ILLINOIS POLLUTION CONTROL BOARD
July 24, 1997

VILLAGE OF NILES, a municipal   )
corporation,   )
)
          Complainant,   )   PCB 98-10
)   (Enforcement - UST, Citizens)
     v.   )
)
MOBIL OIL COMPANY,   )
a Delaware corporation,   )
)
          Respondent.   )

ORDER OF THE BOARD (by G.T. Girard):

     This matter comes before the Board on the filing of a citizens enforcement
complaint by the Village of Niles, an Illinois municipal corporation, on July 8, 1997.
The Board has not yet received a response from Mobil Oil Company (Mobil), a
Delaware corporation which owned and operated a gasoline station located at 7963
Waukegan Road, Niles, Illinois (site). This matter is accepted for hearing.

     Complainant alleges that Mobil caused the open dumping of waste at the site by
allowing underground storage tanks to leak gasoline onto the site in violation of Section
21(a) of the Environmental Protection Act (Act) (415 ILCS 5/21(a) (1996)).
Complainant also alleges that Mobil improperly conducted waste storage, waste
treatment or waste disposal operation in violation of 35 Ill. Adm. Code 732.200 of the
Board's regulations and in violation of Section 21(d)(2) of the Act (415 ILCS
5/21(d)(2) (1996)). Complainant states that it recently acquired the site in 1995 which
was previously owned by Mobil from the 1960s to 1981. Complainant requests that the
Board order Mobil to reimburse all remediation costs which complainant has incurred
as a result of the alleged contamination caused by Mobil.

     Section 103.124(a) of the Board's procedural rules which implements Section
31(b) of the Act (415 ILCS 5/31(b) (1996)), provides that this matter shall be placed on
the Board agenda for the Board's determination as to whether or not the complaint is
duplicitous or frivolous. This section further states that if the complaint is duplicitous
or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify
the parties of its decision. If the Board rules that the complaint is not duplicitous or
frivolous, this does not preclude the filing of motions regarding the insufficiency of the
pleadings. 35 Ill. Adm. Code 103.124(a).

     An action before the Board is duplicitous if the matter is identical or
substantially similar to one brought in another forum. Brandle v. Ropp (June 13,

1985), PCB 85-68. An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. Citizens for a Better Environment v. Reynolds Metals Co. (May 17, 1973), PCB 73-173. At this time, the Board finds that, pursuant to Section 103.124(a), the evidence before the Board does not indicate that this complaint is either duplicitous or frivolous.
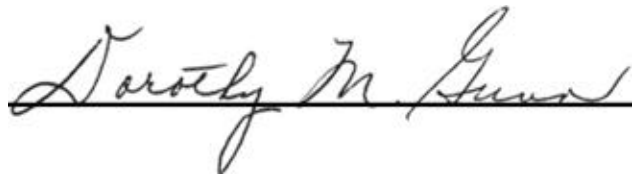
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 21 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 24th day of July 1997, by a vote of 4-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board