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MAR - 7 2005

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

March 2, 2005

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. City of Cairo***
PCB No. 05-117

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and an AMENDED COMPLAINT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
CITY OF CAIRO,)
)
Respondent.)

MAR - 7 2005

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-117
(Enforcement)

NOTICE OF FILING

To: Allan McIntire
Attorney at Law
1501 Washington Avenue
Cairo, IL 62914

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, an AMENDED COMPLAINT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 2, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on March 2, 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and AMENDED COMPLAINT

To: Allan McIntire
Attorney at Law
1501 Washington Avenue
Cairo, IL 62914

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



THOMAS DAVIS, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ALEXANDER COUNTY, ILLINOIS

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CLERK'S OFFICE

MAR - 7 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
CITY OF CAIRO,)
)
Respondent.)

PCB 05- 117
(Enforcement-Tire Cost Recovery)

AMENDED COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, CITY OF CAIRO, as follows:

COUNT I

COST RECOVERY: SECOND AND OHIO SITE

1. This Complaint is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the 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 Section 55.3 of the Illinois Environmental Act ("Act"), 415 ILCS 5/55.3 (2002).

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

3. The City of Cairo ("Cairo") is an Illinois municipal corporation. The City owns property located at Second and Ohio Streets in Cairo, Alexander County, Illinois.

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

- b. Upon making a finding that an accumulation of used or waste tires creates a hazard posing a threat to public health or the environment, the Agency may undertake preventative or corrective action in accordance with this subsection. Such preventative or corrective action may consist of any or all of the following:

* * *

3. Removal of used and waste tire accumulations from the area.

* * *

- 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, and to the owner or operator, or both, of the accumulation of the tires at the site, whenever the Agency finds that the used or waste tires pose a threat to public health or the environment * * *

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

* * *

- 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.

* * *

- 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 preventative action under this Section shall be liable for all costs thereof incurred by the State of Illinois, including reasonable costs of collection. Any monies received by the Agency hereunder shall be deposited into the Used Tire Management Fund.

* * *

- h. Any person liable to the Agency for costs incurred under subsection (g) of this Section may be liable to the State of Illinois 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 preventative or corrective action pursuant to notice issued under subsection (d) of this Section.

* * *

5. Prior to June 24, 1999, John Stephenson accumulated more than 4,000 used and waste tires in and around a warehouse located at 1601 Commercial Avenue in Cairo, Alexander County, Illinois. This site was not registered as a tire storage facility. The site was not secured from public access and was located near a school, a church, and a day care facility. Upon learning of the site, the Illinois EPA initiated enforcement efforts and sent a referral to the Attorney General. On August 4, 1999, the Attorney General filed a complaint and thereafter obtained preliminary injunctive relief prohibiting Mr. Stephenson from accumulating any more waste or used tires at the site. On December 20, 1999, the Attorney General obtained a default judgment against Mr. Stephenson which directed him to bring the site into compliance with the Act and regulations by January 19, 2000.

6. In early January 2000, the City declared the site to be a threat to public health and safety and began moving tires from the site to a second location utilized by Mr. Stephenson to store used and waste tires which was also the subject of the Attorney General's complaint and the default judgment. The Illinois EPA notified the City that it lacked the authorization to do this. The City then transferred the remaining tires to its Second and Ohio Street property where they were commingled with tires generated or accumulated as a result of other City activities.

7. On April 25, 2000, the Illinois EPA issued Mr. Stephenson and the City a notice (attached hereto as Exhibit A) pursuant to Section 55.3(d) of the Act, 415 ILCS 5/ 55.3(d), directing the City and Mr. Stephenson to remove the waste and used tires accumulated at the 2nd and Ohio Street property. Neither party removed the tires pursuant to the notice.

8. On July 31, 2000, one of the Illinois EPA's tire removal contractor commenced the removal of the tires at the 2nd and Ohio Street property. The work was completed in early August, 2000. Approximately 191.17 tons of waste and used tires removed and properly disposed of at a cost of \$35,170.75.

9. On May 17, 2002, the Illinois EPA sent a demand, (attached hereto as Exhibit B) requesting reimbursement of the removal costs. The City responded by letter but did not provide the requested reimbursement.

10. The City failed without sufficient cause to perform the preventative or corrective action required under the Illinois EPA's Section 55.3(d) notice.

11. Pursuant to Section 55.3(g) of the Act, 415 ILCS 5/55.3(g) (2002), the City is liable to the State of Illinois for the sum of \$35,170.75 for the actual costs of the tire removal.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board:

(A) Set a hearing in this matter not less than twenty-one (21) days from the date of service of this Complaint at which the Respondent, City of Cairo, be required to answer all of the allegations herein;

(B) After due consideration of all statements, testimony, evidence, and arguments that shall be submitted at said hearing or upon default by the Respondent, issue a final order finding that the Respondent failed without sufficient cause to take preventative or corrective action pursuant to the Illinois EPA notice issued under Section 55.3(d) of the Act, 415 ILCS 5/55.3(d) (2002), and direct the Respondent to pay \$35, 170.75 to the Used Tire Management Fund as actual cleanup costs expended by the State and punitive damages of \$70,341.50 to the Used Tire Management Fund;

(C) After due consideration of all statements, testimony, evidence, and arguments that shall be submitted at said hearing or upon default by the Respondent, issue a final order directing the Respondent to cease and desist from further violations of the Act and its regulations;

(D) Pursuant to Section 55.3(g) of the Act, 415 ILCS 5/55.3(g) (2002), award to Complainant its costs and reasonable attorney's fees; and

(E) Grant such other and further relief as this Board may deem appropriate.

