

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ROLF SCHILLING, PAM SCHILLING and )  
SUZZANE VENTURRA, )

Complainants, )

vs. )

GARY D. HILL, VILLA LAND TRUST, )  
an Illinois Land Trust, and PRAIRIE )  
LIVING WEST, LLC )

Respondents. )

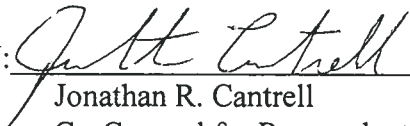
PCB. No. 10-100

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**STATE OF ILLINOIS**  
**Pollution Control Board**

**ENTRY OF APPEARANCE**

NOW COMES the law firm of WINTERS, BREWSTER, CROSBY and SCHAFER LLC, Jonathan R. Cantrell as Co-Counsel for Respondents, and hereby enters its appearance on behalf of GARY D. HILL, VILLA LAND TRUST, and PRAIRIE LIVING WEST, LLC, Respondents, in the above-entitled matter and requests that all further pleadings and/or notices be forwarded to this office.

WINTERS, BREWSTER, CROSBY and SCHAFER LLC

BY:   
Jonathan R. Cantrell  
Co-Counsel for Respondents,  
Gary D. Hill, Villa Land Trust, and  
Prairie Living West, LLC  
ARDC No. 6296030

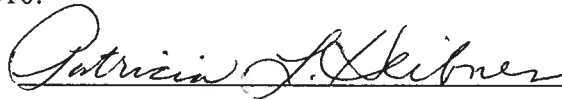
WINTERS, BREWSTER, CROSBY and SCHAFER LLC  
Attorneys at Law  
111 West Main, P.O. Box 700  
Marion, IL 62959  
Phone: (618) 997-5611  
Fax: (618) 997-6522

## CERTIFICATE OF MAILING

The undersigned certifies that a copy of the above and foregoing instrument was mailed by depositing the same in a U.S. Post Office Box in the City of Marion, Illinois, postage fully prepaid and addressed to:

Sorling, Northrup, Hanna, Cullen,  
& Cochran, Ltd.  
Stephen F. Hedinger and Brian D.  
Jones, Of Counsel  
Suite 800 Illinois Building  
P O Box 5131  
Springfield, IL 62705

Dated this 30<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_

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**MOTION TO DISMISS**

NOW COME the Respondents, GARY D. HILL, VILLA LAND TRUST, an Illinois Land Trust, and PRAIRIE LIVING WEST, LLC, by and through their attorneys Winters, Brewster, Crosby and Schafer LLC, and moves this Board to dismiss Complainants' Complaint, pursuant to 31(d)(1) of the Environmental Protection Act (415 ILCS 5/31(d)(1)) and Title 35 of the Illinois Administrative Code, and in support thereof, hereby state as follows:

1. Respondents' Motion to Dismiss is made pursuant to section 31(d)(1) of the Environmental Protection Act (415 ILCS 5/31(d)(1)) and Title 35 of the Illinois Administrative Code.

2. The Pollution Control Board (Board) will not accept a formal complaint if it is found to be frivolous. 415 ILCS 5/31(d). The formal complaint submitted by Rolf Schilling, Pam Schilling and Suzzane Ventura is frivolous. A complaint is frivolous if it "fails to state a cause of action upon which the Board can grant relief." 35 Ill Admin Code 101.202.

3. The Environmental Protection Act (Act) requires that a complaint include “a statement of the manner in, and the extent to which [the respondent] is said to violate the Act.” 415 ILCS 5/31(c)(1). The Board’s rules require that a complaint include, “[t]he dates, location, events, nature, extent, duration and strength of discharge or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense.” 35 Ill. Admin Code 103.204(c)(2).

4. The Complaint in the above cause is frivolous and should be dismissed because it does not provide sufficient facts to allow Respondents to prepare a defense. The Complaint is void of specific dates upon which the pollution occurred, and it fails to enumerate any specific activities or sources of the pollution, other than “construction activities”. (Comp., ¶ 8). Further, the Complaint is vague when describing the type of pollution by referring to contaminants without describing in detail what they are. (Comp., ¶ 13,14).

