

ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

OCT 25 2004

STATE OF 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.)

NOTICE OF FILING

(By Mail)

TO: Clayton L. Lindsey
Williams & McCarthy
PO Box 339
607 Washington Street
Oregon, IL 61062

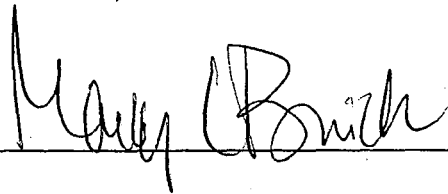
William C. Murphy
Kinnally, Krentz, Loran, Hodge & Herman, P.C.
PO Box 5030
Aurora, IL 60507-5030

Pollution Control Board
100 W. Randolph St., Ste. 11-500
Chicago, IL 60601

YOU ARE HEREBY NOTIFIED that on the 21st day of October, 2004, I filed by mail with the Office of the Clerk of the Illinois Pollution Control Board on behalf of Respondents, David E. Tripp and Janice L. Tripp, a Response to Motion to Compel Discovery, a copy of which is attached hereto and made a part hereof.

CLIFFE, FOSTER, CORNEILLE & BUICK

By: _____



CLIFFE, FOSTER, CORNEILLE & BUICK
151 West Lincoln Highway
DeKalb, Illinois 60115
Phone: (815) 758-6616

ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

OCT 25 2004

STATE OF 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.)

RESPONDENTS DAVID E. TRIPP AND JANICE L. TRIPP'S
RESPONSE TO MOTION TO COMPEL DISCOVERY

NOW COMES David E. Tripp and Janice L. Tripp, Respondents, by and through their attorneys Cliffe, Foster, Corneille & Buick, LLC, as and for their response to Complainants' Motion to Compel Discovery state as follows:

1. That Respondents David E. Tripp and Janice L. Tripp adopt and incorporate Newby Oil Company's Objections to Motion to Compel Discovery in its entirety and assert the same objections herein.
2. Further, Respondents Tripp assert that the Complainants in their Motion to Compel Discovery cite to no authority that would allow the Illinois Pollution Control Board to enter a order requiring them to produce information that does not currently exist.
3. That Complainants cite an Illinois Administrative Rule that allows a Hearing Officer to order the production of information that is relevant to the matter under consideration. (35 Illinois Administrative Code 101.614).
4. This Administrative Rule has been interpreted as a remedy in the nature of

CF

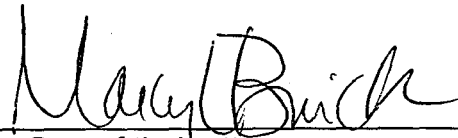
CLIFFE, FOSTER, CORNEILLE & BUICK
151 West Lincoln Highway
DeKalb, Illinois 60115
Phone: (815) 758-6616

a Motion to Compel when a Respondent refuses to answer Discovery requests such as Interrogatories. (See, The People of the State of Illinois vs. Skokie Valley Asphalt, Company, 2003 WL 22134512, Illinois Pollution Control Board).

5. That although Complainants seek to present their pending "request" as a Motion to Compel Discovery, there is no existing information to tender to the Complainant in answer to their "request."
6. Finally, Complainants cite no authority which would allow the Illinois Pollution Control Board to order either the Tripps or the Newby Oil Company to allow further entry onto their property for purposes of obtaining soil boring samples without their consent.

WHEREFORE, Respondents David E. Tripp and Janice L. Tripp request that Complainants' Motion to Compel Discovery be denied.

David E. Tripp and Janice L. Tripp

By: 
One of their attorneys

CLIFFE, FOSTER, CORNELLE & BUICK
151 West Lincoln Highway
DeKalb, Illinois 60115
Phone: (815) 758-6616

STATE OF ILLINOIS)
) SS
COUNTY OF DEKALB)

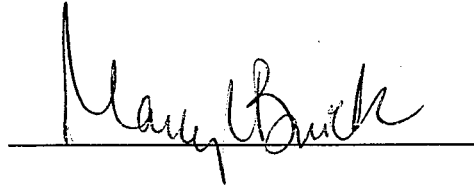
CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and states that she did deposit a copy of the foregoing Response to Motion to Compel Discovery in a United States Post Office Box in the City of DeKalb, DeKalb County, Illinois, before the hour of 6:00 p.m., with United States postage fully prepaid thereon, on the 21st day of October, 2004, enclosed in an envelope properly and securely sealed and plainly addressed as follows:

TO: Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, IL 60601

Clayton L. Lindsey
WILLIAMS & McCARTHY
P.O. Box 339
Oregon, IL 61062

William C. Murphy
Kinnally, Krentz, et al.
2114 Deerpath Road
P.O. Box 5030
Aurora, IL 60507-5030



Subscribed and Sworn to before me this 21st day of October, 2004


Notary Public



CLIFFE, FOSTER, CORNEILLE & BUICK
151 West Lincoln Highway
DeKalb, Illinois 60115
Phone: (815) 758-6616