

ILLINOIS POLLUTION CONTROL BOARD

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OCT 29 2004

STATE OF ILLINOIS
Pollution Control Board

TERESA L. SHEPRO, as Trustee of the)
Justice W. Shepro Trust,)
and TERESA L. SHEPRO and)
FRANK WIEMERSLAGE, as)
beneficiaries under Trust No. 898, of the)
Chicago Trust Company,)
Complainant,)

COPY

Case No. PCB 04-12

v.)

NEWBY OIL COMPANY, DAVID E.)
TRIPP and JANICE L. TRIPP,)
Respondents.)

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a copy of the Plaintiffs' Motion to Compel Discovery was filed with the Illinois Pollution Control Board (an original and four copies) and served on the Defendants by placing the same in an envelope addressed to:

Clerk of the Illinois Pollution Control Board
Attn. John
P.O. Box 19274
Springfield, IL 62794-9274

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

William C. Murphy
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Chicago, IL 60603-3441

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CLIFFE, FOSTER, CORNEILLE & BUICK
151 West Lincoln Highway
DeKalb, IL 60115

with postage fully prepaid and depositing said envelope in the U. S. Mail at Oregon, Illinois on the 12th day of October, 2004, at or about the hour of 5:00 o'clock p.m.

Clayton L. Lindsey

Subscribed and sworn to before me
this 12th day of October, 2004.

Beverly A. Knowles
NOTARY PUBLIC



Clayton L. Lindsey
WILLIAMS & McCARTHY
P.O. Box 339
607 Washington Street
Oregon, IL 61061
815/732-2101
815/732-2289 Fax

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MOTION TO COMPEL DISCOVERY

NOW COME the Complainants, TERESA L. SHEPRO, as Trustee of the Justice W. Shepro Trust, and TERESA L. SHEPRO and FRANK WIEMERSLAGE, as beneficiaries under Trust No. 898, of the Chicago Trust Company, pursuant to 35 Illinois Administrative Code 101.500 and moves the Hearing Officer to Order Respondents, NEWBY OIL COMPANY, DAVID E. TRIPP and JANICE L. TRIPP, to permit soil sample testing on their premises, and in support thereof, state as follows:

1. This action was commenced by the filing of Complaint on or about July 23, 2003.
2. Complainants Amended Complaint was filed on or about November 13, 2003 and seeks recovery against the Respondents pursuant to 415 ILCS 5/12(A) and 415 ILCS 5/12(d).
3. Complainants contend that environmental contamination found on their premises is the proximate cause of a release, spill or leaching from the Respondents' site.
4. Soil boring testing on Complainants' site, as well as other discovery in this action, has confirmed :
 - (a) Contamination is present on Complainants' site at a concentration exceeding Tier 1 Remediation Objective set forth in 35 Illinois Administrative Code 742 at or near the property line between lots owned by Complainants and

Respondents (owned by Tripp and operated/leased by Newby Oil Company).
(Report of Wendler Engineering).

- (b) Ground water flow direction is from Respondents' site towards Complainants' site. (Report of Wendler Engineering and Deposition of Greg Kazmerski).
- (c) Respondents have engaged in business on their site in excess of 10 years, during which time they have stored petroleum products in 55 gallon drums on their site, at or near the property line directly adjacent to the location of the above referenced contamination. (Deposition of David Newby, Answers to Interrogatories of Newby Oil Company, number 7).
- (d) Surface soil sampling by the Illinois EPA of Respondents' site in the area of the location of the storage of petroleum products has revealed the presence of petroleum products, although at a level below Tier 1 Remediation Objectives. (Deposition of Greg Kazmerski).

5. Complainants have requested permission to conduct three or four soil borings on Respondents' property in an area adjacent to the property line and location of contamination on Complainants' property.

6. Respondents have denied Complainants' requests.

7. Counsel for Complainants have exhausted all methods of obtaining this information, including personal consultation with counsel for Respondents, to no avail.

8. Pursuant to the Rules of the Illinois Pollution Control Board, 35 Illinois Administrative Code 101.614, the Hearing Officer may Order the production of information that is relevant to the matter under consideration. Clearly, the presence, or lack thereof, of petroleum contaminants on Respondents' property adjacent to Complainants' property would be relevant information.

9. Pursuant to Rules of the Illinois Pollution Control Board, 35 Illinois Administrative Code 101.616, all relevant information and information calculated to lead to relevant information

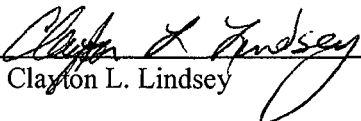
is discoverable. The extent of contamination, if any, on Respondents' site adjacent to Complainants' site is relevant to these proceedings.

10. Ordering the Respondents to conduct three or four soil borings will encourage resolution of this matter in the form of spurring settlement discussions or the potential dismissal of this cause.

11. The soil borings will not be an unreasonable invasion of Respondents' property and can be done in such a manner so as not to interfere with Respondents' business operations.

WHEREFORE, Complainants request the Hearing Officer to enter an Order permitting Complainants to conduct three or four soil borings on Respondents' property near the Complainants' site for purposes of evaluating the extent, if any, of petroleum contamination in said borings.

TERESA L. SHEPRO, as Trustee of the Justice
W. Shepro Trust, and TERESA L. SHEPRO and
FRANK WIEMERSLAGE, as beneficiaries under
Trust No. 898, of the Chicago
Trust Company, Complainants
By WILLIAMS & McCARTHY

By: 
Clayton L. Lindsey

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