

ILLINOIS POLLUTION CONTROL BOARD

January 6, 2005

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-117
)	(Enforcement – Land, Cost Recovery)
CITY OF CAIRO,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On December 22, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against the City of Cairo (City). The complaint concerns the removal of alleged used and waste tires from two sites owned by the City. Both sites are located in the City of Cairo, Alexander County: one at Second and Ohio Streets; the other at 105 Sixth Street. For the reasons below, the Board accepts the complaint for hearing. In the interest of administrative efficiency, the Board also grants the People leave to file an amended complaint to correct apparent typographical errors in the People's requested relief.

In count I of the complaint, the People allege that the City removed used and waste tires from an individual's warehouse site in the City of Cairo to a property owned by the City and located at Second and Ohio Streets. The complaint states that the Illinois Environmental Protection Agency (Agency) issued a notice to the City, pursuant to Section 55.3(d) of the Environmental Protection Act (Act) (415 ILCS 5/55.3(d) (2002)), directing the City to remove the tires from the City's property at Second and Ohio Streets. The People allege that the City failed without sufficient cause to perform the preventative or corrective action required under the notice. According to the complaint, the Agency's tire removal contractor then removed approximately 191.17 tons of used and waste tires from the Second and Ohio Streets site at a cost of \$35,170.75. Under count I, the People seek to recover from the City these cleanup costs expended by the State, punitive damages in the amount of \$70,341.50, and costs and reasonable attorney fees.

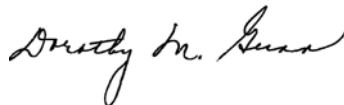
In count II of the complaint, the People allege that the City removed used and waste tires from the same warehouse site to a property owned by the City and located at 105 Sixth Street. The complaint states that the Agency issued a notice to the City, pursuant to Section 55.3(d) of the Act (415 ILCS 5/55.3(d) (2002)), directing the City to remove the tires from the City's property at 105 Sixth Street. The People allege that the City failed without sufficient cause to perform the preventative or corrective action required under the notice. According to the complaint, the Agency's tire removal contractor then removed approximately 75 tons of used and waste tires from the 105 Sixth Street site at a cost of \$14,970.50. Under count II, the People seek to recover from the City cleanup costs expended by the State, punitive damages, and costs and reasonable attorney fees. However, the dollar amounts in the prayer for relief under count II are

the same as those sought under count I, *i.e.*, the complaint states that the People seek, under count II, removal costs of \$35,170.75 and punitive damages of \$70,341.50, as they do under count I.

In the interest of expediting this proceeding, the Board accepts the complaint for hearing and grants the People leave to file an amended complaint correcting the apparent typographical errors in the prayer for relief under count II. The People must file the amended complaint by February 4, 2005. The time period for the City to file an answer or other responsive motion or pleading will begin upon service of the amended complaint. The City's failure to file an answer to the amended complaint within 60 days after receiving it may have severe consequences. Generally, if the City fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the amended complaint, the Board will consider the City to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 6, 2005, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board