in the northwest corner of the facility. Tr. at 26; Comp. Exh. 1. The tires were stacked at least 25 feet high. Tr. at 27. The Agency also identified tires outside that had accumulated water, thus posing a threat of mosquito breeding. Tr. at 57. The Agency also observed tires located inside and up against the buildings. Tr. at 58, 75. The Agency further noted that from August 1994 until December 14, 1994, CIC removed 15,000 tires each month. Comp. Exh. 1. From December 14, 1994, until the date of inspection, CIC removed only two loads of tires. Comp. Exh. 1. The Agency also noted that CIC was not complying with the March 24, 1994, consent order in that it had not yet deposited $140,000 in an escrow account as a performance bond, nor was it removing 20,000 tires a month. Comp. Exh. 1. During that inspection, the Agency also inspected CIC's records, which indicated that only 300,000 used tires were at the facility. Tr. at 27.

Complainant initiated contempt proceedings on April 28, 1995, due to CIC's failure to comply with the interim consent order. Tr. at 28, 72. The court entered a contempt order on May 31, 1995, requiring CIC to completely remove the tires by the end of 1995 at a rate of at least 30,000 tires per month. Tr. at 30, 72. The court further ordered CIC to post a $140,000 performance bond, pay $14,000 in contempt sanctions, and pay $600 in attorney fees. Tr. at 9-10. CIC did not fulfill its obligations as set forth in the May 31, 1995, contempt order. Comp. at 3.

Almost two years after complainant initiated an action in the circuit court of Fulton County, the Agency, on July 17, 1995, issued a formal notice to CIC pursuant to Section 55.3(d) of the Act (415 ILCS 5/55.3(d) (1994)). Tr. at 74-78; Comp. Exh. 4. The notice specified that approximately 500,000 used tires were located at the facility, many of which were stored within wood-framed structures and therefore exacerbating the risk for fire. Comp. Exh. 4. The notice recited the Agency's finding that the approximate 500,000 used or waste tires posed a serious threat of fire. Tr. at 75; Comp. Exh. 4. The notice also identified the response action to be taken by CIC as the submission of a tire removal plan by August 17, 1995, and the immediate cessation of improper storage. Finally, in Section VII of the notice, the Agency reserved the right to undertake removal action at any time. Comp. Exh. 4.

The Agency again inspected the facility on August 14, 1995. Tr. at 29; Comp. Exh. 2. At that time, the Agency observed that CIC's removal was proceeding very slowly. Tr. at 33; 79-81.

CIC submitted its tire removal plan to the Agency in response to the Section 55.3 notice on August 25, 1995. The plan involved contracting with Gardens, Inc. (Gardens) to "supervise the removal of the used and waste tires." Comp. Exh. 5. Gardens in turn contracted a company called Eco-Systems and an individual named Randy Nowak to initiate the removal of tires from the facility on or before September 15, 1995. Comp. Exh. 5. Eco-Systems, was hired to bale waste tires and remove all of them from the site at a "rate no less than 400 bales per month, no less than 450 bales in October, and increase up to 500 bales per month" until the removal process was completed. Comp. Exh. 5. For purposes of this contract, CIC clarified that one bale equals 165 automobile tires and two bales of truck tires equals one bale of automobile tires. Comp. Exh. 5. Gardens established a temporary work force sufficient to complete the removal process, based on an average of 12 hours per day, 6 days per week. Eco-Systems entered into a contract with the City of Hannibal, Missouri, to accept the baled used tires. Comp. Exh. 5. Using its estimate of 450,000 tires, CIC estimated that it would complete the entire removal process by the end of December 1995. Comp. Exh. 5. CIC further indicated that it borrowed and set aside $140,000 to implement the plan. Comp. Exh. 5.

The Agency rejected CIC's plan as inadequate on September 28, 1995, in a letter from Paul Purseglove, manager of the Used Tire Unit. Comp. Exh. 6. Mr. Purseglove explained in the letter that while the Agency confirmed Hannibal, Missouri would accept 450 bales of used tires, the tires consumed by Hannibal "represents a small fraction of the total tires on site. The Agency has not been notified of any other specific projects or commitments that would verify that bales, beyond the 450 going to Hannibal, will be removed from the site." Comp. Exh. 6. The letter also advised CIC that the Agency would begin corrective action on October 2, 1995, as provided for in Section 55.3 of the Act. Comp. Exh. 6. Although the plan was determined by the Agency to be inadequate, CIC was allowed to proceed with its efforts to dispose of the tires. Comp. at 3.

