

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 10 2012

STATE OF ILLINOIS
Pollution Control Board

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
CMH HOMES INC. AND DAVID R. MOSER,)
)
Respondents.)

AC 12-39

(IEPA NO. 78-12-AC)

ORIGINAL

RETURN TO CLERK'S OFFICE


NOTICE OF FILING

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

David R. Moser
13546 North Harmony Lane
Opdyke, IL 62872

PLEASE TAKE NOTICE that on May 9, 2012, the undersigned by third party carrier, Federal Express, mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled PETITION FOR REVIEW AND AFFIDAVIT.

Respectfully submitted,



Jeffrey G. Howard, Attorney for CMH Homes, Inc.

JEFFREY G. HOWARD
ARDC #6203080
HOWARD, LEGGANS, PIERCY & HOWARD LLP
1008 MAIN, P.O. BOX 1810
MT. VERNON, IL 62864
618/242-6594

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)
 Respondents.)

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PETITION FOR REVIEW

NOW COMES the Respondent, CMH Homes Inc., through its attorney, Jeffrey G. Howard, Howard, Leggans, Piercy & Howard LLP, and, for its Petition for Review, states as follows:

1. That on or about April 4, 2012, the Illinois Environmental Protection Agency filed an Administrative Citation against Respondents, CMH Homes Inc., and David R. Moser.

2. That said Citation alleged that the Respondents were in violation of the Illinois Environmental Protection Act in that they:

- a. Caused or allowed the open dumping of waste in a manner resulting in litter;
- b. Caused or allowed the open dumping of waste in a manner resulting in deposition of general construction or demolition debris; or clean construction or demolition debris;

3. That Respondent CMH Homes, Inc. did not cause or allow the alleged violations to take place on the property.

4. That said Respondent, by and through Alan Xanders, its authorized representative, strictly advised David R. Moser (the current operator) that at no time was he to engage in any bulldozing operations upon the property.

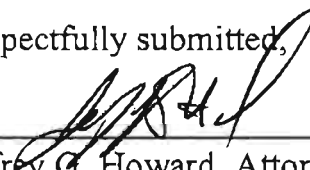
5. Any conditions complained of in the Administrative Citation are believed to be the result of bulldozing activities by David R. Moser upon the property, which activities were directly contrary to the explicit direction given to David R. Moser by CMH Homes, Inc.

WHEREFORE, the Respondent, CMH Homes, Inc.:

A. Requests that the Illinois Pollution Control Board grant its Petition for Review; and,

B. Find that the Respondent is no longer in violation of the Illinois Environmental Protection Act and, therefore, is not subject to any civil penalty.

Respectfully submitted,



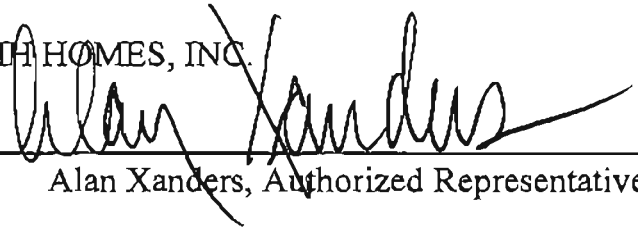
Jeffrey G. Howard, Attorney for CMH Homes, Inc.

JEFFREY G. HOWARD
ARDC #6203080
HOWARD, LEGGANS, PIERCY & HOWARD LLP
1008 MAIN, P.O. BOX 1810
MT. VERNON, IL 62864
618/242-6594

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

VERIFICATION

Under the penalties as provided by law pursuant to Section 1/109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

CMD HOMES, INC.
By 

Alan Xanders, Authorized Representative

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AFFIDAVIT

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

I, Alan Xanders, having been first duly sworn, do hereby state as follows:

1. That I am an employee and authorized representative of CMH Homes Inc. for the purposes of making this Affidavit, which corporation is named as Respondent in the Administrative Citation filed by the Illinois Environmental Protection Agency on or about April 4, 2012.

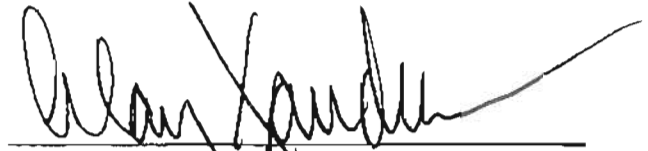
2. That Respondent did not cause or allow the alleged violations to take place on the property. It is believed that David R. Moser undertook bulldozing operations on the property, which activities were without the knowledge or consent of CMH Homes Inc.

3. That David R. Moser was specifically advised by the undersigned on several

occasions that at no time was he to engage in any bulldozing operations on the property.


4. Any bulldozing operations undertaken by David R. Moser upon the property were without the knowledge or consent of CMH Homes Inc.

FURTHER AFFIANT SAYETH NOT.

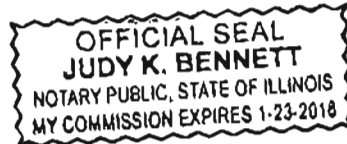


Alan Xanders

SUBSCRIBED to and SWORN before me
this 9th day of May, 2012.



Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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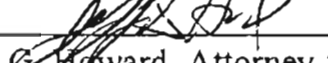
NOTICE OF APPEARANCE

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

David R. Moser
13546 North Harmony Lane
Opdyke, IL 62872

The undersigned attorney, Jeffrey G. Howard, of the law firm of Howard, Leggans, Piercy & Howard, LLP, hereby enters his appearance on behalf of the Respondent, CMH Homes Inc., and further requests all further pleadings be served at the address listed below.

Howard, Leggans, Piercy & Howard LLP

By 
Jeffrey G. Howard, Attorney for CMH Homes, Inc.

JEFFREY G. HOWARD
ARDC #6203080
HOWARD, LEGGANS, PIERCY & HOWARD LLP
1008 MAIN, P.O. BOX 1810
MT. VERNON, IL 62864
618/242-6594

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CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on May 9, 2012, I served the attached Petition for Review of CMH Homes Inc., Affidavit, Notice of Filing and Notice of Appearance on the complainant by third party carrier, Federal Express, at the address below:

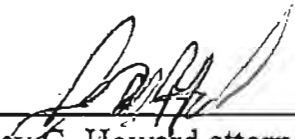
COMPLAINANT'S ADDRESS:

Name Illinois Environmental Protection Agency ATTN: Division of Legal Counsel
Street 1021 North Grand Avenue East
City, state, zip code Springfield, Illinois 62794-9276

and by certified mail return receipt requested, to Respondent, David R. Moser, at the address below:

RESPONDENT'S ADDRESS:

Name David R. Moser
Street 13546 North Harmony Lane
City, state, zip code Opdyke, Illinois 62872



Jeffrey G. Howard attorney for CMH Homes Inc.
JEFFREY G. HOWARD
ARDC #6203080
HOWARD, LEGGANS, PIERCY & HOWARD LLP
1008 MAIN, P.O. BOX 1810
MT. VERNON, IL 62864
618/242-6594

Subscribed to and sworn before me
this 9th day of May, 2012.



Notary Public



My commission expires: 1-23-2016

FedEx Express US Airbill

FedEx Tracking Number **8723 9492 5870**

1 From Please print and press hard Sender's FedEx Account Number **SEDER'S 01173347427000**

Date **May 9, 2012** Sender's Name **Jeffrey G. Howard** Phone **618 242-6594**

Company **HOWARD LEGGANS PIERCY & HOWARD**

Address **1008 MAIN ST** City **Mount Vernon** State **IL** ZIP **62864-4011**

2 Your Internal Billing Reference **01111CMH Homes Inc.**

3 To Recipients **Ms. Michelle Ryan** Phone **(217) 782-2829**

Company **Illinois Environmental Protection Agency**

Address **Division of Legal Counsel** City **Springfield** State **IL** ZIP **62794-9276**

Address **1021 North Grand Avenue East** City **Springfield** State **IL** ZIP **62794-9276**



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5 Packaging FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube Other

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No Signature Required Signature Required Signature Required (no return)

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. David R. Moser
 13546 North Harmony Lane
 Opdyke, IL 62872

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number 7006 2760 0002 7646 0692
 (Transfer from service label)

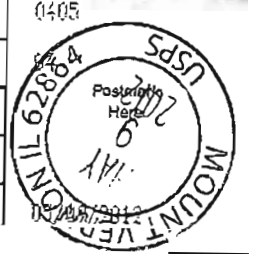
7006 2760 0002 7646 0692

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Total Postage & Fees	\$ 5.95



Sent to: Mr. David R. Moser
 Street or PO: 13546 North Harmony Lane
 City: Opdyke, IL 62872

PS Form 3811, February 2004 Instructions

HOWARD, LEGGANS, PIERCY & HOWARD LLP

GEORGE W. HOWARD, JR. (1932-1994)
G. W. HOWARD III
DAVID R. LEGGANS
DAVID L. PIERCY
JEFFREY G. HOWARD

ATTORNEYS AT LAW
1008 MAIN STREET
HOWARD BLDG. - PO BOX 1810
MT. VERNON, IL 62864

AREA CODE 618
TELEPHONE 242-6594
FAX 244-7197

May 9, 2012

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Pollution Control Board

AC12-39

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

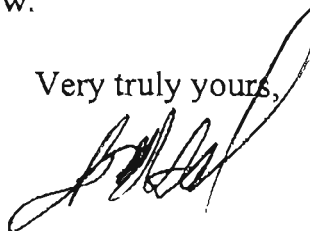
Re: Illinois Environmental Protection Agency v. CMH Homes, Inc. and
David Moser
IEPA File No. 78-12-AC; 0818105002-Jefferson County

Dear Mr. Therriault:

Enclosed for filing, please find Petition for Review with Affidavit, Notice of Filing, Notice of Appearance and Certificate of Service in the above referenced matter, together with 9 copies of the same.

Thank you for your assistance. Should there be any questions or anything further required, please do not hesitate to let me know.

Very truly yours,



Jeffrey G. Howard

JGH/jkb

enclosure

cc: Ms. Michelle M. Ryan

Mr. Alan Xanders