

ORIGINAL
ILLINOIS POLLUTION CONTROL BOARD

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JUL 23 2003

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,)

v.)

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

PCB 04-12

COMPLAINT

NOW COME the Complainants, 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, by and through their attorneys, WILLIAMS & McCARTHY, and for their Complaint against the Respondents, NEWBY OIL COMPANY, DAVID E. TRIPP and JANICE L. TRIPP, state as follows:

COUNT I - NEWBY

1. Plaintiff, TERESA L. SHEPRO, Trustee of the Justice W. Shepro Trust (hereinafter SHEPRO) is the beneficial co-owner of the real property which is the subject matter of this Complaint.
2. Plaintiff, FRANK WIEMERSLAGE, (hereinafter WIEMERSLAGE) is the beneficial co-owner of the real property which is the subject matter of this Complaint.
3. Plaintiffs, SHEPRO and WIEMERSLAGE, are the sole beneficiaries under Trust No. 898 dated June 29, 1977 of the Chicago Trust Company (hereinafter Trust).

8/15/234-877

0-11-5

4. The Trust is the owner of certain real property located on Oakland Drive, Sycamore, County of DeKalb, Illinois, and legally described as follows:

Lot 4 in Block One in Gateway Centre Subdivision, a subdivision of part of the East ½ of Section 12, Township 40 North, Range 4, East of the 3rd P.M., according to the Plat thereof recorded in Book (R) of Plats, Page 64, on July 5, 1977, as Document No. 403627 in DeKalb County, Illinois.

5. Defendants, DAVID E. TRIPP and JANICE L. TRIPP (hereinafter TRIPP), are owners of certain real property located directly adjacent and to the east of Plaintiffs' property, Defendants' real property being legally described as follows:

Lot 5 in Block One in Gateway Centre Subdivision, a subdivision of part of the East ½ of Section 12, Township 40 North, Range 4, East of the 3rd P.M., according to the Plat thereof recorded in Book "R" of Plats, Page 64, on July 5, 1977, as Document No. 403627 in DeKalb County, Illinois.

6. At all pertinent times herein, Defendant, NEWBY OIL COMPANY (hereinafter NEWBY) was the sole tenant, occupier and operator of the real property owned by TRIPP.

7. This Complaint is brought as a standard enforcement action before the Illinois Pollution Control Board pursuant to Section 5(d) and 31(d) of the Illinois Environmental Protection Act. 415 ILCS 5/5(d) and 5/31(d).

8. During all pertinent times herein, NEWBY has operated an oil company on the premises owned by TRIPP.

9. During NEWBY's occupation of TRIPP's real property, and up to and including at least July 20, 2001, NEWBY placed certain 55 gallon drums, above-ground storage tanks and semi trailers owned and used by NEWBY on the real property owned by Plaintiffs.

10. NEWBY did not have consent of Plaintiffs to place said 55 gallon drums, above-ground storage tanks or semi trailers on Plaintiffs' real property.

11. As a result of NEWBY's business operations, great and dangerous quantities of petroleum and other harmful chemicals have migrated onto Complainant's real property causing environmental contamination and a concern for safety of Complainant's soil and groundwater.

12. The conditions created by NEWBY are endangering the health, use and life of Complainant's real property and preventing Complainants comfortable and reasonable use and enjoyment thereof.

13. Complainants have retained the services of an environmental consultant, Wendler Engineering Services, Inc., for purposes of investigating the source of contamination on Complainant's real property. Attached hereto as Exhibit 1 is the Expanded Site Investigation Report prepared by Wendler Engineering Services. Pursuant to the Investigative Reports, NEWBY's conduct has given rise to subsurface contamination in excess of Illinois EPA Tier 1 remediation objectives in both soil and groundwater located on Complainant's real property.

14. As a direct and proximate cause of NEWBY's conduct Complainants have and will continue to incur damages in one or more of the following ways:

- (a) The presence of these materials and equipment has caused contamination and pollutants in the soil and ground water of Complainants' property;
- (b) Complainants have incurred costs related to environmental investigation into the contamination cause by NEWBY;
- (c) Complainants will incur additional costs in the immediate future related to the investigation of the extent of contamination on Complainants' real property;

- (d) Complainants will incur substantial costs in the immediate future related to the remediation of environmental contamination on Complainants' real property;
- (e) A diminution in the fair market value of Complainants' real property;
- (f) Damages related to the "stigma" of having environmentally contaminated property, even after remediation has been completed.

15. Demand has been made on NEWBY to remediate the contamination and NEWBY has failed and refused to do so.

WHEREFORE, Complainants pray that this Court enter Judgment in their favor and against Respondent, NEWBY, and provide the following relief:

- A. An award of monetary damages in excess of \$50,000.00;
- B. An injunctive order mandating NEWBY to remediate any and all contamination on Complainants' real property;
- C. Cease and desist the conduct against the interest of Complainants;
- D. Cost of suit.
- E. Civil penalties assessed against NEWBY.

