

State of Illinois  
Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
<http://www.ipcb.state.il.us/>

1. SECOND AMENDED FORMAL COMPLAINT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of: )  
E.R. 1, LLC, assignee of CASEYVILLE )  
SPORT CHOICE, LLC, )  
Complainant(s), ) PCB No. 2008-030  
v. )  
ERMA I. SEIBER, ADMINISTRATRIX OF )  
THE ESTATE OF JAMES A. SEIBER, )  
DECEASED, AND ERMA I. SEIBER, )  
INDIVIDUALLY, and FAIRMOUNT PARK )  
Respondent(s) )

1. Your Contact Information

Name: E.R. 1, Inc., assignee of Caseyville Sport Choice, LLC  
Street Address: c/o Bryan Cave LLP  
Attn: Daniel Nester, Esq.  
211 N. Broadway, Ste. 3600  
St. Louis, Missouri 63102  
County: St. Louis City  
State: Missouri  
Phone Number: 314-259-2000

2. Place where you can be contacted during normal business hours (if different from above)

Name: Same as above  
Street Address: \_\_\_\_\_  
County: \_\_\_\_\_  
State: \_\_\_\_\_  
Phone Number: ( ) -

3. Name and address of respondent (alleged polluter)

Name: James A. Seiber, Jr., Executor of the Estate of Erma  
I. Seiber, Deceased, and James A. Seiber, Deceased  
Street Address: 508 Greenwood Place  
Collinsville, Illinois 62234  
County: Madison County  
State: Illinois  
Phone Number: N/A

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above  
Same as in First Amended Formal Complaint for PCB 2008-030 and dated August 26, 2008, which is attached as Exhibit A.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated  
Same as in First Amended Formal Complaint for PCB 2008-030 and dated August 26, 2008. See Exhibit A.

6. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution  
Same as in First Amended Formal Complaint for PCB 2008-030 and dated August 26, 2008. See Exhibit A.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known)  
Same as in First Amended Formal Complaint for PCB 2008-030 and dated August 26, 2008. See Exhibit A.

8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity  
Same as in First Amended Formal Complaint for PCB 2008-030 and dated August 26, 2008. See Exhibit A.

9. Describe the relief that you seek from the Board (*e.g.*, an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action))

Same as in First Amended Formal Complaint for PCB 2008-030 and dated August 26, 2008. See Exhibit A.

10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government)  
Identical Case: PCB 2008-030.

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.)

The Complainant is represented by Bryan Cave LLP and is not representing itself.

12. E.R. 1, LLC, assignee of Caseyville Sport Choice, LLC

By: 

(Complainant's signature)

CERTIFICATION  
(optional but encouraged)

I, Allen K. Schmale, on oath or affirmation, state that  
I have read the foregoing and that it is accurate to the best of my knowledge.

*Allen K. Schmale*  
(Complainant's signature)

Subscribed to and sworn before me

this 26<sup>th</sup> day

of February, 2013.

*Angela Edgar*  
Notary Public

My commission expires: 12-10-15



## **NOTICE TO RESPONDENT**

**NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT**

### **INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

### **BOARD ACCEPTING FORMAL COMPLAINT FOR HEARING; MOTIONS**

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

### **ANSWER TO COMPLAINT**

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

### **COSTS**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

**CERTIFICATE OF SERVICE**

I, the undersigned, on oath or affirmation, state that on February 26, 2013, I served the attached formal complaint and notice on the respondent by

\_\_\_\_\_ certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

\_\_\_\_\_ registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

\_\_\_\_\_ messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

X \_\_\_\_\_ personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

**RESPONDENT'S ADDRESS:**

Name James A. Seiber, Jr., Executor of the Estate of Erma I. Seiber, Deceased, and James A. Seiber, Deceased.

Street 508 Greenwood Place

City, state, zip code Collinsville, Illinois 62234  
(list each respondent's name and address if multiple respondents)

[Signature]  
Complainant's signature

Street Bryant Co & Co 211 N. Broadway St St Louis  
on 2nd floor of building E.R. 1 LLC  
City, state, zip code St. Louis, Mo 63102

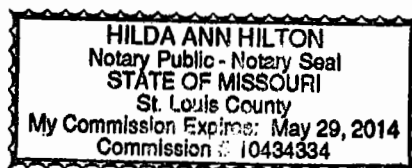
Subscribed to and sworn before me

this 26<sup>th</sup> day

of February, 2013

[Signature]  
Notary Public

My commission expires: \_\_\_\_\_



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

E.R. 1, LLC, ASSIGNEE OF CASEYVILLE  
SPORT CHOICE, LLC

Complainant,

v.