The Agency contracted with Tri-Rinse to remove the used tires from the CIC site and haul them to Archer Daniels Midland (ADM) located in Decatur. Tr. at 96-97. As indicated in the payment vouchers provided by the Agency, Tri-Rinse removed 5,631.26 tons of used tires from October 1, 1995, through March 6, 1996. Comp. Exh. 8. The total costs paid for that removal was allegedly $326,153.74. Comp. Exh. 8.

STATUTORY AND REGULATORY AUTHORITY

Overview

In adding Title XIV to the Act in 1989, the General Assembly sought to abate the special environmental and health problems which can be caused by improper management and disposal of used tires. These include landfill disposal difficulties, tire fires, and habitat for

disease-spreading insects and infectors. At the same time, the legislature also envisioned used tires as presenting a "significant economic opportunity for recycling" which it sought to foster by grant and other funding aids. 415 ILCS 5/53(a) (1996).

Title XIV, by its terms, specifies various prohibitions, good management practices, and financial assurance requirements for the tire site owner or operator. Title XIV of the Act also mandates Board regulatory oversight. 415 ILCS 5/55, 55.1, 55.2 (1996); see 35 Ill. Adm. Code 848. In the event a tire site owner or operator fails to fulfill its obligations, Section 55.3 of Title XIV allows the Agency to initiate clean up. The Agency can then initiate a cost-recovery action before the Board for recovery of the State's clean-up costs and collection costs, as well as punitive damages if a person has failed without sufficient cause to take preventive or corrective action pursuant to notice issued under Section 55.3(d) of the Act. 415 ILCS 5/55.3(d) (1996). In significant departure from enforcement actions under Title VIII of the Act, the Board is specifically directed not to consider the reasonableness of the pollution using the factors of Section 33(c) of the Act. See 415 ILCS 5/33(c), 55.3(k) (1996).

ANALYSIS

Liability Under Section 55.3 of the Act

Section 55.3(g) of the Act provides that any owner or operator of any accumulation of used or waste tires at which the Agency has undertaken corrective or preventative action shall be liable for all costs thereof incurred by the State of Illinois, including reasonable costs of collection. See 415 ILCS 5/55.3(g) (1996). Section 55.3(i), however, states that there is no liability for a person otherwise liable who can establish by a preponderance of the evidence that the hazard created by the tires was caused by (1) an act of God, (2) an act of war, or (3) an act or omission of a third party other than an employee or agent, and other than a person whose act or omission occurs in connection with a contractual relationship with the person otherwise liable. 415 ILCS 5/55.3(i) (1996).

It is uncontested that the Agency has undertaken a correction action at CIC's tire recycling facility. Accordingly, under Section 55.3(g), the Board finds that CIC is liable for the Agency's costs. See 415 ILCS 5/55.3(g) (1996). Moreover, the Board finds that CIC is not exempt from liability pursuant to any of the provisions of Section 55.3(i) of the Act, as CIC has not proven that it meets any of the three defenses set forth in this section. 415 ILCS 5/55.3(i) (1996).

There is no argument that the tire hazard at the CIC facility was caused by an act of God or act of war. Rather, CIC argues that the tire hazard was caused by a third person, other than CIC. Specifically, CIC implies that the breach of contract by Mi-Jack, the lessor of the failed shredding equipment, prevented CIC from processing and removing tires from its facility in a timely manner. Assuming that the tire hazard was caused by the breach of contract by Mi-Jack, the Board finds that CIC would still be liable under Section 55.3 because CIC had a contractual relationship with Mi-Jack. CIC could only be found not liable if the

hazard was caused by a third party in which CIC did not have a contractual relationship. See 415 ILCS 5/55.3(i)(3).

Therefore, the Board concludes that the failure of the Mi-Jack equipment to produce the tire shreds within contract specifications is properly attributable to CIC. CIC is unable to take advantage of the third-party defense as set forth in Section 55.3(i)(3). Accordingly, CIC is liable under Section 55.3 for creating a threat to human health or the environment and for costs incurred by complainant in removing tires from the CIC facility.

Amount of Corrective Action Costs under Section 55.3(g)

Having found CIC liable for the costs of the Agency's corrective action, the next issue to be resolved is the amount of the Agency's corrective action costs. CIC challenges the amount of tires removed and the reimbursement costs sought here. CIC argues that CIC itself removed some of the used tires included in the State's totals and that it should not be liable for the full amount of costs sought.