COUNT II - TRIPP

1. Complainant, TERESA L. SHEPRO, Trustee of the Justice W. Shepro Trust (hereinafter SHEPRO) is the beneficial co-owner of the real property which is the subject matter of this Complaint.

2. Complainant, FRANK WIEMERSLAGE, (hereinafter WIEMERSLAGE) is the beneficial co-owner of the real property which is the subject matter of this Complaint.

3. Complainants, SHEPRO and WIEMERSLAGE, are the sole beneficiaries under Trust No. 898 dated June 29, 1977 of the Chicago Trust Company (hereinafter Trust).

4. The Trust is the owner of certain real property located on Oakland Drive, Sycamore, County of DeKalb, Illinois, and legally described as follows:

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5. Respondents, DAVID E. TRIPP and JANICE L. TRIPP (hereinafter TRIPP), are owners of certain real property located directly adjacent and to the east of Complainants' property, Respondents' real property being legally described as follows:

Lot 5 in Block One in Gateway Centre Subdivision, a subdivision of part of the East ½ of Section 12, Township 40 North, Range 4, East of the 3rd P.M., according to the Plat thereof recorded in Book "R" of Plats, Page 64, on July 5, 1977, as Document No. 403627 in DeKalb County, Illinois.

6. At all pertinent times herein, Respondent, NEWBY OIL COMPANY (hereinafter NEWBY) was the sole tenant, occupier and operator of the real property owned by TRIPP.

7. This Complaint is brought as a standard enforcement action before the Illinois Pollution Control Board pursuant to Section 5(d) and 31(d) of the Illinois Environmental Protection Act. 415 ILCS 5/5(d) and 5/31(d).

8. During all pertinent times herein, NEWBY has operated an oil company on the premises owned by TRIPP.

9. During NEWBY's occupation of TRIPP's real property, and up to and including at least July 20, 2001, NEWBY placed certain 55 gallon drums, above-ground storage tanks and semi trailers owned and used by NEWBY on the real property owned by Complainants.

10. NEWBY did not have consent of Complainants to place said 55 gallon drums, above-ground storage tanks or semi trailers on Complainants' real property.

11. As a result of TRIPP's business operations and lease of the premises, great and dangerous quantities of petroleum and other harmful chemicals have migrated onto Complainant's real property causing environmental contamination and a concern for safety of Complainant's soil and groundwater.

12. The conditions created by TRIPP are endangering the health, use and life of Complainant's real property and preventing Complainants comfortable and reasonable use and enjoyment thereof.

13. Complainants have retained the services of an environmental consultant, Wendler Engineering Services, Inc., for purposes of investigating the source of contamination on Complainant's real property. Attached hereto as Exhibit 1 is the Expanded Site Investigation Report prepared by Wendler Engineering Services. Pursuant to the Investigative Reports, TRIPP's conduct has given rise to subsurface contamination in excess of Illinois EPA Tier 1 remediation objectives in both soil and groundwater located on Complainant's real property.

14. As a direct and proximate cause of TRIPP's conduct Complainants have and will continue to incur damages in one or more of the following ways:

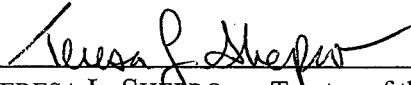
- (a) The presence of these materials and equipment has caused contamination and pollutants in the soil and ground water of Complainants' property;

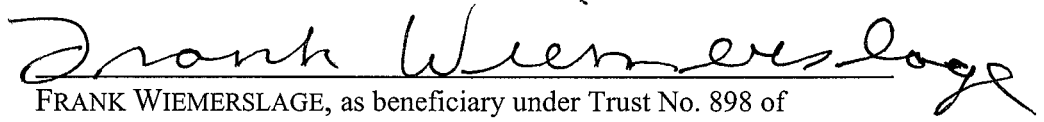
- (b) Complainants have incurred costs related to environmental investigation into the contamination cause and allowed by TRIPP.
- (c) Complainants will incur additional costs in the immediate future related to the investigation of the extent of contamination on Complainants' real property;
- (d) Complainants will incur substantial costs in the immediate future related to the remediation of environmental contamination on Complainants' real property;
- (e) A diminution in the fair market value of Complainants' real property;
- (f) Damages related to the "stigma" of having environmentally contaminated property, even after remediation has been completed.

15. Demand has been made on TRIPP to remediate the contamination and TRIPP has failed and refused to do so.

WHEREFORE, Complainants pray that this Court enter Judgment in their favor and against Respondent, TRIPP, and provide the following relief:

- A. An award of monetary damages in excess of \$50,000.00;
- B. An injunctive order mandating TRIPP to remediate any and all contamination on Complainants' real property;
- C. Cease and desist its negligent conduct against the interest of Complainants;
- D. Cost of suit.
- E. Civil penalties assessed against TRIPP.