ERMA I. SEIBER, ADMINISTRATRIX OF  
THE ESTATE OF JAMES A. SEIBER,  
DECEASED, ERMA I. SEIBER,  
INDIVIDUALLY, AND FAIRMOUNT PARK, INC

Respondents.

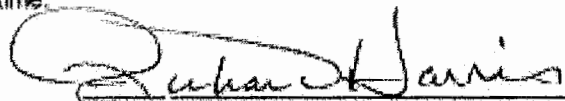
**AFFIDAVIT OF SERVICE**

I, Richard Harris do hereby state the following: I am over the age of 21 and am a disinterested party in the above listed cause.

On Tuesday 02-26-13 at approximately 3:05 PM I made Personal Service of a "Second Amended Formal Complaint" in the above titled matter to Mr. James A. Seiber, Jr.

Service was obtained at the residence of James A. Seiber, Jr. located at 608 Greenwood Place, Collinsville, Illinois 62234.

Affiant has nothing further to state at this time.

  
\_\_\_\_\_  
RICHARD HARRIS  
SPECIAL PROCESS SERVER



**Electronic Filing - Received, Clerk's Office, August 26, 2008**

State of Illinois  
Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
<http://www.ipcb.state.il.us/>

**FIRST AMENDED  
FORMAL COMPLAINT**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In The Matter Of: )  
CASEYVILLE SPORT CHOICE, LLC, )  
An Illinois Limited Liability Company )

(Insert your name(s) in the space above)

Complainant(s), )

v. )

ERMA I. SEIBER, ADMINISTRATRIX OF )  
THE ESTATE OF JAMES A. SEIBER, )  
DECEASED, AND ERMA I. SEIBER, IN )  
HER INDIVIDUAL CAPACITY and )  
FAIRMOUNT PARK, INC., (formerly )  
known as OGDEN FAIRMOUNT, INC.) )  
A Delaware Corporation )

(Insert name(s) of alleged polluter(s))

Respondent(s) )

PCB 2008 - 030  
(For Board use only)

**COUNT I**

(against

Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased,  
and Erma I. Seiber, in her individual capacity)

**1. Your Contact Information**

Name:	Caseyville Sport Choice, LLC
Street Address:	c/o Belsheim & Bruckert, L.L.C. 1002 East Wesley Drive, Suite 100
County:	St. Clair
State:	O'Fallon, IL 62269

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Phone Number: ( 618 ) 624-4221

2. Place where you can be contacted during normal business hours (if different from above)

Name: Same as above

Street Address: \_\_\_\_\_

County: \_\_\_\_\_

State: \_\_\_\_\_

Phone Number: (       )       -      

3. Name and address of respondent (alleged polluter)

Name: Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Case No. 07-P-00003 in Todd District Court (Commonwealth of Kentucky) and Erma I. Seiber, in her individual capacity (See order attached as Exhibit A.)

Street Address: 2070 Rattlesnake Road

County: Todd

State: Elkton, KY 42220

Phone Number: Not Known

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above

The respondents operated a business which hauled away – from a nearby racetrack – large amounts of horse manure and miscellaneous "municipal trash" intermixed with the horse manure, and dumped both the horse manure and "municipal trash" on three parcels of land in St. Clair County.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated

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- (a) the open dumping of waste, in violation of §21(a) of the Illinois Environmental Protection Act (415 ILCS 5/21(a));
  - (b) the conduct of a waste-storage or waste-disposal operation without a permit granted by the Illinois Environmental Protection Agency, in violation of §21(d) of the Illinois Environmental Protection Act (415 ILCS 5/21(d));
  - (c) the disposal, storage, or abandoning of waste on land which was not "a site or facility which meets the requirements of this Act and of regulations and standards thereunder," in violation of §21(e) of the Illinois Environmental Protection Act (415 ILCS 5/21(e));
  - (d) the development of a new solid waste management site without a Development Permit issued by the Environmental Protection Agency, in violation of 35 Illinois Administrative Code 807.201; and
  - (e) the operation of a solid waste management site without an Operating Permit issued by the Environmental Protection Agency, in violation of 35 Illinois Administrative Code 807.202.
- 

6. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution.

The respondents dumped over 159,000 tons of horse manure and over 2,600 tons of "municipal trash" on the three parcels of land, the legal descriptions of which are attached as Exhibit B.

