

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**SEP 30 2011**

**STATE OF ILLINOIS  
Pollution Control Board**

ROLF SCHILLING, PAM SCHILLING and )  
SUZZANE VENTURRA, )

Complainants, )

vs. )

PCB. No. 10-100

GARY D. HILL, VILLA LAND TRUST , and )  
PRAIRIE LIVING WEST, LLC, )

Respondents, )

AND )

GARY D. HILL and PRAIRIE LIVING WEST, )  
LLC, )

Third-Party Complainants, )

vs. )

HORVE CONTRACTORS, INC., )

Third-party Respondent. )

**ORIGINAL**

**THIRD-PARTY COMPLAINT**

NOW COME the Respondents/Third Party Complainants, GARY D. HILL and PRAIRIE LIVING WEST, LLC, by and through their attorneys, Winters, Brewster, Crosby and Schafer LLC, and complains of Third-Party Respondent, HORVE CONTRACTORS, INC., and for said Complaint, hereby states as follows:

1. That at all times relevant herein, Respondent/Third-Party Complainant, GARY D. HILL, is a resident of Murphysboro, Jackson County, Illinois.
2. That at all times relevant herein, Respondent/Third-Party Complainant, PRAIRIE LIVING WEST, LLC, is a limited liability company duly organized under the

laws of the State of Illinois.

3. That at all times relevant herein, Third-Party Respondent, HORVE CONTRACTORS, INC (hereinafter "HORVE"), is and was an Illinois corporation duly organized under the laws of the State of Illinois.
4. That at all times mentioned herein, PRAIRIE LIVING WEST, LLC was acting by and through its agent, GARY D. HILL.
5. That PRAIRIE LIVING WEST, LLC hired HORVE to be the General Contractor on the Project described as Prairie Living West, located at 900 Villa Court, Carbondale, IL 629101, also known and referred to as Phase II of Prairie Living at Chautauqua, which, based upon information and belief, was constructed in or around 2009 and 2010.
6. That as General Contractor of Phase II, HORVE was responsible for complying with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
7. That prior to June 17, 2009, HORVE was hired to be, and was the General Contractor on Phase I of Prairie Living at Chautauqua, located at 955 Villa Court, Carbondale, IL 629101, which, based upon information and belief, was completed in or around 2004.
8. That as General Contractor of Phase I, HORVE was responsible for complying with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
9. That as General Contractor, HORVE was in control of the premises upon which the construction activities occurred in Phase I and II.

10. That as General Contractor, HORVE was responsible for the construction operations and activities of Phase I and Phase II, and directly supervised the workers working on the project sites.
11. That as General Contractor, HORVE was responsible for the development and implementation of a Storm Water Pollution Prevention Plans, soil stabilization practices, soil erosion control structures, and the erection and maintenance of silt fencing for both Phase I and Phase II.
12. That Complainants have alleged that following inception of Phase II construction activities, Respondents/Third-Party Complainants disregarded and abandoned their construction plans and plans to control and eliminate sediments and erosion from leaving the construction site and polluting Complainants' property and their adjacent Pond.
13. That Complainants have alleged that Respondents/Third-Party Complainants have failed to construct, maintain and manage engineering features to control the runoff of water, sediments, mud and other contaminants that have allegedly resulted in serious and severe flooding and inundation of complainants' properties from materials coming off of the Phase II construction site, including substantial deposition of contaminating materials into the Pond.
14. That Complainants have alleged that during Phase I, construction activities at that resulted in a substantial amount of water, mud, construction-site residues, eroded material, and other waste materials to flow from the project onto property owned by Complainants and into their Pond.
15. Respondents/Third-Party Complainants, PRAIRIE LIVING WEST, LLC and

GARY D. HILL, specifically deny that they violated the Act, but to the extent that Complainants demonstrate a violation of the Act during Phase I and II, those violations are the acts and/or omissions of HORVE, and/or HORVE's agents, as HORVE was in charge of the work, solely in control of the premises upon which the projects were constructed, and responsible for compliance with the SWPPP.

16. That as a result of the foregoing, HORVE's acts and omissions regarding the construction of both Phase I and Phase II, are in violation of the following provisions of the Illinois Environmental Protection Act:

- a. 415 ILCS 5/12(a);
- b. 415 ILCS 5/12(b);
- c. 415 ILCS 5/12(d);
- d. 415 ILCS 5/12(f).

WHEREFORE, Respondents/Third-Party Complainants, GARY D. HILL and PRAIRIE LIVING WEST, LLC, pray that this Board enter an order pursuant to Section 42 of the Illinois Environmental Protection Act, 415 ILCS 5/42, finding violation(s) of the Act against the Third-party Respondent, HORVE CONTRACTORS, INC., and impose on it a proper penalty pursuant to the Act, and for such further and additional relief as this Board deems just and proper.

WINTERS, BREWSTER, CROSBY and SCHAFER LLC

BY: \_\_\_\_\_

Molly Wilson Dearing  
Attorneys for Respondents/Third Party Complainants  
ARDC No. 6294101

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

**CERTIFICATE OF SERVICE**

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, certified mail/return receipt requested, postage fully prepaid and addressed to:

Horve Contractors, Inc.  
Mr. Jeffrey Horve  
330 West Marion Avenue  
Forsyth, Illinois 62535

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STATE OF ILLINOIS  
Pollution Control Board

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.  
Mr. Stephen F. Hedinger  
Suite 800 Illinois Building  
P O Box 5131  
Springfield, IL 62705

Ms. Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

**ORIGINAL**

The undersigned certifies that the original and nine copies 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:

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

Dated this 28<sup>th</sup> day of September, 2011.



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

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LINDA J. BRAME\*  
MOLLY R. DEARING  
JONATHAN R. CANTRELL

\* Also licensed in Missouri

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

CHARLES D. WINTERS (1917-1992)

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September 28, 2011

E-MAIL: [winlaw@winterslaw.com](mailto:winlaw@winterslaw.com)

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

**ORIGINAL**

RE: Rolf Schilling, Pam Schilling and Suzanne Venture vs Gary D. Hill, Villa Land Trust, an Illinois Land Trust, and Prairie Living West, LLC  
PCB. No. 2010-100  
WBCS File No.: 10-185 JSB

Dear Mr. Therriault:

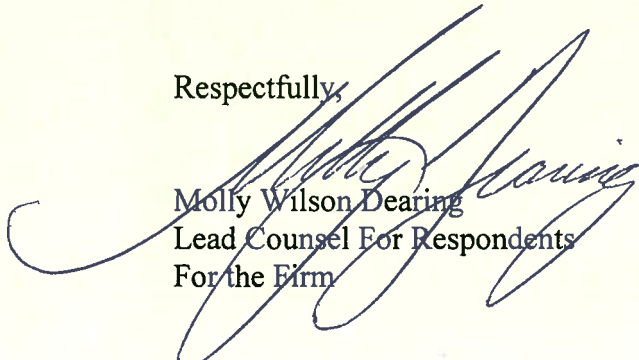
Please find enclosed find original and nine (9) copies of the following documents to be filed in the above-referenced matter:

Third-Party Complaint  
Certificate of Service  
Notice To Third Party Respondent

Please return file-stamped copies of same to this office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and should you have any questions, please do not hesitate to contact me.

Respectfully,

  
Molly Wilson Dearing  
Lead Counsel For Respondents  
For the Firm

cc: Mr. Jeffrey Horve  
Mr. Carol Webb  
Mr. Stephen Hedinger