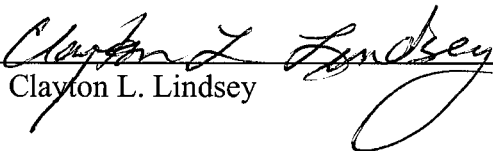

TERESA L. SHEPRO, as Trustee of the Justice W. Shepro Trust,
and as beneficiary under Trust No. 898 of the Chicago
Trust Company



FRANK WIEMERSLAGE, as beneficiary under Trust No. 898 of
the Chicago Trust Company

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, Complainants

By WILLIAMS & McCARTHY

By: 
Clayton L. Lindsey

Clayton L. Lindsey
WILLIAMS & McCARTHY
607 Washington Street
P.O. Box 339
Oregon, IL 61061
815/732-2101
Fax 815/732-2289
clindsey@wilmac.com

Complaint(bk)

CLAYTON L. LINDSEY
EMAIL: CLINDSEY@WILMAC.COM

WILLIAMS & MCCARTHY
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STATE OF ILLINOIS
Pollution Control Board

July 15, 2003

Clerk of the Illinois Pollution Control Board
600 South 2nd Street
Springfield, IL 62704

Re: Shepro v. Newby Oil Company, et al.

Dear Clerk:

We are enclosing the original and nine (9) copies of the Complaint and Notices which have been filed relating to the enclosed Complaint before the Illinois Pollution Control Board. We would ask that these be filed and assigned a number before the Illinois Pollution Control Board. Please return a file-stamped copy of the Complaint to me for my records.

If there are any updated procedural handouts for actions before the Illinois Pollution Control Board, please advise. This action is being filed pursuant to Section 31 of the Illinois Environmental Protection Act.

Very truly yours,

WILLIAMS & MCCARTHY



Clayton L. Lindsey

Enclosures

cc: Teresa L. Shepro (w/o enclosures)
Frank Wiemerslage (w/o enclosures)

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TERESA L. SHEPRO, as Executor of the)
Estate of the Justice W. Shepro, deceased,)
and FRANK WIEMERSLAGE, as)
beneficiaries under Trust No. 898, of the)
Chicago Trust Company,)
Plaintiff,)

v.)

NO. PCB 04-12

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

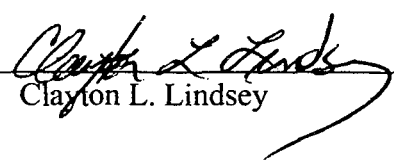
NOTICE

TO: NEWBY OIL COMPANY, 2270 W. Oakland Drive, Sycamore, IL 60178

This is to provide you with Notice that the attached Complaint has been filed before the Illinois Pollution Control Board. You are hereby being placed on Notice pursuant to Title 35 of the Illinois Administrative Code, Section 103.204.

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, Complainants

By WILLIAMS & McCARTHY

By: 
Clayton L. Lindsey

WILLIAMS & McCARTHY
607 Washington Street
P.O. Box 339
Oregon, IL 61061
815/732-2101
Fax 815/732-2289
clindsey@wilmac.com
Notice.01(bk)

I certify that I served this Notice on Respondent as follows:

(a) -- (Individual respondent--personal):

By leaving a copy of this Notice with a copy of the Complaint with the respondent personally on the date and time of the day when the Notice of Hearing was left with the respondent.

(b) -- (Individual respondent--abode):

By leaving a copy of this Notice at the usual place of abode of the respondent with a person of respondent's family, of the age of 13 years or upwards, informing that person of the contents of the Notice.

_____, Private Process Server

JUL 23 2003

ILLINOIS POLLUTION CONTROL BOARD

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TERESA L. SHEPRO, as Executor of the)
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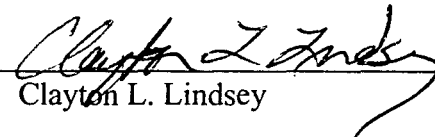
NOTICE

TO: JANICE L. TRIPP, 1117 Commercial Street, Sycamore, IL 60178

This is to provide you with Notice that the attached Complaint has been filed before the Illinois Pollution Control Board. You are hereby being placed on Notice pursuant to Title 35 of the Illinois Administrative Code, Section 103.204.

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, Complainants

By WILLIAMS & McCARTHY

By: 
Clayton L. Lindsey

WILLIAMS & McCARTHY
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NEWBY OIL COMPANY, DAVID E.)
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By WILLIAMS & McCARTHY

By: Clayton L. Lindsey
Clayton L. Lindsey

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