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7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known)

The respondents dumped the horse manure and intermixed "municipal trash" over a period of years (from approximately 1981 to 1993) preceding their conveyance of the parcels of land to the complainant on December 16, 2004. The complainant became aware of the huge amount of horse manure, and the presence of "municipal trash" intermixed with the horse manure, in April, 2005, in the course of developing the land for a subdivision. Since obtaining title and possession to the parcels of land, the complainant has not allowed the dumping of any more horse manure or intermixed "municipal trash" on the parcels of land.

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8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity

To proceed with the development of its subdivision on the three parcels of land, the complainant cleaned up the land and obtained an Environmental No Further Remediation Letter from the Illinois Environmental Protection Agency, which it recorded in the St. Clair County Recorder's Office as Document No. A02003866 on September 27, 2006. The complainant incurred cleanup costs in the amount of Four Million Five Hundred and Twenty-eight Thousand Five Hundred and Eighty-nine Dollars and Ten Cents (\$4,528,589.10).

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9. Describe the relief that you seek from the Board (e.g., an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)).

Reimbursement of the complainant's clean-up costs from the respondents.

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10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government)

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The complainant filed a "Proof of Claim and Affidavit of Claimant" in the Estate of James A. Seiber, Deceased, No. 07-P-00003 in the Todd District Court (Commonwealth of Kentucky) on July 5, 2007. The filing of the "Proof of Claim and Affidavit of Claimant" was necessary, under the law of the State of Kentucky, in order to preserve the complainant's rights against Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased. A Notice of Disallowance of the claim was mailed by Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, on August 21, 2007.

The complainant intends to file – on the same day that it files this complaint with the Illinois Pollution Control Board – a complaint against the respondents in an appropriate United States District Court based upon theories of (1) breach of contract and (2) common law fraud.

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11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.)

The complainant is represented by Belsheim & Bruckert, L.L.C., Attorneys at Law, and is *not* representing itself.

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**Electronic Filing - Received, Clerk's Office, August 26, 2008**

12. CASEYVILLE SPORT CHOICE, LLC  
an Illinois limited liability company,

By

(Complainant's signature)

COUNT II

(against  
Fairmount Park, Inc.  
[formerly known as Ogden Fairmount, Inc.],  
a Delaware corporation)

1. Your Contact Information

Name: Caseyville Sport Choice, LLC  
Street Address: c/o Belshelm & Bruckert, L.L.C.  
1002 East Wesley Drive, Suite 100  
County: St. Clair  
State: O'Fallon, IL 62269  
Phone Number: ( 618 ) 624-4221

2. Place where you can be contacted during normal business hours (if different from above)

Name: Same as above  
Street Address:  
County:  
State:  
Phone Number: ( ) -

3. Name and address of respondent (alleged polluter)

Name: Fairmount Park, Inc. [formerly known as Ogden Fairmount, Inc.]  
Street Address: 9301 Collinsville Road  
County: St. Clair

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State:	Collinsville, IL 62234
Phone Number:	Not Known
Name of Registered Agent:	Illinois Corporation Service C
Address of Registered Agent:	801 Adlai Stevenson Drive
State:	Springfield, IL 62703
Phone Number:	Not Known

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above

The respondent corporation operated a horse racing track. The respondent corporation repeatedly paid James Seiber d/b/a Seiber Hauling and Contracting to haul away, from its horse racing track, large amounts of horse manure and miscellaneous "municipal trash" intermixed with the horse manure, with the expectation that Seiber would dump the horse manure and "municipal trash" on his own land rather than at a properly permitted waste-disposal site or facility.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated

(a) The respondent corporation caused or allowed the open dumping of waste, in violation of §21(a) of the Illinois Environmental Protection Act (415 ILCS 5/21(a)).

6. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution.

The respondent corporation caused or allowed the open dumping of over 159,000 tons of horse manure and over 2,600 tons of "municipal trash" on Seibers' three parcels of land, the legal descriptions of which are attached as Exhibit B.

**Electronic Filing - Received, Clerk's Office, August 26, 2008**

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known)

The respondent corporation caused or allowed the open dumping of the horse manure and intermixed "municipal trash" over a period of years (from approximately 1981 to 1993) on Seibers' parcels of land. The complainant purchased the parcels of land from James A. Seiber and Erma I. Seiber on December 16, 2004. The complainant became aware of the huge amount of horse manure, and the presence of "municipal trash" intermixed with the horse manure, in April, 2005, in the course of developing the land for a subdivision. Since obtaining title and possession to the parcels of land, the complainant has not allowed the dumping of any more horse manure or intermixed "municipal trash" on the parcels of land.

