

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 29 2003

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.

STATE OF ILLINOIS
Pollution Control Board

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

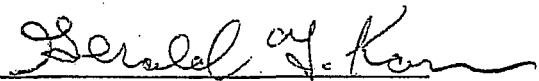
NOTICE OF FILING

TO: Attached Service List

PLEASE TAKE NOTICE that on December 29, 2003, we filed with the Clerk of the Illinois Pollution Control Board, Complainant's Complaint and Certificate of Service, a copy of which is attached and served upon you. Failure to file an answer to this Complaint within 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. If you have questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

Respectfully submitted,

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

By: 

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

DATED: December 29, 2003

SERVICE LIST

Thomas Gray
13163 East 2500 South Road
Mokena, Illinois 60454

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

Leona Childress
William McCoy
13493 East 6000 South Road
Saint Anne, Illinois 60964-4571

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, THOMAS GRAY, STEVE WHYTE, GLADYS WHYTE, LEONA CHILDRESS AND WILLIAM McCOY, (referred to hereafter collectively as "Respondents") as follows:

1. This Complaint is brought by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 55.3(k) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/55.3(k) (2002) and is an action to recover the costs incurred by the People of the State of Illinois in a corrective action undertaken by the Illinois EPA.

2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. The parcels of land (hereinafter "Site") that are the subject of this proceeding are identified as Tax Parcels No. 10-19-16-101-033, 10-19-16-101-034, and 10-19-16-101-035, and are located in Momence, Kankakee County, Illinois, 60954.

4. At all times relevant to this Complaint, Respondent Gray, an Illinois resident, owned parcel 10-19-16-101-034 and operated the Site.

5. At all times relevant to this Complaint, Respondents Steve and Gladys Whyte owned parcel 10-19-16-101-033.

6. At all times relevant to this Complaint, Respondents Childress and McCoy owned parcel 10-19-16-101-035.

7. The last known address for Respondent Gray was 13163 East 2500 South Road, Momence, Illinois, 60954.

8. The last known address for Respondents Steve and Gladys Whyte was 242 West 150th Street, Harvey, Illinois 60426-2058.

9. The last known address for Respondents Childress and McCoy was 13493 East 6000 South Road, St. Anne, Illinois 60946-4571.

10. On November 10, 1997, the Illinois EPA conducted an inspection of the Site. Pursuant to this inspection, the Illinois EPA determined that the Site contained approximately 100,000 used or waste tires.

11. On June 9, 2000, the Illinois EPA conducted a re-inspection of the Site, conditions had not changed.

12. Section 55.3(d) of the Act, 415 ILCS 5/55.3(d)(2002), provides in pertinent part, as follows:

- d. The Agency shall have authority to provide notice to the owner or operator, or both, of a Site where used or waste tires are located, ...whenever the Agency finds that the used or waste tires pose a threat to the public health or the environment...

* * *

The notice provided by the Agency shall include the identified preventive or corrective action, and shall provide an opportunity for the owner, operator, or both to perform such action.

13. Section 848.104 of the Illinois Pollution Control Board Regulations (hereinafter "Board Regulations"), 35 Ill. Adm. Code 848.104, titled, Management of Used and Waste Tires, in pertinent part, provides the following definitions:

"DISPOSAL" means the placement of used tires into or on land or water except as an integral part of a systematic reuse or conversion in the regular course of business.

"STORAGE" means the placement of used or waste tires that does not constitute disposal. At a minimum, such an accumulation must be an integral part of a systematic alteration, reuse, reprocessing or conversion of the tire business in the regular course of business.

"TIRE" means a hallow ring, made of rubber or similar materials, which was manufactured for the purpose of being placed on the wheel rim of a vehicle.

"TIRE STORAGE SITE" means a Site where used tires are stored or processed.

"USED TIRE" means a worn, damaged, or defective tire which is not mounted on a vehicle rim.

"WASTE TIRE" means a used tire that has been disposed of.

14. On February 5, 2001, pursuant to Section 55.3(d) of the Act, 415 ILCS 5/55.3(d) (2002), the Illinois EPA issued a formal written notice to the Respondents. (This notice will

hereinafter be referred to as the "55.3(d) notice").

15. Pursuant to the 55.3(d) notice, Respondents were informed that:
 - a. The accumulation of the used or waste tires posed a threat to public health or the environment;
 - b. A plan must be submitted to the Illinois EPA within 30 days from the date of the 55.3(d) notice detailing the removal of all the used waste tires at the Site;
 - c. If owner or operator did not comply with the 55.3(d) notice, the Illinois EPA would perform the clean-up and pursue any potentially responsible parties for all costs incurred by the State; and
 - d. If owner or operator failed to comply with the 55.3(d) notice, such failure may subject the owner or operator to additional punitive damages in an amount equal to, and not more than two times, the amount of costs incurred by the State.
16. Section 55.3(e) of the Act, 415 ILCS 5/55.3(e) (2002), provides in pertinent part, as follows:
 - e. In accordance with constitutional limitations, the Agency shall have authority to enter at all reasonable times upon any private or public property for the purpose of taking whatever preventive or corrective action is necessary and appropriate in accordance with the provisions of this section, including but not limited to removal, processing or treatment of used or waste tires, whenever the Agency finds that used or waste tires pose a threat to public health or the environment.
17. As of July 1, 2001, Respondents had not submitted a cleanup plan, nor removed the waste tires.
18. On or about July 6, 2001, Respondents were informed that the Illinois EPA had not

received a response to the Section 55.3(d) Notice and that the Illinois EPA intended to remove the tires from the Site. Respondent Gray authorized and consented to the Illinois EPA's removal action.

