

RECEIVED
CLERK'S OFFICE

FEB 25 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

PCB 04-106

(Enforcement – Cost Recovery)

THOMAS GRAY, STEVE WHYTE)

GLADYS WHITE, LEONA CHILDRESS,)

And WILLIAM MCCOY,)

Respondents.)

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that on February 25, 2004, I filed with the Clerk of the Illinois Pollution Control Board, Respondent WILLIAM MCCOY'S Appearance, Answer and Affirmative Defense, copies of which are attached and served upon you.

Respectfully submitted,

RESPONDENT WILLIAM MCCOY

BY: Keith Harley
Keith Harley, Attorney for WILLIAM MCCOY

Keith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu

SERVICE LIST

Gerald T. Karr, Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Steve Whyte
242 W. 150th Street
Harvey, IL 60426-2058

Gladys Whyte
242 W. 150th Street
Harvey, IL 60426-2058

Thomas Gray
13163 E. 2500 South Road
Momence, IL 60954

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

February 25, 2004

RECEIVED
CLERK'S OFFICE

FEB 25 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

THOMAS GRAY, STEVE WHYTE)

GLADYS WHITE, LEONA CHILDRESS,)

And WILLIAM MCCOY,)

Respondents.)

PCB 04-106

(Enforcement – Cost Recovery)

APPEARANCE

I, KEITH HARLEY, an attorney, hereby enter the Appearance of WILLIAM MCCOY,
and my Appearance as Counsel for WILLIAM MCCOY, in the above matter.


Attorney's Signature

Date: February 25, 2004

Keith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu

CERTIFICATE OF SERVICE

I, KEITH HARLEY, an attorney, hereby certify that true copies of the foregoing Appearance were mailed by First Class Mail, by depositing the same in the U.S. Mail depository located at 220 West Monroe, Chicago, Illinois in an envelope with sufficient postage prepaid, on February 25, 2004, to the following:

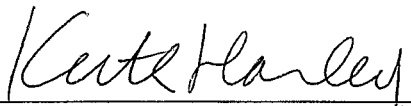
Gerald T. Karr, Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Steve Whyte
242 W. 150th Street
Harvey, IL 60426-2058

Gladys Whyte
242 W. 150th Street
Harvey, IL 60426-2058

Thomas Gray
13163 E. 2500 South Road
Mokena, IL 60454

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


Keith Harley, Attorney for William McCoy
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu

RECEIVED
CLERK'S OFFICE

FEB 25 2004

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
THOMAS GRAY, STEVE WHYTE)
GLADYS WHITE, LEONA CHILDRESS,)
And WILLIAM MCCOY,)
)
Respondents.)

PCB 04-106
(Enforcement – Cost Recovery)

ANSWER and AFFIRMATIVE DEFENSE

Now comes WILLIAM MCCOY by and through his attorney, KEITH HARLEY, and for his Answer and Affirmative Defense to the Complaint in the above-captioned case, states as follows:

I. ANSWER

1. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
2. The Respondent admits the allegations contained in Paragraph 2.
3. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
4. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
5. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
6. The Respondent admits the allegations contained in Paragraph 6.
7. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
8. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
9. The Respondent admits the allegations contained in Paragraph 9.

10. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
11. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
12. The Respondent admits the allegations contained in Paragraph 12.
13. The Respondent admits the allegations contained in Paragraph 13.
14. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
15. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
16. The Respondent admits the allegations contained in Paragraph 16.
17. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
18. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
19. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
20. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
21. The Respondent admits the allegations contained in Paragraph 21.
22. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
23. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
24. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.
25. The Respondent denies the allegations contained in Paragraph 25.
26. The Respondent denies the allegations contained in Paragraph 26.

27. The Respondent denies responsibility for reimbursing the State. As to the other allegations in Paragraph 27, the Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.

28. The Respondent admits the allegations contained in Paragraph 28.

29. The Respondent admits the allegations contained in Paragraph 29.

30. The Respondent admits the allegations contained in Paragraph 30.

31. The Respondent denies knowledge and information sufficient to form a reasonable belief, but demands strict proof thereof.

