

ILLINOIS POLLUTION CONTROL BOARD
January 18, 2001

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 00-212
) (Enforcement - Cost Recovery)
KENNETH MORRISON,)
)
Respondent.)

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

On December 4, 2000, the People of the State of Illinois (State), filed a motion for summary judgment against Kenneth Morrison (Morrison). The Board grants the State's motion for summary judgment for the reasons explained below.

BACKGROUND

On May 31, 2000, the State filed a one-count complaint against Morrison seeking reimbursement for its costs to clean up Morrison's used and waste tire site. The complaint alleges Morrison failed to perform corrective action pursuant to notice from the Illinois Environmental Protection Agency (Agency) at the parcel of land located on Coalville Road, Streator, Livingston County, Illinois (site). These actions are in alleged violation of Section 55.3 of the Environmental Protection Act (Act). See 415 ILCS 5/55.3 (1998).

The State seeks reimbursement of \$30,902.52 for costs incurred by the Agency in the clean up of accumulated used and waste tires at the site. The State also seeks punitive damages pursuant to Section 55.3(g) of the Act. See 415 ILCS 5/55.3(g) (1998). Morrison did not answer the complaint.

The State served a Request to Admit Facts upon Morrison on or about September 21, 2000. Morrison failed to respond to the request. In that request, the State sought admission of the following relevant facts:

- a. Morrison admits he owned and operated the site.
- b. Morrison admits he owned and/or operated the accumulation of used and/or waste tires at the site.
- c. Morrison admits he received the Agency's notice pursuant to Section 55.3(d) of the Act requiring him to remove all the tires from the site or be liable for the

cost of the cleanup, plus punitive damages of up to two times the cost of the cleanup.

- d. Morrison admits he failed to respond to the Section 55.3 (d) notice and did not perform any of the acts required by the notice.
- e. Morrison admits the Agency informed him by letter dated October 26, 1998, that it would remove the tires from the site without further notice.
- f. Morrison admits that beginning on December 16, 1998, the Agency performed the tire removal action at the site and incurred costs totaling \$30,902.52.
- g. Morrison admits he has failed to reimburse the Agency for the cost of the cleanup.

The State maintains that pursuant to Section 103.162 of the Board's procedural rules, Morrison's failure to file a response to the State's request to admit facts causes these facts to be deemed admitted by operation of law. See 35 Ill. Adm. Code 103.162. Rather, under the Board's current procedural rules, Section 101.618(f) provides, in relevant part:

Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters 35 Ill. Adm. Code 101.618(f) (effective January 1, 2001).

The State argues that once the facts for which admissions were sought are deemed admitted, there is no genuine issue of material fact remaining. The State asserts it is entitled to a judgment as a matter of law as to Morrison's liability. In its motion, the State requests that the Board order Morrison to pay the State the amount of \$30,902.52 for corrective action, pursuant to 415 ILCS 5/55(k) (1998). The State further requests the Board to order Morrison to pay twice this amount in punitive damages, pursuant to 415 ILCS 5/55(h) (1998).

DISCUSSION

Summary judgment is appropriate when 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 judgment as a matter of law. See Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (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 Purtill 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 arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

The Board finds that the failure by Morrison to respond to the State’s request for admissions and motion for summary judgment has resulted in each of those factual matters being deemed admitted pursuant to 35 Ill. Adm. Code 103.162(c). We find that these admitted facts are sufficient to demonstrate the following:

1. Morrison was the owner and operator of the site.
2. Morrison owned and/or operated the accumulation of used and/or waste tires at the site.
3. Morrison received notice pursuant to Section 55.3(d) of the Act, which required him to remove all of the tires from the site or be liable for cleanup costs, plus up to double the amount in additional punitive damages.
4. Morrison failed to respond to the Section 55.3(d) notice and did not perform the acts required by the notice.
5. The Agency performed the removal of approximately 101.97 tons of waste tires from the site.
6. Morrison failed to reimburse the State for the cost of the cleanup.

