

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE  
DEC 17 2008

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
J. B. TIMMERMANN FARMS, LTD. )  
an Illinois Corporation, )  
 )  
Respondent. )

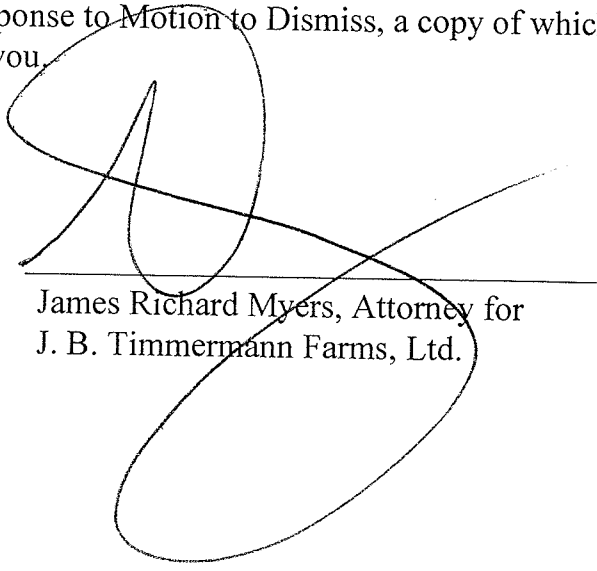
PCB No. 07-70  
(Enforcement-Water)

NOTICE OF FILING

TO: Andrew J. Nicholas, Assistant Attorney General, State of Illinois, Attorney General of the State of Illinois, 500 South Second Street, Springfield, Illinois 62706.

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, an Response to Motion to Dismiss, a copy of which is attached hereto and herewith served upon you.

Dated: December 15, 2008



James Richard Myers, Attorney for  
J. B. Timmermann Farms, Ltd.

James Richard Myers  
Reg. No. 06225705  
Attorney for J. B. Timmermann Farms, Ltd.  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 S. Seventh St., P.O. Box 399  
Vandalia, IL 62471  
Telephone: (618) 283-3034  
Fax: (618) 283-2871  
File #5753/9601

RECEIVED  
CLERK'S OFFICE  
DEC 17 2008  
STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. ) PCB No. 07-70  
 ) (Enforcement-Water)  
J. B. TIMMERMANN FARMS, LTD. )  
an Illinois Corporation, )  
 )  
Respondent. )

**RESPONSE TO MOTION TO STRIKE AFFIRMATIVE DEFENSES**

*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Response to the Motion to Strike Respondent's Affirmative Defenses states:

1. The Motion alleges that the Affirmative Defenses should be stricken as being both factually and legally deficient.
2. The allegations in the Affirmative Defenses are not factually deficient. The detail lacking in the allegations are issues for discovery, not pleading. The pleadings serve to advise the parties of the factual basis for the defenses, which is all that is required by law.
3. The affirmative defenses are legally relevant. The Complaint filed in this matter seeks not only a finding of a violation of the Illinois Environmental Protection Act, but also the assessment of a civil penalty. In determining the appropriate civil penalty to be imposed, the trial court is authorized, but not limited, by section 42(h) of the Act to

consider the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

415 ILCS 5/42(h) (West 1994). In addition, the court can consider any other factor it chooses as this list is not exclusive. *See People ex rel. Ryan v. McHenry Shores Water Co.*, 295 Ill.App.3d 628, 693 N.E.2d 393 (2d Dist. 1998).

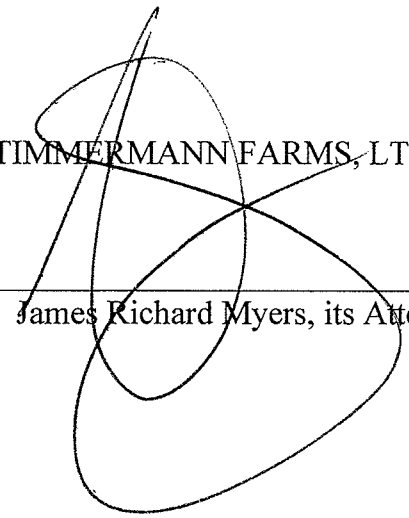
4. The affirmative defenses plead are relevant and material to the issue of the possible imposition of a penalty in this case.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests that the Board enter an Order denying the Motion to Strike and requiring that a reply be filed within a short date certain.

Dated: December 6, 2008

J. B. TIMMERMANN FARMS, LTD.

By: \_\_\_\_\_  
James Richard Myers, its Attorney



James Richard Myers  
Reg. No. 06225705  
Attorney for J. B. Timmermann Farms, Ltd.  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 S. Seventh St., P.O. Box 399  
Vandalia, IL 62471  
Telephone: (618) 283-3034  
Fax: (618) 283-3037  
File #5753/9601

## CERTIFICATE OF SERVICE

I hereby certify that I did on December 15, 2008, send by U.S. mail, first class with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled **NOTICE OF FILING** and **RESPONSE TO MOTION TO DISMISS**

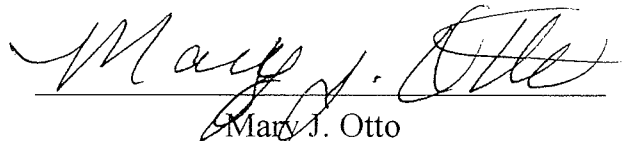
Andrew J. Nicholas  
Assistant Attorney General  
State of Illinois  
Attorney General of the State of Illinois  
500 South Second Street  
Springfield, IL 62706

and the original and ten copies of the Notice of filing by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

A copy of the Notice of Filing was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
\_\_\_\_\_  
Mary J. Otto