Neither CIC nor the Agency can produce documentary evidence concerning the exact number of tires present at the CIC site, as it does not appear that CIC kept records of the used tires received or hauled away from the site in its early days of operation. Complainant asserts that, during the Agency's inspections on April 17, 1995, and August 14, 1995, the Agency calculated 500,000 tires were stored at the CIC facility while CIC's records indicated that there were 300,000 tires at the facility. Comp. Exh. 1, 2. Upon completion of the tire removal in March 7, 1996, however, complainant concluded that it had in fact removed more than 600,000 tires, or about 6,042 tons of tires, from the CIC facility. Tr. at 51; Comp. Exh. 3; Comp. Exh. 8.

A review of the invoices provided by complainant reveals in fact that Tri-Rinse removed 5,631.26 tons of tires from the CIC facility at a total cost of $326,153.74.

Invoice Date	Tons of Tires	Cost
10-17-95	734.95	44,832.45
10-31-95	1581.24	94,842.74
12-05-95	414.72	24,874.61
01-09-96	257.54	15,447.21
01-31-96	821.10	51,095.29
02-15-96	410.93	24,647.59
02-29-96	391.30	23,470.17
02-29-96	636.23	22,077.18 (.35 less than inv.)[5]
03-22-96	383.25	24,866.50
Totals	**5,631.26**	**$326,153.74**

[5] This miscalculation is reflected in the invoice dated February 29, 1996. See Comp. Exh. 8.

The invoices provided by complainant outline the weight ticket numbers and number of tons dumped for each truck that arrived at ADM in Decatur. Comp. Exh. 8.

As for CIC's allegations that Tri-Rinse overestimated the amount of used tires it removed, the Board finds no support in the record for that allegation. The vouchers contained logs of each shipment of tires for which Tri-Rinse was paid. The logs contained the date of each truckload of tires removed, and importantly, the tonnage weight of each. CIC, on the other hand, kept no records of how many tires it had at the facility, nor did it keep records of how many tires it may have removed.

Punitive Damages under Section 55.3(h)

Section 55.3(h) of the Act provides that any person liable to the Agency for costs "may also be liable to the State of Illinois for punitive damages in an amount at least equal to, and not more than two times, the costs incurred by the State if such person failed without sufficient cause to take preventative or corrective action pursuant to notice issued under subsection (d) of this Section." See 415 ILCS 5/55.3(h) (1996). The statute dictates that, if punitive damages are imposed, they must be equal to, but not greater than, the actual costs incurred by the State from its tire removal operations. Therefore, if the Board chooses to impose punitive damages on CIC, it must either impose such damages in an amount ranging from $326,153.74 to $652,307.48. The Board has no discretion to impose less than one time or greater than two times the costs incurred by the State.

Complainant maintains that CIC failed to implement a plan in response to the Agency's Section 55.3(d) notice that completely and timely removed the used or waste tires from its facility. Comp. Br. at 4-6. Moreover, complainant argues that the Board should consider CIC's history of noncompliance as well as its removal plan's lack of merit. Comp. Br. at 6. Complainant alleges that the lack of adequate funding, the lack of control over the baling activities, and the lack of technical success were all factors that contributed to the failures of CIC's removal plans. Comp. Br. at 6. Complainant contends that CIC has failed on several occasions to remove the tires and therefore is subject to punitive damages. Comp. Br. at 4.

Upon consideration of Section 55.3(h) of the Act, the Board finds that punitive damages are not warranted in this matter. Section 55.3(h) provides that the State is entitled to such damages, if a person "failed without sufficient cause to take preventative or corrective action pursuant to notice issued under subsection (d) of this Section." 415 ILCS 5/55.3(h) (1996). Complainant's Section 55.3(d) notice informed CIC that it must, within 30-days of receipt of the July 17, 1995, notice, submit a plan to the Agency for removal of all used tires from the facility. Comp. Exh. 4. The notice did not specify by what date CIC should complete the tire removal. On August 25, 1995, CIC provided complainant with a detailed used tire removal plan. In the plan, CIC outlined the contracts it had entered into and the arrangements it had made to successfully remove all of the used tires by the end of 1995. Removal by Gardens was scheduled to begin September 15, 1995. But, on September 28, 1995, complainant deemed that plan inadequate and retained Tri-Rinse to assume the tire removal process.

While the Agency itself concluded that CIC's plan would not result in the timely removal of all tires from the facility, the Board does not find that CIC "failed without sufficient cause to take preventative or corrective action pursuant to notice issued under subsection (d)" of Section 55.3 (415 ILCS 55.3(d) (1996). Moreover, the Board finds that it is inappropriate, as complainant suggests, to consider CIC's prior two-year history of noncompliance; Section 55.3(h) mandates only that we determine whether CIC failed without sufficient cause to take corrective action under subsection (d), *i.e.*, after (emphasis added) it received notice from the Agency. The Board has already concluded that CIC took action upon receipt of the Section 55.3(d) notice. Accordingly, the Board will not assess punitive damages.

