

ILLINOIS POLLUTION CONTROL BOARD

April 7, 2011

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

OPINION AND 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. With the Board's leave, the People filed an amended complaint on March 7, 2005, to correct a typographical error. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. In count I of the amended 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 amended complaint states that the Illinois Environmental Protection Agency (Agency) issued a notice to the City, pursuant to Section 55.3(d) of the Act (415 ILCS 5/55.3(d) (2008)), 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 amended 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. 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) (2008)), 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. Through the amended complaint, the People seek to recover the cleanup costs expended by the State and punitive damages, as well as costs and reasonable attorney fees.

On February 8, 2011, the People and the City filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Cairo Citizen* on February 24, 2011. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of the City's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The City does not affirmatively admit the alleged liability. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. The City agrees to pay a civil penalty of \$2,000. The People and the City have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The City must pay a civil penalty of \$2,000 by May 9, 2011, which is the first business day following the 30th day after the date of this order. The City must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Used Tire Management Fund. The case number, case name, and The City's federal employer identification number must be included on the certified check or money order.
3. The City must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

The City must send a copy of the certified check or money order and any transmittal letter to:

Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. The City must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 7, 2011, by a vote of 5-0.



John Therriault, Clerk
Illinois Pollution Control Board