

RECEIVED
CLERK'S OFFICE

APR 16 2004

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

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,)

vs.)

Case No. PCB 04-12

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

**COMPLAINANTS' FIRST SET OF INTERROGATORIES DIRECTED TO
RESPONDENT, NEWBY OIL COMPANY**

TO: Newby Oil Company
c/o KINNALLY, KRENTZ, LORAN, HODGE & HERMAN, P.C.
2114 Deerpath Road, P.O. Box 5030
Aurora, IL 60507-5030

NOW COME the Complainants, Teresa L. Shepro and Frank Wiemerslage, by their attorneys, Williams & McCarthy, and propounds the following Interrogatories, pursuant to Illinois Supreme Court Rule 213, and the Rules of the Illinois Pollution Control Board, upon the Respondent, Newby Oil Company, to be answered in writing and under oath within the time required by law based upon information available to Respondent at this time, and to be supplemented at a later date as required by Illinois Supreme Court Rule.

INTERROGATORY NO. 1: State your full name, as well as your current residence address, date of birth, marital status, driver's license number and issuing State, and social security number.

ANSWER:

David Wayne Newby

3101 Fairway Oaks, DeKalb, IL 60115
D.O.B. 12/16/55
Status: Married
N100-1795-5357 (IL)
Affiant objects to stating his Social Security Number.

INTERROGATORY NO. 2: Pursuant to Illinois Supreme Court Rule 213(f)(1), state the name and address of each lay witness the Respondent intends to call as a witness at the trial or any other hearing of this cause, and for each such witness, identify the subjects on which the witness will testify.

ANSWER:

David Wayne Newby, 3101 Fairway Oaks, DeKalb, IL 60115. Will answer to all allegations of amended complaint, answer and affirmative defenses.

Chance D. Newby, 3101 Fairway Oaks, DeKalb, IL 60115.

Douglas D. Thompson, P.O. Box 233, Creston, IL.

David Withoff Kasmanski, 301 E. Lincoln Highway, DeKalb, IL 60115. Will testify concerning conversation with IEPA representative on or about August 13th, 2003.

INTERROGATORY NO. 3: Pursuant to Illinois Supreme Court Rule 213(f)(2), state the name and address of each independent expert witness the Respondent intends to call as a witness at the trial or any other hearing of this cause and for each such independent expert witness:

- (a) Identify the subjects on which the witness will testify;
- (b) Identify the opinions the Respondent expects to illicit.

ANSWER:

Kathy Geyer, IEPA, Rockford office. Ms. Geyer will testify concerning re: pollution on Plaintiff's property and remedial measures in June and July 1994.

Robert Kyler, Kyler Excavating, Malta, IL 60150. Mr. Kyler will testify concerning the above 1994 incidents.

Gregg Kazmerski, IEPA, see answer to No. 10.

INTERROGATORY NO. 4: Pursuant to Supreme Court Rule 213(f)(3), state the name and address of each controlled expert witness the Respondent intends to call as a witness at the trial or any other hearing of this cause, and for each such controlled witness;

- (a) Identify the subject matter on which the witness will testify;
- (b) Identify the conclusions and opinions of the witness and the bases therefore;
- (c) Identify the qualifications of the witness; and
- (d) Identify any reports prepared by the witness about the case.

ANSWER:

- (a) Brad M. Burke P.E., principal and consultant of Enviro-Risk Consulting Group, Inc., 1176 Silverwood Bay, St. Paul, MN 55125.
- (b) Based on many factors and its investigation, Enviro-Risk's conclusions are set forth in the attached Exhibit A.
- (c) Investigation Continues.
- (d) Report entitled "Historical Usage a Factual Investigation Report" dated November 19, 2001.

INTERROGATORY NO. 5: State the full name and current residence address of each person who has knowledge or claims to have knowledge of any contamination occurring to either the Complainants' site or the Respondent's site which are subject matters of this lawsuit.

ANSWER:

See answers to No. 2, 3, and 4 above.

INTERROGATORY NO. 6: Other than those already identified, state the date that Newby Oil first started to store 55 gallon drums on the property leased by Newby Oil Company.

ANSWER:

Investigation continues but affiant believes it was sometime in either 1997 or 1998.

INTERROGATORY NO. 7: From the date Newby Oil first started parking semi-trailers on property leased by Newby Oil adjacent to the Plaintiffs' property, state the contents of each such semi-trailer and the dates in which each such semi-trailer was parked on the property adjacent to plaintiff's property.

ANSWER: All dates are presently unknown; investigation continues.

1. Empty plastic drums which had contained sodium hypochlorite on Trailer 1.
2. Diatomaceous earth powder in 50 lb. bags, swimming pool filter tanks and miscellaneous pool accessories on Trailer 2.
3. Full drums of motor oil and hydraulic oil on Trailer 3.
4. Swimming pool solar covers and hot tub covers on Trailer 4.
5. Empty 1 gallon and 2 gallon bottles used for liquid chlorine (sodium hydrochlorate) on Trailer 5.
6. Empty 55 gallon drums returned by customers, laid on side. All drums were sealed.

Dates of parking are uncertain; investigation continues.

INTERROGATORY NO. 8: Have you in your possession any photographs, movies and/or video tapes taken of the lot leased by Newby Oil Company or the lot owned by Complainants? If so, state the date or dates on which such photographs, movies and/or video tapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

ANSWER:

None, except for photos taken by the IEPA of 1994 pollution by Plaintiffs and photographs in Enviro-Risk Report; Investigation continues.