COUNT II

COST RECOVERY: MAINTENANCE GARAGE SITE

1. This Complaint is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the 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 Section 55.3 of the Illinois Environmental Act ("Act"), 415 ILCS 5/55.3 (2002).

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

3. The City of Cairo ("Cairo") is an Illinois municipal corporation. The City owns property located at 105 Sixth Street in Cairo, Alexander County, Illinois, and operates a maintenance garage there.

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

b. Upon making a finding that an accumulation of used or waste tires creates a hazard posing a threat to public health or the environment, the Agency may undertake preventative or corrective action in accordance with this subsection. Such preventative or corrective action may consist of any or all of the following:

* * *

3. Removal of used and waste tire accumulations from the area.

* * *

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, and to the owner or operator, or both, of the accumulation of the tires at the site,

whenever the Agency finds that the used or waste tires pose a threat to public health or the environment * * *

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

* * *

- 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.

* * *

- 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 preventative action under this Section shall be liable for all costs thereof incurred by the State of Illinois, including reasonable costs of collection. Any monies received by the Agency hereunder shall be deposited into the Used Tire Management Fund.

* * *

- h. Any person liable to the Agency for costs incurred under subsection (g) of this Section may be liable to the State of Illinois 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 preventative or corrective action pursuant to notice issued under subsection (d) of this Section.

* * *

5. Prior to June 24, 1999, John Stephenson accumulated more than 4,000 used and waste tires in and around a warehouse located at 1601 Commercial Avenue in Cairo, Alexander County, Illinois. This site was not registered as a tire storage facility. The site was not scured from public access and was located near a school, a church, and a day care facility. Upon learning of the site, the Illinois EPA initiated enforcement efforts and sent a referral to the Attorney General. On August 4, 1999, the Attorney General filed a complaint and thereafter

obtained preliminary injunctive relief prohibiting Mr. Stephenson from accumulating any more waste or used tires at the site. On December 20, 1999, the Attorney General obtained a default judgment against Mr. Stephenson which directed him to bring the site into compliance with the Act and regulations by January 19, 2000.

6. In early January 2000, the City declared the site to be a threat to public health and safety and began moving tires from the site to a second location utilized by Mr. Stephenson to store used and waste tires which was also the subject of the Attorney General's complaint and the default judgment. The Illinois EPA notified the City that it lacked the authorization to do this. The City then transferred some of the remaining tires to its maintenance garage property where they were commingled with tires generated or accumulated as a result of other City activities.

7. On April 27, 2000, the Illinois EPA issued Mr. Stephenson and the City a notice (attached hereto as Exhibit C) pursuant to Section 55.3(d) of the Act, 415 ILCS 5/ 55.3(d), directing the City and Mr. Stephenson to remove the waste and used tires accumulated at the maintenance garage property. Neither party removed the tires pursuant to the notice.

8. In July of 2000, one of the Illinois EPA's tire removal contractor commenced the removal of the tires at the maintenance garage property. The work was completed later that month. Approximately 75 tons of waste and used tires removed and properly disposed of at a cost of \$14,970.50.

9. On May 17, 2002, the Illinois EPA sent a demand, (attached hereto as Exhibit D) requesting reimbursement of the removal costs. The City responded by letter but did not provide the requested reimbursement.

10. The City failed without sufficient cause to perform the preventative or corrective action required under the Illinois EPA's Section 55.3(d) notice.

11. Pursuant to Section 55.3(g) of the Act, 415 ILCS 5/55.3(g) (2002), the City is liable to the State of Illinois for the sum of \$14,970.50 for the actual costs of the tire removal.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board:

(A) Set a hearing in this matter not less than twenty-one (21) days from the date of service of this Complaint at which the Respondent, City of Cairo, be required to answer all of the allegations herein;

(B) After due consideration of all statements, testimony, evidence, and arguments that shall be submitted at said hearing or upon default by the Respondent, issue a final order finding that the Respondent failed without sufficient cause to take preventative or corrective action pursuant to the Illinois EPA notice issued under Section 55.3(d) of the Act, 415 ILCS 5/55.3(d) (2002), and direct the Respondent to pay \$14,970.50 to the Used Tire Management Fund as actual cleanup costs expended by the State and punitive damages of \$29,941.00 to the Used Tire Management Fund;

(C) After due consideration of all statements, testimony, evidence, and arguments that shall be submitted at said hearing or upon default by the Respondent, issue a final order directing the Respondent to cease and desist from further violations of the Act and its regulations;

(D) Pursuant to Section 55.3(g) of the Act, 415 ILCS 5/55.3(g) (2002), award to Complainant its costs and reasonable attorney's fees; and

(E) Grant such other and further relief as this Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois,

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

BY: 

THOMAS DAVIS
Assistant Attorney General
Environmental Bureau

Attorney Reg. No. 3124200
500 South Second Street
Springfield, Illinois 62706
217/782-7968
Dated: 3/02/05