

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1998

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 98-80
) (Enforcement - Land)
CRAIG LINTON, an individual, and)
RANDY ROWE, an individual,)
)
Respondents.)

ORDER OF THE BOARD (by M. McFawn):

Before the Board is "Complainant's Motion for Summary Judgment," filed on September 29, 1998. Respondents did not respond to the motion. Because the record does not establish all elements of complainant's case when viewed in the light most favorable to respondents, the motion for summary judgment is denied.

This proceeding was initiated by the filing of a complaint on December 9, 1997. By the complaint, the State seeks reimbursement for costs incurred cleaning up an accumulation of used and waste tires and punitive damages, pursuant to Section 55.3 of the Environmental Protection Act (Act), 415 ILCS 5/55.3 (1996). The relevant subsections of Section 55.3 provide:

- 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 [Illinois Environmental Protection] Agency finds that the used or waste tires pose a threat to public health or the environment, or that the owner or operator, or both, is not proceeding in accordance with a tire removal agreement under Section 55.4

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

- 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 the 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 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 reasonable costs of collection. Any monies received by the Agency hereunder shall be deposited into the Used Tire Management Fund. The Agency may in its discretion store, dispose of or convey the tires that are removed from an area at which it has undertaken a corrective, preventive or consensual removal action, and may sell or store such tires and other items that are removed from the area. The net proceeds of any sale shall be credited against the liability incurred by the owner or operator for the costs of any preventive or corrective action.
- 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 cost incurred by the State if such person failed without sufficient cause to take preventive or corrective action pursuant to notice issued under subsection (d) of this Section.

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 229, 240, 489 N.E.2d 867, 871 (1986).

In this case, the record includes admissions and affidavits. Admissions consist of responses to complainant's first requests to admit facts (Responses), filed by each respondent on May 15, 1998, as well as facts admitted by operation of 35 Ill. Adm. Code 103.162(c) due to respondents' failure to reply to complainant's second requests to admit facts, filed on

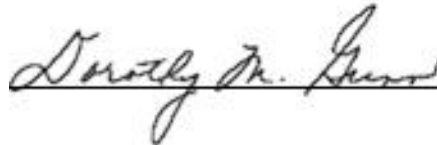
September 2, 1998. Complainant has supplied affidavits of Paul M. Purseglove, who was manager of the Agency's Used Tire Unit at the time of the events alleged in the complaint, and Katherine Geyer, an Agency Field Inspector who inspected the site.

To prevail on its claims, complainant must establish that the respondents were owners and/or operators of a site from which used or waste tires were removed. Geyer states in her affidavit that on May 20, 1991, respondents Craig Linton and Randy Rowe admitted that they owned and operated respectively a site at which used and waste tires were disposed. Complainant has also proffered, as Exhibit C to its motion, a quitclaim deed purportedly conveying a parcel of land in LaSalle County to Randall Rowe and Craig Linton as tenants in common. This deed is dated June 19, 1990. Neither of these documents establishes that Linton or Rowe owned or operated the site in March of 1996 when, according to the contractor's invoice appended as Exhibit I to complainant's motion, the tires were removed. Furthermore, in their Responses, both Linton and Rowe deny owning the property as joint tenants. While these denials are subject to multiple interpretations, for the purposes of this motion the Board must construe them strictly against complainant and liberally in favor of respondents. Purtill, *supra*, 489 N.E.2d at 871. Viewed in this way, the Board cannot find that there is no material issue as to the status of respondents as owners or operators of the site at the time liability would have been incurred, *i.e.*, in March of 1996.

Complainant's motion for summary judgment is denied.

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 3rd day of December 1998 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board