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8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity

To proceed with the development of its subdivision on the three parcels of land, the complainant cleaned up the land and obtained an Environmental No Further Remediation Letter from the Illinois Environmental Protection Agency, which it recorded in the St. Clair County Recorder's Office as Document No. A02003866 on September 27, 2006. The complainant incurred cleanup costs in the amount of Four Million Five Hundred and Twenty-eight Thousand Five Hundred and Eighty-nine Dollars and Ten Cents (\$4,528,589.10).

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9. Describe the relief that you seek from the Board (e.g., an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)).

Reimbursement of the complainant's clean-up costs from the respondent corporation.

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10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government)

No other pending action against the respondent corporation.

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.)

The complainant is represented by Belsheim & Bruckert, L.L.C., Attorneys at Law, and is not representing itself.

12. CASEYVILLE SPORT CHOICE, LLC  
an Illinois limited liability company,

By [Signature]

(Complainant's signature)

**CERTIFICATION**  
(optional but encouraged)

I, W. JOHN NICHOLSON, on oath or affirmation,  
state that I have read the foregoing and that it is accurate to the best of my knowledge.

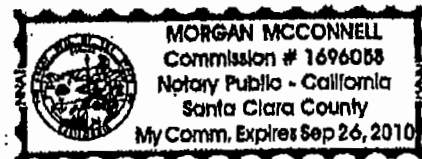
[Signature]  
(Complainant's signature)

Subscribed to and sworn before me this 8<sup>th</sup> day

of July, 2008.

[Signature]  
Notary Public

My commission expires: 09-26-2010



**Electronic Filing - Received, Clerk's Office, August 26, 2008**

## **NOTICE TO RESPONDENT**

**NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT**

### **INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

### **Board Accepting Formal Complaint for Hearing; Motions**

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion

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alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

**Answer to Complaint**

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**

**Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

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**Costs**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

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**CERTIFICATE OF SERVICE**

I, the undersigned, on oath or affirmation, state that on August 26, 2008 served the attached formal complaint and notice on the respondent by

X certified mail (attach copy of receipt if available,  
otherwise you must file receipt later with Clerk)

\_\_\_\_\_ registered mail (attach copy of receipt if available,  
otherwise you must file receipt later with Clerk)

\_\_\_\_\_ messenger service (attach copy of receipt if available,  
otherwise you must file receipt later with Clerk)

\_\_\_\_\_ personal service (attach affidavit if available,  
otherwise you must file affidavit later with Clerk)

at the address below:

**RESPONDENT'S ADDRESS:**

Name Illinois Corporation Service Co., Registered Agent for  
Fairmount Park, Inc. [formerly known as Ogden Fairmount, Inc.),  
a Delaware corporation

Street 801 Adlai Stevenson Drive

City, state, zip code Springfield, IL 62703

John Long  
Complainant's signature

John Long of Belsheim & Bruckert, L.L.C., in behalf of  
Complainant, Caseville Sport Choice, LLC

Street 1002 E. Wesley Drive, Suite 100

City, state, zip code O'Fallon, IL 62269

Subscribed to and sworn/affirmed before me  
this 26 day of August, 2008.

Christine L. Holtmann  
Notary Public



My commission expires: \_\_\_\_\_

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COMMONWEALTH OF KENTUCKY  
TODD DISTRICT COURT  
CASE NUMBER 07-P-00003

**ENTERED**

JAN 16 2007

IN RE: THE ESTATE OF JAMES A. SEIBER, DECEASED

TODD COUNTY CIRCUIT/DISTRICT CT.  
BY: [Signature] D.C.

**ORDER**

THIS DATE came Erma I. Seiber and filed an application requesting that she be appointed as Administratrix of the Estate of James A. Seiber, deceased, and the Court having considered said application and having found that the personal property in the Estate is estimated to be valued at \$20,000.00, excluding any debts thereon, and the Court thereby being sufficiently advised, it should be and hereby is ordered that Erma I. Seiber be and hereby is appointed Administratrix of the Estate of James A. Seiber, deceased, and her bond is set in the sum of \$20,000.00, with Lisa D. Seiber as surety thereon.

