

ILLINOIS POLLUTION CONTROL BOARD
May 7, 2009

ELMHURST MEMORIAL HEALTHCARE)
and ELMHURST MEMORIAL HOSPITAL,)
)
Complainants,)
)
v.) PCB 09-66
) (Citizens Enforcement - Land)
CHEVRON U.S.A., INC.,)
)
Respondent.)

ORDER OF THE BOARD (by G.L. Blankenship):

On March 6, 2009, Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital (Elmhurst) filed a complaint against Chevron U.S.A, Inc. (Chevron). *See* 415 ILCS 5/31(d) (2006); 35 Ill. Adm. Code 103.204. Elmhurst alleges that Chevron violated Sections 12(a) and 12(e) of the Illinois Environmental Protection Act (Act). Elmhurst further alleges that Chevron violated these provisions by causing or allowing the open dumping of gas station waste from a leaking underground storage tank, and by disposing, storing, and abandoning said waste at a facility that did not meet the Act. The complaint concerns Elmhurst's remediation of a property that Chevron formerly owned and operated as a gas filling station located at 701 South Main Street, Lombard, DuPage County.

Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2006)) 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). Chevron has filed no motion. No evidence before the Board indicates that Elmhurst's complaint is duplicative or frivolous.

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.212(a). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Chevron 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 Chevron 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, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board