

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

VOGUE TYRE & RUBBER COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 96-10
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

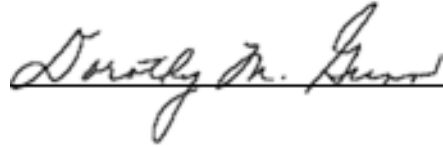
Vogue Tyre & Rubber Company (Vogue Tyre) is seeking review of a June 15, 1995 determination by the Illinois Environmental Protection Agency (Agency) that the remediation at the site located at 1401 Golf Road, Skokie, Cook County was not subject to 35 Ill. Adm. Code 731 and 732. On June 20, 2003, the Agency filed a motion for summary judgment. On July 30, 2003, Vogue Tyre filed a response to the motion. For the reasons discussed below the Board finds that there are issues of material fact and the motion for summary judgment is denied.

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that 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 (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.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief “is clear and free from doubt.” *Id.*, citing Purtill v. Hess, 111 Ill. 2d 299, 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 (2d Dist. 1994).

The record before the Board at this time includes the original petition filed by Vogue Tyre, the motion for summary judgment, and the response from Vogue Tyre. None of these pleadings are accompanied by affidavits supporting the facts included (*see* 35 Ill. Adm. Code 101.504) in the pleadings. Therefore, the Board denies the motion for summary judgment because, the record does not include sufficient facts for the Board to determine that the Agency is entitled to judgment as a matter of law. The Board notes that the Agency may renew this motion after the Agency’s record is filed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above order on September 4, 2003, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board