

ILLINOIS POLLUTION CONTROL BOARD
May 15, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 08-45
)	(Enforcement – Water)
DISTINCTIVE HOMES, LTD., and)	
DISTINCTIVE COMPANIES, LTD.)	
)	
Respondents.)	

ORDER OF THE BOARD (by N.J. Melas):

On February 13, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Distinctive Homes, Ltd. and Distinctive Companies, Ltd. (collectively respondents). The complaint concerns respondents' "Villas of Fountain Hills" residential development located at Wolf Road, one block south of 179th Street in the Village of Orland Park, Cook County. By order of February 18, 2008, the Board accepted the complaint for hearing.

Respondents filed an answer and affirmative defenses (Ans.) on March 28, 2008, which the People moved to strike on April 24, 2008. To date, respondents have not responded to the motion. Section 101.500(d) of the Board's procedural rules provides that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d).

In this case, the People allege that respondents violated Sections 12(b) and (f) of the Environmental Protection Act (Act) (415 ILCS 5/12(b), (f) (2006)) and Sections 309.102(a) and 309.202(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.102(a), 309.202(a)). The People allege that respondents violated these provisions by constructing, installing, and operating a sanitary sewer at the site without a construction permit from the Illinois Environmental Protection Agency (Agency); and by failing to obtain from the Agency a National Pollutant Discharge Elimination System (NPDES) stormwater permit for construction site activities.

In their answer, respondents admit some facts and deny others. In closing, as affirmative defenses, respondents allege that:

- 1) The Metropolitan Water Reclamation District and the Village of Orland Hills issued the requisite permits for the work performed at the site, and


- 2) The Metropolitan Water Reclamation District and the Village of Orland Hills inspected and approved the work performed at the site. Ans. at unnumbered p. 13.

In the motion to strike (Mot.), citing Illinois court and Board precedent, the People remind that “an affirmative defense confesses or admits the allegations in the complaint, and then seeks to defeat a [complainant’s claim] by asserting new matter not contained in the complaint and answer.” Mot. at 2. The People assert that neither of respondents’ alleged affirmative defenses pleads facts relevant to the complaint’s allegations, namely that respondents performed work without Agency-issued construction and NPDES stormwater permits. The People assert that these alleged affirmative defenses are legally insufficient, unsupported by caselaw, and fail to defeat the complaint’s causes of action. The People accordingly request that the Board dismiss both affirmative defenses with prejudice. Mot. at 5-6.

The Board grants the People’s motion to strike the affirmative defenses. As the People have discussed, neither of the respondents’ allegations meet the definition of “affirmative defense” or, if proven, would serve to defeat the complaint’s allegations that the respondents performed sanitary sewer work without required permits. Respondents are free to present evidence concerning permits issued, or inspections made, by the Metropolitan Water Reclamation District and the Village of Orland Hills as mitigating evidence under Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2006)).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 15, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board