Collection Costs/Attorney Fees

Complainant also seeks collection costs in the amount of $3,480 (basically, for attorney fees). Comp. Br. at 6; Comp. Reply Br. at 11. Complainant provided an affidavit in support of its request for collection costs. According to Section 55.3(g), "the owner or operator of any accumulation of waste or used tires at which the Agency has undertaken a corrective or preventive action plan under this section, shall be liable for all costs incurred by the State, including reasonable costs of collection." 415 ILCS 5/55.3(g) (1996).

The Board finds that "reasonable costs of collection" does not include attorney fees here and therefore the Board denies complainant's request for collection costs/attorney fees. Illinois case law and Board opinions clearly provide that, in the event the language of the statute does not specifically indicate that the ordinary expenses of litigation or attorney fees are recoverable, the courts will not give the language expanded meaning. ESG Watts, Inc. v. Pollution Control Board, 286 Ill. App. 3d 325, 679 N.E.2d 299 (3rd Dist. 1997) (citing Sanelli v. Glenview State Bank, 126, Ill. App.3d 411, 466 N.E.2d 1119 (1st Dist. 1984)); Qazi v. Ismail, 50 Ill. App.3d 271, 364 N.E.2d 595 (1st Dist. 1997); Dayton Hudson Corp. v. Cardinal Industries, Inc. *et al*. (August 21, 1997), PCB 97-134, slip op. at 8. The Board declines to read beyond the bounds of Section 55.3(g), which does not specifically provide for "attorney fees."

Forfeiture of Financial Assurance

Complainant asserts that, in February 1993, CIC paid $10,000 for financial assurance. Complainant requests that the $10,000 paid by CIC, in addition to any accrued interest, be applied to the judgment against it. The Board agrees that the $10,000, plus any accrued interest, paid by CIC for financial assurance should be applied toward the total monetary judgment against it. As the used tires have been removed from the facility, financial assurance is no longer necessary. Thus, directing the $10,000, plus any accrued interest, paid in financial assurance towards the total monetary judgment is proper.

CONCLUSION

In conclusion, the Board finds that complainant is entitled to costs pursuant to Sections 55.3(g) and (k) for monies expended by the Agency in removing waste and used tires from the CIC facility. In accordance with Section 55.3(g) of the Act, the Board awards complainant $326,153.74 in corrective action costs. The Board denies complainant's request for punitive damages and attorney fees. Finally, the Board orders CIC to forfeit the $10,000, plus accrued interest in financial assurance, to the Used Tire Management Fund toward the total monetary judgment. Payment will be due within 45 days of the date of this order, specified to be April 20, 1998.

This opinion constitutes the Board's findings of facts and conclusions of law.

ORDER

1. The Board finds that complainant, People of the State of Illinois, shall recover costs for monies expended by the Illinois Environmental Protection Agency in removing used and waste tires from the facility owned and operated by respondent, Cyber America Corporation f/k/a Canton Industrial Corporation (CIC) located at 260 East Elm Street, Canton, Fulton County, Illinois.

2. CIC shall pay $326,153.74 in corrective action costs, in accordance with Sections 55.3(g) and (k) of the Act (415 ILCS 5/55.3(g), (k) (1996)) for the removal of tires from its facility. The $10,000, plus accrued interest, previously paid by CIC into the Used Tire Management Fund shall be applied toward the total monetary judgment.

   All payments shall be made by certified check or money order payable to the Used Tire Management Fund on or before April 20, 1998, and shall be sent by first class mail to the following address:

   Illinois Environmental Protection Agency
   Used Tire Management Fund
   1021 North Grand Avenue East
   Springfield, Illinois 62702

   The certified check or money order shall clearly indicate on its face CIC's federal employer identification number, and that the payments are directed to the Used Tire Management Fund. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1996)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty is stayed.

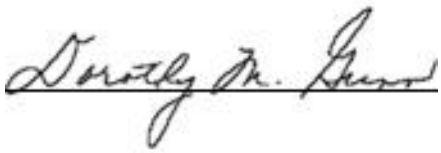
3. The Board denies complainant's request for attorney fees under Sections 42(f) and 55.3(g) of the Act (415 ILCS 5/42(f), 55.3(g) (1996)).

4. The Board denies complainant's request for punitive damages under Section 55.3(h) of the Act (415 ILCS 5.55.3(h) (1996)).

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on them 5th day of March 1998 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board