19. The tire removal was commenced on or about October 11, 2001, and was completed on or about December 21, 2001.

20. As part of the removal action, 421.41 tons of tires were removed from the Whyte parcel, 449.20 tons of tires were removed from the Gray parcel, and 228.62 tons of tires were removed from the Childress/McCoy parcel, for a total of 999.93 tons.

21. Section 55.3(g) of the Act, 415 ILCS 5/55.3(g)(2002), provides in pertinent part, as follows:

- g. Except as otherwise provided in this Section, the owner or operator of any site or accumulation of used or waste tires at which the Agency has undertaken corrective or preventive action under this Section shall be liable for all costs thereof incurred by the State of Illinois, including costs of collection. Any monies received by the Agency shall be deposited in the Used Tire Management Fund.

22. The materials described in paragraphs 11 and 20 of this Complaint constitute an accumulation of "used tires" and "waste tires" within the meaning of Section 807.104 of 35 Ill. Adm. Code.

23. The Site and the accumulation of used tires and waste tires thereon were the subject of a corrective or preventive action undertaken by the State of Illinois pursuant to Section 55.3 of the Act, 415 ILCS 5/55.3 (2002).

24. The Illinois EPA incurred costs in undertaking corrective or preventive action to removed the accumulation of used tires and waste tires on the Site as follows; Whyte parcel in the amount of \$50,624.43, the Gray parcel in the amount of \$54,059.08 and the Childress/McCoy parcel in the amount of \$27,198.97 for a total of \$131,902.48.

25. Respondents are owners and/or operators of an accumulation of used or waste tires within the meaning of Section 55.3(g) of the Act, 415 ILCS 5/55.3(g)(2002), because they owned the Site at the time of the removal of the accumulation of tires.

26. As an owner and/or operator of an accumulation of waste and used tires, pursuant to Section 55.3(g) of the Act, Respondents are liable for \$131,902.48 in costs incurred by the State for corrective action or preventive action taken at the Site in accordance with Section 55.3(g) of the Act, 415 ILCS 5/55.3(g) (2002).

27. As of the date of the filing of this Complaint, Respondents have failed to reimburse the State for any portion of the \$131,902.48 expended in removing used and waste tires from the Site.

28. Section 55.3(h) of the Act, 415 ILCS 5/55.3(h)(2002), provides, in pertinent part, as follows:

h. Any person liable to the Agency for costs incurred under Section (g) of this Section may be liable to the State 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 Section (d) of this Section.

29. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

30. Respondents are a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

31. Respondents received a 55.3(d) notice on or about February 7, 2001. They failed

without sufficient cause to take any preventive or corrective action to remediate the threat created by the accumulation of waste and used tires present at the Site.

32. By failing without sufficient cause to take preventive or corrective action pursuant to the 55.3(d) notice, Respondents are also liable to the State of Illinois for punitive damages equal to at least \$131,902.48 and up to \$263,804.96.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of the Complainant and against the Respondents, granting the following relief:

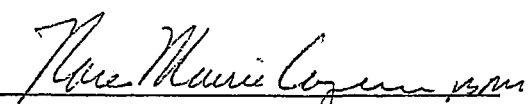
1. Finding that the Respondents are owners and/or operators of an accumulation of waste and used tires pursuant to Section 55.3(g) of the Act;
2. Ordering the Respondents to pay at least \$131,902.48 to the Used Tire Management Fund as a reimbursement of the actual costs expended by the State in funding the clean-up of the Site;
3. Finding that Respondents failed without sufficient cause to take preventive or corrective action pursuant to notice issued under Section 55.3(d) of the Act;
4. Ordering Respondents to pay at least \$131,902.48 and up to \$263,804.96 as punitive damages pursuant to Section 55.3(h) of the Act;
5. Ordering the Respondents to cease and desist from further violations of the Act;
6. Assessing all costs of this proceeding pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), (2002), including attorneys' fees, expert witness fees, and consultant fees against Respondents; and
7. Granting such other relief as the Board deems equitable and just.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:

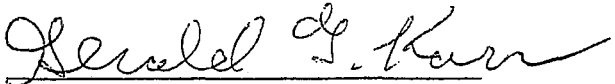

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

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

CERTIFICATE OF SERVICE

I, GERALD T. KARR, an Assistant Attorney General in this case, do certify that on this 29th day of December, 2003, I caused to be served by First Class Mail the foregoing Notice of Filing and Complainant upon the individuals listed on the attached service list, by depositing the same in the U.S. Mail depository located at 100 West Randolph Street, Chicago, Illinois in an envelope with sufficient postage prepaid.


GERALD T. KARR