

ILLINOIS POLLUTION CONTROL BOARD
January 13, 2005

TERESA L. SHEPRO, as executor of the)
estate of JUSTICE W. SHEPRO, deceased, and)
FRANK WILEMERSLAGE, 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.)

HEARING OFFICER ORDER

On October 29, 2004, the complainants filed a motion to compel discovery with the Board. On October 25, 2004, respondents David E. Tripp and Janice L. Tripp (Tripp) filed their response to the motion to compel. On October 26, 2004, respondent Newby Oil Company (Newby) filed its objections to the motion to compel. As evidenced by the filing dates above, complainants served the respondents prior to filing their motion to compel with the Board.

In this enforcement matter, the complainants contend that contamination found on their premises is the proximate cause of a release, spill or leaching from the respondents' site. In the motion, the complainants represent that the respondents have refused access to their site for the purposes of conducting soil borings. The complainants contend that these borings are relevant and that pursuant to Section 101.614 and 101.616 of the Board's procedural rules, the hearing officer may compel discovery that is relevant or information calculated to lead to relevant information.

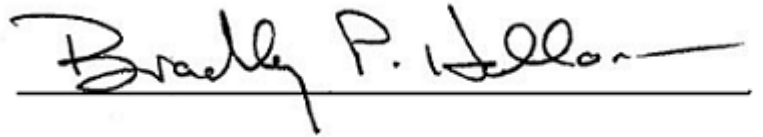
In the respondents' respective responses and objections, both argue that the complainants cite no authority which would allow the Illinois Pollution Control Board or the hearing officer to compel access to the site to allow soil borings. Additionally, the respondents represent that on April 23, 2004, the Illinois Environmental Protection Agency (Agency) took soil samples from the respondents' property. The Agency's narrative attached to Newby's objections, indicate that no contaminants were found above Tier 1 objectives. The respondents argue that any further testing would be burdensome and duplicative.

The complainants correctly state that soil borings may be relevant to this matter. However, the complainants cite to no authority, nor is the hearing officer aware of any, that would allow the Board or the hearing officer to compel access to the respondents' site to allow soil boring. Further, the requested access to the respondents' property to allow for soil boring

appears to be duplicative where the Agency has previously inspected the site. The complainants motion to compel is denied.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on January 18, 2005, at 2:00 p.m. The telephonic status conference must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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