

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2003

TERESA L. SHEPRO, as Executor of the)	
Estate of Justice W. Shepro, deceased, and)	
FRANK WIEMERSLAGE, 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.)	

ORDER OF THE BOARD (by T.E. Johnson):

On July 23, 2003, Teresa L. Shepro and Frank Wiemerslage (complainants) filed a complaint against Newby Oil Company, David E. Tripp, and Janice L. Tripp (respondents). *See* 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.204. The complainants allege that the respondents placed 55-gallon drums, above-ground storage tanks and semi-trailers on property owned by the complainants on Oakland Drive, DeKalb in Sycamore County that resulted in environmental contamination and a concern for safety of the complainants' soil and groundwater.

Newby Oil Company filed a response to the complaint on September 22, 2003, and David E. and Janice L. Tripp filed an answer to the complaint on October 1, 2003.

Section 31(d) of the Environmental Protection Act (Act) (415 ILCS 5/31(d) (2002)) 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 duplicitous or frivolous, it shall schedule a hearing." *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicitous 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.*

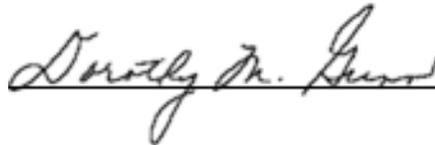
In addition to the requirements of Section 31(d) of the Act, a complaint filed before the Board must meet certain requirements pursuant to Board regulations. *See* 35 Ill. Adm. Code 103.204(c). Specifically, a complaint must contain a reference to the provision of the Act and regulations that the respondents are alleged to be violating. 35 Ill. Adm. Code 103.204(c)(1). The instant complaint is deficient in that it contains no references to provisions of the Act or associated regulations that respondents allegedly violated. Accordingly, the Board does not

accept this complaint and directs complainants to amend the complaint to comply with the requirements of 35 Ill. Adm. Code 103.204 within 30 days from the date of this order, or the Board will dismiss this matter.

The Board has not made a ruling on whether or not the complaint is duplicative or frivolous as required by Section 31(d) of the Act. 415 ILCS 5/31(d) (2002). Generally, within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(b). None of the respondents have filed such a motion to date. This time period will re-commence if the complainants serve an amended complaint on the respondents.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board