5. The Complaint alleges that Respondents are in violation of 415 ILCs 5/12(b), which states “[n]o person shall: (b) Construct, install, or operate and equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution...without a permit granted by the Agency, or in violation of any conditions imposed by such permit.” (Comp. at 18(B)). The Complaint does not include facts that, if taken as true, would support a violation of this provision. Complainants fail to allege facts that show the facility is capable of causing or contributing to water pollution. Further, there are no allegations that Respondents are installing or operating any equipment that is causing water pollution, other than the vague reference to “construction activities.” (Comp., ¶ 8, 10).

6. The Complaint alleges that the Respondents are in violation of 415 ILCS 5/12(D), which states “[n]o person shall (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.” (Comp., ¶ 18(C)). The Complaint merely focuses on pollution to the pond and flooding of Complainants’ property. It does not list any contamination to “land” that will create a water pollution hazard.

7. The Complaint alleges that Respondents are in violation of 415 ILCS 5/12(f), which states “[n]o person shall (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State.” (Comp., ¶ 18(D)). The Complaint fails to allege any contamination of any waters of the state. The only allegations involve the contamination of water in a privately owned pond.

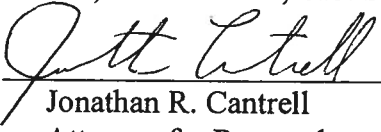
8. Further, Defendant Villa Land Trust should be dismissed from this case entirely as it does not own the properties located at 900 and/or 955 Villa Court. See Exhibit A.

9. Defendant Gary Hill should also be dismissed from this case entirely as he was not a managing member of the Defendant Prairie Living West, LLC. The sole member of Prairie Living West, LLC is Westown Inc. See Exhibit B. Even if Mr. Hill were a managing member, it is inappropriate for him to be named individually. “A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.” 805 ILCS 180/10-10(a). Mr. Hill’s only other connection with this matter is allegedly as the beneficiary of Villa Land Trust. Because Villa Land Trust does not own the property in question, it is appropriate that Mr. Hill be dismissed.

WHEREFORE, Respondents GARY D. HILL, VILLA LAND TRUST, and PRAIRIE LIVING WEST, LLC, requests that the Pollution Control Board dismiss the Complaint filed by

Rolf Schilling, Pam Schilling and Suzzane Venturra, dismiss Defendants Villa Land Trust and Gary D. Hill, that the Board award Respondents reasonable attorney's fees and costs, and for such further relief as the Board deems proper.

WINTERS, BREWSTER, CROSBY AND SCHAFER LLC

By:   
Jonathan R. Cantrell  
Attorney for Respondents  
ARDC No. 6296030

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**AFFIDAVIT OF GARY D. HILL**

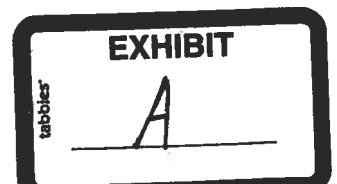
Gary D. Hill, being first duly sworn, on their oath depose and state as follows:

1. I am familiar with the Villa Land Trust.
2. I have personal knowledge that the Villa Land Trust does not own the property located at 900 and/or 955 Villa Court, Carbondale, Jackson County, Illinois.
3. Further the affiant sayeth not.

  
GARY D. HILL

Subscribed and sworn to me by Gary D. Hill before me this 30<sup>th</sup> day of July, 2010.

  
Notary Public





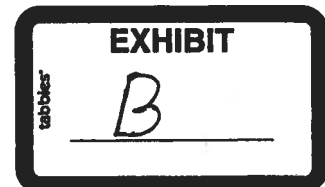
SERVICES    PROGRAMS    PRESS    PUBLICATIONS    DEPARTMENTS    CONTACT

**LLC MEMBERS**

<b>Entity Name</b>	PRAIRIE LIVING WEST, LLC	<b>File Number</b>	02564351
<b>Name</b>	<b>Address</b>		
WESTOWN INC	2150 W MAIN, CARBONDALE, IL - 62901		

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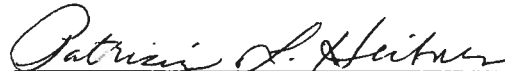


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Dated this 30<sup>th</sup> day of July, 2010.

  
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