These facts, in conjunction with an affidavit and other uncontested exhibits attached to the motion by the State in this matter, sufficiently prove that the State is entitled to a judgment under 415 ILCS 5/55.3(k) as a matter of law. Morrison, a site operator, accepted used and waste tires at the site. The Section 55.3(d) notice, as served on Morrison by the Agency, states that the accumulation of used or waste tires at the site presents a threat to public health or the environment. Comp. Exh. B at 2. Morrison failed to respond to the notice. The Agency, as authorized under Section 55.3(e) of the Act, took corrective action by arranging and paying for the removal of used or waste tires at the site. See 415 ILCS 5/55.3(e) (1998). The State provided an affidavit regarding costs in the amount of \$30,902.52, which demonstrated that the Agency paid for the contractor to clean up the site. See Comp. Exh. D. Morrison failed to pay the Agency for the cost of the cleanup. Section 55.3(k) of the Act provides in part that the Board may impose costs and damages provided for by this section. 415 ILCS 5/55.3(k) (1998). Since the State met its burden for summary judgment, and Morrison did not provide any evidence to present a factual basis, which arguably entitled it to a judgment, the Board finds Morrison is liable for the cost of the tire-removal.

TIRE REMOVAL COSTS

The State is entitled to reimbursement of costs for its site cleanup, pursuant to Section 5/55.3(k) of the Act. 415 ILCS 5/55.3(k) (1998). The State provided sufficient evidence that the Agency paid the amount of \$30,902.52 to a contractor to remove and dispose of the used and waste tires on the site. The State filed an affidavit by Todd Marvel, attesting to the total cost incurred by the Agency. See Comp. Exh. D at 1. Since the State has provided sufficient evidence concerning the cost of the tire removal, the Board finds that Morrison should reimburse the Agency for costs in the amount of \$30,902.52.

PUNITIVE DAMAGES

The State also requests that the Board order Morrison to pay punitive damages in the amount of \$61,805.04, pursuant to Section 55.3(h) of the Act. See 415 ILCS 5/55.3(h) (1998). 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.” 415 ILCS 5/55.3(h) (1998). The statute dictates that, if punitive damages are imposed, they must be equal to, but not greater than, the actual costs incurred by the Agency from its tire removal operations. Therefore, if the Board chooses to impose punitive damages on Morrison, it must impose such damages in an amount ranging from \$30,902.52 to \$61,805.04. The Board has no discretion to impose less than one time or greater than two times the costs incurred by the Agency.

Morrison’s failure to abide by Section 55.3 of the Act is clear from the record. Morrison failed to take preventative or corrective action pursuant to the Section 55.3(d) notice. Morrison failed to respond to the notice, and did not clean up any of the used or waste tires on the site. Morrison did not respond to the complaint by the State in this matter, and failed to respond to the State’s Request to Admit Facts. The failure to expend even a minimal effort in this matter may justify imposing punitive damages.

However, neither of the parties included sufficient information in the record to show whether Morrison had sufficient cause to fail to take such action as required under 55.3(d) of the Act. Since the record is unclear, and a genuine issue of material fact remains, the Board finds the record concerning punitive damages must be supplemented and clarified at hearing, which should be held as expeditiously as practicable.

CONCLUSION

In conclusion, the Board finds that the State is entitled to costs pursuant to Sections 55.3(g) and (k) of the Act for monies expended by the Agency in removing waste and used tires from the site operated by Morrison. See 415 ILCS 5/55.3(g), (k) (1998). In accordance with Section 55.3(g) of the Act, the Board awards the State \$30,902.52 in corrective action costs. Since a genuine issue of material fact remains as to whether Morrison had sufficient

cause to fail to abide by Section 55.3(d) of the Act, the Board directs that the hearing be held as expeditiously as practicable on the issue of whether and in what amount, punitive damages should be imposed on Morrison.

ORDER

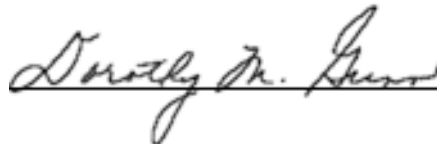
1. The Board hereby grants the State's motion for summary judgment for the cost of corrective action.
2. The Board orders Morrison to reimburse the Illinois Environmental Protection Agency in the amount of \$30,902.52 for costs incurred in the clean up of accumulated used and waste tires at the site located at or near Coalville Road, Streator, Livingston County, Illinois
3. Payment shall be made in the form of a certified check or money order, payable to the Used Tire Management Fund. The case number, name, and Morrison's social security number or federal employer number should also be included on the check or money order.
4. The check or money order shall be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. The Board directs that a hearing be held as expeditiously as practicable on the issue of whether and in what amount, punitive damages should be imposed on Morrison.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of January 2001 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board