32. The Respondent denies the allegations contained in Paragraph 32.

II. AFFIRMATIVE DEFENSE

1. 415 ILCS 5/55.3(i) states in pertinent part:

There shall be no liability under subsection (g) of this Section for a person otherwise liable who can establish by a preponderance of the evidence that the hazard created by the tires was caused solely by... (3) an act or omission of a third party other than an employee or agent, and other than a person whose act or omission occurs in connection with a contractual relationship with the person otherwise liable.

2. The Respondent was given an ownership interest in parcel 10-19-16-101-035 (hereinafter "Respondent's parcel") in Momence, Kankakee County, Illinois by his mother, Leona Childress. Respondent McCoy paid no consideration, but instead, was given this interest in the property as part of Leona Childress' estate planning.

3. The Respondent never resided on this parcel, never used the parcel and never exerted any control over the parcel.

4. At the time of transfer of an ownership interest to Respondent McCoy, he was unaware that there were tires on the parcel.

5. The Respondent's parcel is adjacent to a parcel owned by Respondent Thomas Gray (hereinafter the "Gray parcel").

6. Thomas Gray was never an employee or agent of Respondent McCoy.

7. During all times relevant to this Complaint, Respondent McCoy had no contractual relationship with Thomas Gray.

8. At no time did Respondent McCoy authorize any person to have access or use of his parcel for any activities related to tire storage and/or disposal, nor did he employ or contract with any person for tire storage and/or disposal on his property.
9. Respondent McCoy never engaged in any tire storage or disposal activities on his parcel or on any other property.
10. Respondent McCoy believed all tire storage and/or disposal activities were confined to the adjacent Gray parcel.
11. At no time did Respondent McCoy, who rarely visited the parcel, observe any storage and/or disposal of tires on his parcel.
12. Any tires that came to be stored and/or disposed of on Respondent McCoy's property were placed there without his knowledge and consent.
13. That any hazard created by the tires on the Respondent's parcel was caused solely by an act or omission of a third party other than an employee or agent of Respondent McCoy, and other than a person whose act or omission occurred in connection with a contractual relationship with Respondent McCoy.
14. Along with his mother, Respondent Leona Childress, respondent McCoy consistently communicated to the IL EPA that he had this defense, and that it created sufficient cause for him not to take preventive or corrective action. Respondent McCoy further communicated to IL EPA that requiring him to remove tires was impractical because of his physical condition and very limited financial means.
15. Respondents Childress and McCoy sold the parcel on or about December 9, 2002 for a purchase price virtually identical to the price Childress paid for the property in 1979.
16. Respondent McCoy has never derived any benefit from the disposal or removal of tires made necessary by the activities of Thomas Gray.

WHEREFORE, the Respondent WILLIAM MCCOY, respectfully requests the Board to enter an order that:

1. he is not the owner and/or operator of waste and used tires;
2. he is not liable to reimburse the State for costs it incurred in funding the cleanup of the site;
3. in light of his defense, he had sufficient cause not to take corrective or preventive action;
4. he is not liable for punitive damages;

5. he is not liable for any costs relating to this proceeding;
6. he is entitled to such other relief as the Board deems equitable and just.

RESPONDENT WILLIAM MCCOY

BY: Keith Harley
Keith Harley, Attorney for William McCoy

Keith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu

CERTIFICATE OF SERVICE

I, KEITH HARLEY, an attorney, hereby certify that true copies of the foregoing Answer and Affirmative Defense were mailed by First Class Mail, by depositing the same in the U.S. Mail depository located at 220 West Monroe, Chicago, Illinois in an envelope with sufficient postage prepaid, on February 25, 2004, to the following:

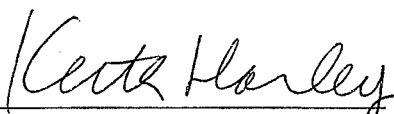
Gerald T. Karr, Assistant Attorney General
Office of the Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601

Steve Whyte
242 W. 150th Street
Harvey, IL 60426-2058

Gladys Whyte
242 W. 150th Street
Harvey, IL 60426-2058

Thomas Gray
13163 E. 2500 South Road
Mokena, IL 60454

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


Keith Harley, Attorney for William McCoy
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu