

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

ROLF SCHILLING, PAM SCHILLING and )  
SUZANNE VENTURA, )

Complainants, )

v. )

PCB. No. 10-100

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

LIVING WEST, LLC )

Respondents. )

COMPLAINANTS' RESPONSE IN OPPOSITION TO MOTION  
FOR LEAVE TO FILE THIRD-PARTY COUNTERCLAIM

NOW COME Complainants, ROLF SCHILLING, PAM SCHILLING and SUZANNE VENTURA, through their attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Stephen F. Hedinger of Counsel, and for their objection in response to the "Motion for Leave to File Third-Party Counterclaim," filed by and on behalf of all three Respondents, GARY D. HILL, VILLA LAND TRUST, and PRAIRIE LIVING WEST, LLC, state as follows:

1. Respondents have filed a Motion for Leave to File Third-Party Counterclaim that names Horve Contractors, Inc., as a proposed Counter Respondent.

2. Respondents support their motion with a proposed counterclaim, which asserts that the basis for the counterclaim is a contractual indemnification provision.

3. Although the proposed counterclaim asserted that the contractual document was attached as an exhibit, the copy received by counsel for Complainants did not include any such document. In the absence of such a document, Complainants cannot fully evaluate Respondents' assertion of a right to indemnification.

4. Among other things, Complainants question whether all three Respondents would be entitled to the indemnification relief sought in the Counterclaim; to the extent such indemnification is available, it would seem to contradict the Respondents' earlier claims that some of the Respondents have no liability for the environmental damages alleged in this enforcement action because they were not responsible for site activities.

5. More importantly, however, Complainants believe that this Board lacks jurisdiction to entertain a counterclaim seeking indemnification based upon contractual provisions between these parties. This Board's jurisdiction in this matter is defined by Section 31(d) of the Illinois Environmental Protection Act, 415 ILCS 5/31(d), and consists of the right of any person to file with this Board an acceptable complaint "against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order." 415 ILCS 5/31(d)(1). The proposed counterclaim does not appear to allege that Horve Builders, Inc., is in violation of the Environmental Protection Act, nor of any rule, regulation, permit or Board order, and therefore does not appear to be within this Board's jurisdiction.

WHEREFORE Complainants, ROLF SCHILLING, PAM SCHILLING and SUZANNE VENTURA, request that this Board deny the instant "Motion for Leave to File Third-Party Counterclaim" filed by and on behalf of all three Respondents in this matter.

Date December 2, 2010

Respectfully submitted,

ROLF SCHILLING, PAM SCHILLING and  
SUZANNE VENTURA, Complainants

By:

  
Stephen F. Hedinger

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**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, certify that I have served a copy of the foregoing document upon the attorneys for Respondents at the following addresses:

Jonathan R. Cantrell  
Molly Wilson Dearing  
Winters, Brewster, Crosby & Schafer LLC  
111 West Main  
P.O. Box 700  
Marion, IL 62959

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Ave. East  
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Springfield, IL 62794-9274

by depositing same in the U.S. Mail, certified mail/return receipt requested, postage prepaid, on this 2<sup>nd</sup> day of December, 2010.

Similarly, the original and nine copies were mailed to:

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

by depositing same in the U.S. Mail, first class, postage prepaid, on this 2<sup>nd</sup> day of December, 2010.

By: \_\_\_\_\_

  
Stephen F. Hedinger  
Attorney for Complainants

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