

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 19 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

THOMAS GRAY, an individual, STEVE
WHYTE, an individual, GLADYS WHYTE, an
individual, LEONA CHILDRESS, an individual,
and WILLIAM McCOY, an individual

Respondents.

PCB No. 04-106
(Enforcement-Cost Recovery)

NOTICE OF FILING

TO: Attached Service List

PLEASE TAKE NOTICE that on July 19 , 2004 we filed with the Clerk of the Illinois Pollution Control Board, Complainant's Motion for Summary Judgment and Certificate of Service, a copy of which is attached and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA Madigan, Attorney General State
of Illinois

By: Gerald T. Karr

Gerald T. Karr
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-3369

DATED: July 19 , 2004

SERVICE LIST

Thomas Gray
13163 East 2500 South Road
Mokena, Illinois 60954

Steve Whyte
Gladys Whyte
242 West 150th Street
Harvey, Illinois 60426-2058

Keith Harley
Chicago Legal Clinic
205 West Monroe Street, 4th Floor
Chicago, Illinois 60606

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

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COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

NOW COMES, Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General for the State of Illinois, and pursuant to Section 101.516 of the Illinois Pollution Control Board Procedural Regulations, 35 Ill. Adm. Code 101.516, hereby moves for the entry of an order granting summary judgment in favor of the Complainant and against the Respondents, Thomas Gray, Steve Whyte and Gladys Whyte. In support of its motion Complainant states as follows:

INTRODUCTION

On December 29, 2003, Complainant filed a one count Complaint seeking to recover monies expended by the State of Illinois in conducting a clean-up of used and waste tires at property owned and/or operated by the Respondents, Thomas Gray, Steve Whyte and Gladys Whyte (hereinafter referred to as "Respondents"). A copy of the Complaint is attached hereto and is incorporated herein as Exhibit "A". Pursuant to Section 103.204 (f) of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 103.204 (f), the Notice on the Complaint contained, in part, the following

language:

Failure to file an answer to this Complaint in 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding.

Service of the Complaint was completed by registered certified mail. The proof of service is attached hereto and incorporated herein as Exhibit "B". Respondents, have failed to answer the Complaint, nor have they filed a motion attacking the sufficiency of the Complaint. Pursuant to Section 103.204(d) of the Illinois Pollution Control Board Procedural Regulations, 35 Ill. Adm. Code 103.204(d), all material allegations of the Complaint are deemed admitted by operation of law. The Illinois Environmental Protection Agency hired a contractor to remove the used and waste tires and the tires were in fact disposed of at a cost of \$131, 902.48. See a copy of the affidavit of Todd J. Marvel, Manager of the Used Tire Unit, attached hereto and incorporated herein as Exhibit "C".

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (Ill. Sup. 1998). Use of summary judgment procedure is to be encouraged as an aid in expeditious disposition of lawsuits; however, it is drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free of doubt. Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511, 622 N.E.2d 788 (Ill. Sup. 1993). Granted summary judgment is a drastic consequence, the instant case is tailor made for this type of disposition and resolution.

UNCONTESTED FACTS

1. Respondents owned or operated the Site. See Exhibit A, paras. 4 & 5.
2. Respondents received the Notice pursuant to Section 55.3(d) of the Act requiring

them to removal all the tires from the Site or be liable for the cost of the clean-up, plus additional punitive damages of up to double the cost of the clean-up. See Exhibit A, paras. 14 & 15.

3. Respondents failed to respond to the Section 55.3(d) Notice and did not perform any of the acts required by the Notice. See Exhibit A, paras. 17 & 18.

4. The State of Illinois performed the tire removal action at a cost of \$131,902.48. See Exhibit A, paras. 19 & 20 and Exhibit C.

5. Respondents have failed to reimburse the State of Illinois for the cost of the clean-up. See Exhibit A, para. 27 and Exhibit C.

CONCLUSION

WHEREFORE, for the foregoing reasons, Complainant respectfully request the Board to:

1. Enter an order granting summary judgment for Complainant and against Respondents, Thomas Gray, Steve Whyte and Gladys Whyte;
2. Order Respondents, Thomas Gray, Steve Whyte and Gladys Whyte to reimburse the Illinois Environmental Protection Agency, \$131,902.48 for the cost of the tire clean-up; and
3. Order any other relief it deems just and appropriate.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney General
State of Illinois

By: Gerald T. Karr

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Assistant Attorney General
Environmental Bureau
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DATED: July 19, 2004