

ILLINOIS POLLUTION CONTROL BOARD
March 20, 1997

MARILYN J. RICHEY,)
)
 Complainant,)
)
 v.) PCB 97-148
) (Enforcement - Citizens)
)
 TEXACO REFINING AND MARKETING,)
 INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by G. T. Girard):

This matter comes before the Board on the filing of a complaint by Marilyn J. Richey on March 3, 1997 against respondent, Texaco Refining and Marketing, Inc. (Texaco). Texaco has not responded to the complaint. This matter is accepted for hearing.

In the complaint, Ms. Richey alleges that Texaco violated the Sections 22.12, 22.13, 22.18 and Title XVI of the Environmental Protection Act (Act) (415 ILCS 5/22.12, 22.13, 22.18 and 57 *et seq.*) by allowing gasoline seepage from underground storage tanks resulting in contaminated soil. Ms. Richey claims to have removed over 2,000 cubic yards of contaminated soil and asks the Board to direct Texaco to reimburse her.

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.

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 _____ day of _____, 1997 by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board