## ILLINOIS POLLUTION CONTROL BOARD March 6, 1997

| EDMUND and MARY RADKIEWICZ, | ) |                          |
|-----------------------------|---|--------------------------|
|                             | ) |                          |
|                             | ) | DCD 07 100               |
| Complainants,               | ) | PCB 97-136               |
| 77                          | ) | (Enforcement - Citizens) |
| V.                          | ) |                          |
| CHEVRON PRODUCTS COMPANY,   | ) |                          |
|                             | ) |                          |
| Respondent.                 | ) |                          |
|                             |   |                          |

ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board on the filing of a complaint by Edmund and Mary Radkiewicz on February 13, 1997 against respondent Chevron Product Company (Chevron). Chevron has not responded to the complaint. This matter is accepted for hearing.

In the complaint, the Radkiewiczs allege that Gulf Oil violated Section 21(e) of the Illinois Environmental Protection Act (415 ILCS 5/21(e) (1994)) by illegally disposing of and abandoning wastes consisting of soils contaminated with gasoline, kerosene, and heating oil, at an unpermitted facility. Specifically, the Radkiewiczs allege that between 1959 and 1972 Gulf Oil allowed gasoline to be released from one or more of its five (5) underground storage tanks, which in turn contaminated the soils of the property in violation of Section 21(e). The Radkiewiczs purchased the property in January 1974 and subsequently removed all product tanks and performed remediation of the contaminated soils. The Radkiewiczs state that Chevron acquired the assets and liabilities of Gulf Oil. The Radkiewiczs seek reimbursement from Chevron for the costs they incurred in investigating and remediating the gasoline contamination, litigation fees, and any other relief the Board deems appropriate.

Section 103.123(a) of the Board's procedural rules, which implement Section 31(b) of the Act (415 ILCS 5/31(b) (1994)), provides that the Chairman shall place the matter on the Board's agenda for the Board to determine whether the complaint is duplicitous or frivolous. This section further states that if the complaint is duplicitous or frivolous, the Board shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. (35 Ill. Adm. Code 103.124(a).)

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (Brandle v. Ropp (June 13, 1985), PCB 85-68.) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co. (May 17, 1973), PCB 73-173.) At this time, the Board finds that, pursuant to Section 103.124(a), the

evidence before the Board does not indicate that this complaint is either duplicitous or frivolous.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 21 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

## IT IS SO ORDERED.

| I, Dorothy M. Gunn, Clerk of the above order was adopted on the |   | Control Board, hereby certify that, 1997, by a vote of  |  |
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|   | J | Dorothy M. Gunn, Clerk Illinois Pollution Control Board |  |