INTERROGATORY NO. 9: Have you, or has anyone acting on your behalf, had any conversations with any person at any time with regard to the manner in which the occurrence identified in the Plaintiffs' complaint occurred, or have you overheard any statements made by any person at any time with regard to the matters complained of by Plaintiffs or the manner in which the occurrence complained of occurred? If so, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversation and/or statements;
- (c) All persons present for the conversation and/or statements;
- (d) The matters and things stated by the person in the conversation and/or statements;
- (e) Whether the conversation was oral, written and/or recorded? and
- (f) Who has possession of the statement or notes of the statement if written and/or recorded?

ANSWER:

Affiant has conversed with Newby's insurers, his family, his landlord, his experts, his attorneys and IEPA representatives. Affiant does not know dates or exact contents of conversations, or names of those present. All conversations were oral, but they dealt with a denial of the allegations of the complaint and with affirmative defenses to the complaint.

INTERROGATORY NO. 10: Do you know of any statements made by any person relating to the occurrence? If so, give the name and address of each such witness, the date of the statement, and state whether such statement was written and/or oral.

ANSWER:

Mr. Gregg Kazmerski, IEPA. No further address known. Mr. Burke and Mr. David both spoke to Mr. Kazmerski in November or early December of 2002. Mr.

Kazmerski stated orally that he was aware that the vacant lot had been the site of illegal dumping in 1994 and that he observed no conditions at Newby Oil that supported Plaintiff's complaint.

INTERROGATORY NO. 11: Have/Has the principal(s) of Newby Oil Company ever been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction and the court and caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

ANSWER:

No.

INTERROGATORY NO. 12: State the contents of each and every 55 gallon drum stored on the premises leased by Newby Oil Company and the inclusive dates of such storage.

ANSWER:

See No. 7.

INTERROGATORY NO. 13: State the basis for Newby Oil Company's denial of the allegations of the Complaint indicating that Newby Oil did not have permission to place items on Plaintiff's property, said denial being contained in Newby Oil Company's answer.

ANSWER:

David Newby will testify that there was no physical touching of the Plaintiffs' property. The trailers may have extended over the property line in the air, but Mr. Newby denies knowledge of even the intrusion of airspace. Any drums placed on Plaintiffs' property were so placed without his knowledge or consent by unknown third parties, and were removed as soon as David Newby became aware of the possibility that the drums might have been on the Plaintiff's property due to the lack of a clearly marked property line.

INTERROGATORY NO. 14: Have you or anyone at your direction hired anyone



other than Enviro-Risk Consulting Group, Inc. to perform an investigation into the environmental contamination which is the subject matter of this litigation? If so, state the name and address of each such environmental consultant, the date so retained and whether any report has been obtained from that consultant.

ANSWER:

The IEPA may have investigated the purported contamination but Plaintiff has engage no one other than Enviro-Risk to date.

INTERROGATORY NO. 15: As to Enviro-Risk Consulting Group, Inc., state the date said entity was initially retained, the purpose of such retention, the date(s) on which Enviro-Risk was at the location complained of in the Complaint and the date(s) of any report or correspondence prepared by Enviro-Risk regarding this matter.

ANSWER:

Retention was on or about January 25, 2002 by Newby. Enviro-Risk had been retained by National Farmers Union, Newby's Insurer, prior to November 2001. Enviro-Risk was at the site on October 30, 2001 and may have been at the site on other dates; investigation continues. Enviro-Risk reported to National Farmers Union Insurance Company on November 19, 2001.

CERTIFICATE OF LAWYER

RECEIVED
CLERK'S OFFICE

APR 16 2004

The undersigned hereby certifies that at 5:00 p.m. on the 14th of April, 2004, at 2114 S
Deerpath Road, Aurora, IL 60506, she mailed a copy of the foregoing instrument with
postage fully prepaid to:

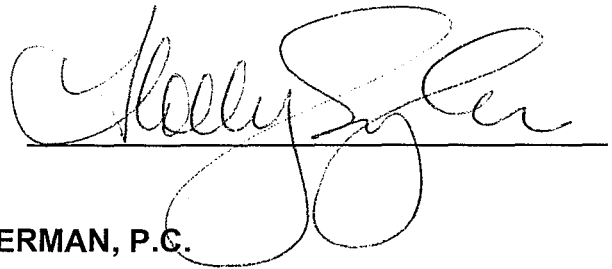
Illinois Pollution Control Board

James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Clayton Lindsey
Williams & McCarthy
607 Washington Street
P.O. Box 339
Oregon, IL 61061-0339

Keith L. Foster
Cliffe, Foster, Corneille & Buick
151 West Lincoln Highway
DeKalb, IL 60115

David Newby
2270 Oakland Drive
Sycamore, IL 60178



William C. Murphy
KINNALLY, KRENTZ, LORAN, HODGE & HERMAN, P.C.
2114 Deerpath Road
P.O. Box 5030
Aurora, IL 60507
630-907-0909

CERTIFICATE OF LAWYER

The undersigned hereby certifies that at 5:00 o'clock p.m. on the 5th day of March, 2004, at 607 Washington Street, Oregon, Illinois, he mailed a copy of the foregoing instrument with postage fully prepaid to:

KINNALLY, KRENTZ, LORAN, HODGE & HERMAN, P.C.
2114 Deerpath Road, P.O. Box 5030
Aurora, IL 60507-5030

Clayton L. Lindsey

Clayton L. Lindsey
Williams & McCarthy
607 Washington Street
P.O. Box 339
Oregon, IL 61061-0339
(815) 732-2101
Fax: (815)732-2289
Interrogatories Newby(bk)

CERTIFICATE

STATE OF ILLINOIS
COUNTY OF DEKALB

David Newby, being first duly sworn on oath deposes and says his is the duly authorized agent of defendant corporation, that he has read the foregoing document and that the answers made herein are true correct and complete to the best of his knowledge, information and belief.

David Newby
David Newby

Subscribed and sworn to before me this 12th day of April 2004

Page 9 of 9

William C. Murphy
Notary Public

