

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2002

UNION OIL COMPANY OF CALIFORNIA)
d/b/a Unocal, a corporation,)
)
Complainant,)
)
v.) PCB 98-169
) (Citizens Enforcement - Land)
BARGEWAY OIL COMPANY, INC.;)
JOSEPH KELLOGG; GERTRUDE)
KELLOGG; DUPAGE ENTERPRISES, INC.)
d/b/a DUNN RENT-A-CAR; JAN P.)
SKLADANY; and CARL J. SKLADANY,)
inclusive,)
)
Respondents.)

ORDER OF THE BOARD (by C.A. Manning):

On August 26, 2002, Union Oil Company of California (Unocal) filed a motion for leave to file an amended complaint and an amended complaint in this matter. The hearing officer required Unocal to file a corrected amended complaint that included the required notice to respondents regarding the consequences of failing to answer the complaint.

On September 30, 2002, Unocal filed an amended complaint. *See* 415 ILCS 5/31(d) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.204. The amended complaint seeks to accomplish two purposes. First, the amended complaint seeks leave to add DuPage Enterprises, Inc. d/b/a Dunn Rent-A-Car, Jan P. Skladany, and Carl J. Skladany (DuPage Enterprises). Second, the amended complaint seeks to dismiss Robert F. Atkins, Bargeway Systems, Inc. and Robert Nielsen, with whom Unocal has settled its claims.

Unocal alleges that DuPage Enterprises violated Sections 12(a) and 12(d) of the Act (415 ILCS 5/12(a), (d) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002). Unocal further alleges that DuPage Enterprises violated these provisions by owning or operating a gasoline service station at 600 E. North Avenue in Glendale Heights, Dupage County, where improper handling of solid waste, including petroleum products and other chemicals, contributed to contamination. Unocal seeks reimbursement of remedial costs pursuant to Section 22.2 of the Act (415 ILCS 5/22.2, *amended by* P.A. 92-0574, eff. June 26, 2002).

Although the Board has accepted these allegations for hearing with respect to respondents Bargeway Oil Company, Joseph Kellogg, and Gertrude Kellogg, the Board must determine whether the complaint is duplicative or frivolous with respect to the newly added DuPage Enterprises. *See* Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002); *see also* 35 Ill. Adm. Code 103.212(a). A

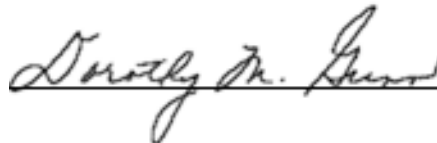
complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the 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). DuPage Enterprises have filed no motion, and no evidence before the Board indicates that Unocal’s complaint against DuPage Enterprises is duplicative or frivolous. Accordingly, the Board amends the caption in this matter to include the new parties.

Further, the Board grants Unocal’s motion to dismiss its complaint against Robert F. Atkins, Bargeway Systems, Inc. and Robert Nielsen, as reflected in the caption of this order. Unocal’s motion for leave to file the amended complaint also asks the Board to delete certain causes of action. This request is unnecessary, as those causes of action were dismissed by the Board’s order issued on January 7, 1999.

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.212(a). All respondents named in this amended complaint may file an answer to the amended complaint. A respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if the 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 respondents 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 November 7, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board