

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10 - 108
)	(Enforcement - Water)
WILLIAM CHARLES REAL ESTATE)	
INVESTMENT, L.L.C., an Illinois limited)	
liability company,)	
)	
Respondent.)	
)	

NOTICE OF FILING

To: See Attached Service List.
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Complainant's REPLY TO RESPONDENT'S 'ACT OF GOD' AFFIRMATIVE DEFENSE, a copy of which is herewith served upon you.

Respectfully submitted,



Nancy J. Tichelsky
Assistant Attorney General

Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-8567

Date: March 30, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Chuck Gunnarson
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

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COMPLAINANT'S REPLY TO RESPONDENT'S AFFIRMATIVE DEFENSE

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and hereby files its Reply to Respondent's, WILLIAM CHARLES REAL ESTATE INVESTMENT, LLC., Affirmative Defense as follows:

INTRODUCTION

On June 24, 2010, the Complainant, People of the State of Illinois ("People" or "Complainant"), filed a three-count Complaint against William Charles Real Estate Investment, LLC ("William Charles" or "Respondent") alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* ("Act") and the Illinois Pollution Control Board's ("Board") regulations thereunder ("Complaint").

On August 23, 2010, William Charles filed its Answer and Affirmative Defenses to the Complaint ("Answer").

On September 17, 2010, the People filed a Motion to Strike Respondent's Affirmative Defenses ("Motion to Strike Affirmative Defenses").

On October 15, 2010, Respondent filed its Response to Complainant's Motion to Strike Affirmative Defenses, wherein Respondent withdrew its Affirmative Defenses filed on August 23, 2010 and filed an Amended Answer with an 'act of God' Affirmative Defense.

On November 12, 2010, the People filed its Motion to Strike Respondent's 'act of God' Affirmative Defense ("Motion to Strike").

On November 30, 2010, Respondent filed its Response to Complainant's Motion to Strike its Affirmative Defense ("Response").

On January 24, 2011, with the hearing officer's leave, the People filed its Reply to Respondent's Response ("Reply").

On March 17, 2011, the Board denied the Complainant's Motion to Strike as to the violations alleged to have taken place in 2007 only.

REPLY TO RESPONDENT'S 'act of God' AFFIRMATIVE DEFENSE

1. In or about August 2007, Winnebago County, Illinois experienced a 24-hour, 250- or 500-year rain and flood event.

ANSWER: The People lack sufficient information with which to admit or deny the allegations of paragraph 1 and therefore, neither admit nor deny the same, but demand strict proof thereof.

2. The subject property is in Winnebago County, Illinois, and was subject to and experienced the 24-hour, 250- or 500-year rain and flood event.

ANSWER: The People admit that that the subject property is located in Winnebago County, Illinois. As to the remaining allegations in paragraph 2, the People lack sufficient information with which to admit or deny the allegations of paragraph 2 regarding a 24-hour, 250- or 500-year

rain and flood event and, therefore, neither admit nor deny the same, but demand strict proof thereof.

3. The 24-hour, 250- or 500-year rain and flood event was an Act of God, over which Defendant [sic] had no control or right of control.

ANSWER: The People lack sufficient information with which to admit or deny the allegations of paragraph 3 and therefore, neither admit nor deny the same, but demand strict proof thereof.

4. To prevail in an action alleging violations of the Environmental Protection Act, the State must show that the Respondent had the “capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred.” *People v. A.J. Davinroy Contractors*, 249 Ill.App.3d 788, 793, 618 N.E.2d 1282 (5th Dist. 1993) (citing *Phillips Petroleum Co. v. IEP4*, 72 Ill.App.3d 217, 390 N.E.2d 620 (1979)).

ANSWER: The People state that the allegation in paragraph 4 is argumentative and a legal conclusion for which no answer is required. The People further state that paragraph 4 summarizes the text of the referenced legal opinion, which speaks for itself and accordingly no response is required. To the extent an answer is required the People deny the allegations of paragraph 4.

5. The alleged injuries, damages and other matters giving rise to or the basis for any alleged relief requested by the Plaintiff [sic] were caused by a 24-hour, 250- or 500-year flood event over which the Respondent had no control or right of control (i.e., an act of God).

ANSWER: The People state that the allegations in paragraph 5 are legal conclusions for which no answer is required. As to the allegations in paragraph 5 regarding a 24-hour, 250- or 500-year rain and flood event, the People lack sufficient information with which to admit or deny

the allegations of paragraph 5 regarding a 24-hour, 250- or 500-year rain and flood event and, therefore, neither admit nor deny the same, but demand strict proof thereof. To the extent an answer is required for the remaining allegations, the People deny the allegations of paragraph 5.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that this Court enter judgment in its favor and a permanent injunction and penalty against Respondent, WILLIAM CHARLES REAL ESTATE INVESTMENT, LLC, as prayed for in the Complaint.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

BY: _____



NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-8567
ntikalsky@atg.state.il.us

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 30, 2011, I served true and correct copies of Complainant's REPLY TO RESPONDENT'S 'ACT OF GOD' AFFIRMATIVE DEFENSE, upon the persons and by the methods as follows:

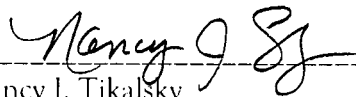
[US first class mail]

[Personal Delivery]

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