

ILLINOIS POLLUTION CONTROL BOARD
January 22, 2004

TERESA L. SHEPRO, as executor of the)
estate of Justice W. Shepro, deceased, and)
FRANK WIEMERSLAGE, as beneficiaries)
under Trust No. 898 of the Chicago Trust)
Company,)
)
Complainants,)
)
v.) PCB 04-12
) (Enforcement – Land, Water)
NEWBY OIL COMPANY, DAVID E. TRIPP,)
and JANICE L. TRIPP,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On July 23, 2003, Teresa L. Shepro and Frank Wiemerslage (complainants) filed a complaint against Newby Oil Company, David E. Tripp, and Janice L. Tripp (respondents). *See* 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.204. The complainants allege that the respondents placed 55 gallon drums, above-ground storage tanks and semi-trailers on property owned by the complainants on Oakland Drive, DeKalb in Sycamore County that resulted in environmental contamination and a concern for safety of the complainants' soil and groundwater.

On October 16, 2003, the Board issued an order finding the complaint deficient and directing the complainants to amend the complaint to comply with the requirements of 35 Ill. Adm. Code 103.204. The Board did not rule on whether or not the complaint is duplicative or frivolous as required by Section 31(d) of the Act.

On November 13, 2003, the complainants filed an amended complaint. Respondent Newby Oil Company (Newby) filed an answer to the amended complaint on November 24, 2003; and respondents David E. Tripp and Janice L. Tripp (Tripps) filed an answer to the amended complaint on December 15, 2003.

The amended complaint alleges that the respondents violated Sections 12(a) and (d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a) and (2) (2002)), as well as the objectives set forth in 35 Ill. Adm. Code 742. The complainants allege that the respondents violated these provisions by causing or allowing the discharge and deposition of contaminants into the environment so as to cause water pollution or create a water pollution hazard.

Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2002)) allows any person to file a complaint with the Board. Section 31(d) further provides that "[u]nless the

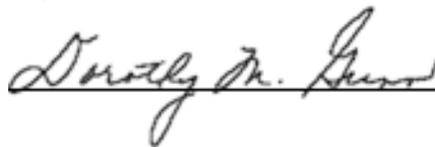
Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.” *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). The respondents have filed no motion. Except as noted below, there is no evidence before the Board that indicates that the allegations of the complaint are duplicative or frivolous.

The Board accepts the majority of the amended complaint for hearing. *See* 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.212(a). However, the Board strikes that portion of the complaint alleging a violation of 35 Ill. Adm. Code Part 742. As stated in the Board’s October 16, 2003 order, a complaint must contain a reference to the provision of the Act and regulations that the respondents are alleged to be violating. 35 Ill. Adm. Code 103.204(c)(1). A reference to Part 742 - regulations that address the tiered approach to corrective action objectives - does not provide sufficient reference to provisions of the Act or associated regulations that respondents allegedly violated.

A respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider respondent to have admitted the allegation. 35 Ill. Adm. Code 103.204(d). The Board directs the hearing officer to proceed expeditiously to hearing.

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 22, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board