THEREUPON, the said Erma I. Seiber executed the aforesaid bond in the sum of \$20,000.00, with Lisa D. Seiber as surety thereon, which bond is approved by the Court and after taking the proper oath as Administratrix, Erma I. Seiber is now the duly qualified and acting Administratrix of the Estate of James A. Seiber, deceased.

ENTERED this 16th day of January, 2007.

[Signature]  
SUE CAROL BROWNING, JUDGE  
TODD DISTRICT COURT

DILLINGHAM,  
RITCHIE &  
PETRIE  
Attorneys at Law

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Parcel 1

The Northwest Quarter of the Northwest Quarter of Section 9, Township 2 North, Range 8 West of the Third Principal Meridian, St. Clair County, Illinois, together with all improvements located thereon.

ALSO, all easements of any kind, including easements of egress and ingress, that are owned by the Grantors.

ALSO, an easement of ingress and egress over the Westerly edge of the approximately 11 acre tract, located in the Southwest Quarter of the Northwest Quarter of Section 9, Township 2 North, Range 8 West of the Third Principal Meridian, which tract is described as follows:

Commencing at the stone that marks the Southeast corner of the Southwest Quarter of the Northwest Quarter of Section 9, Township 2 North, Range 8 West of the Third Principal Meridian, thence in a Northerly direction along the East line of the Southwest Quarter of the Northwest Quarter of said Section 9, a distance of 339.50 feet to an iron bar at the Point of Beginning of the tract of land herein described, thence continuing in a Northerly direction along the East line of the Southwest Quarter of the Northwest Quarter of said Section 9, a distance of 967.32 feet to the stone that marks the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 9; thence in a Westerly direction along the North line of the Southwest Quarter of the Northwest Quarter of said Section 9, a distance of 1002.95 feet to a pipe; thence in a Southeasterly direction to the iron bar at the Point of Beginning, which easement is to be 50 feet in width and located as to be a continuation of the existing Right-of-Way approaching the property from the South, and to include the area 16.5 feet in width of a previously existing easement, with the Southwesterly boundary line thereof to be the existing creek line at a usable level.

Also, Fee Simple Title to that part of the above described approximately 11-acre tract lying West of the above-described easement property.

EXCEPTING from all of the above, the coal, oil, gas and other minerals underlying the premises.

Containing 39.80 acres, more or less.

Permanent Parcel # 03-09,0-100-001

Parcel 2

Lot 5 in U.S. Survey No. 785, Claim 102; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Assessor's Plats Lands North "2" on page 39.

EXCEPT that part thereof lying within the Right-of-Way of the St. Louis, Vandalia and Terre Haute Railroad.

Containing 26.00 acres, more or less.

Permanent Parcel # 03-08,0-200-002

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Parcel 3

Lot 8A, Northeast Quarter of Section 8, Township 2 North, Range 8 West of the Third Principal Meridian; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Assessor's Plats Lands North "2" on page 39,

EXCEPT that part thereof described as follows, to-wit:

6 acres being part of the Northeast Quarter of Section 8, Township 2 North, Range 8 West of the Third Principal Meridian, beginning at the Southeast corner of said Quarter Section; thence West 34 rods; thence North so as to include the 6 acres; thence East and South to the Place of Beginning.

EXCEPT, FURTHER, that part conveyed to Amos B. Emrich by Deed recorded in Book 869 on page 610, described as follows, to-wit:

That part of Lot 8A, Northeast Fractional Quarter of Section 8, Township 2 North, Range 8 West of the Third Principal Meridian, described as follows: Commencing at a pipe which marks the Northeast corner of Lot 2, Northeast Fractional Quarter of Section 8, Township 2 North, Range 8 West; thence North along the East line of Section 8, a distance of 749 feet to a point; thence West along a line parallel to the South line of Section 8, a distance of 753 feet to a point; thence South along a line parallel to the East line of Section 8, a distance of 1217 feet to a point in the East and West center line of Section 8; thence East along the said center line of Section 8, a distance of 194 feet to a pipe which marks the Southwest corner of Lot 2; thence North along the West line of Lot 2; 468 feet to the pipe which marks the Northwest corner of Lot 2; thence East along the North line of Lot 2, a distance of 565 feet to a pipe at the Point of Beginning.

EXCEPT, FURTHER, that part of Lot 4 in the Southeast Quarter and that part of Lot 8A in the Northeast Quarter of Section 8 of Township 2 North, Range 8 West of the Third Principal Meridian, Village of Caseyville, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Assessor's Plats Lands North "2" on page 39, as in Deed Book 3057, page 1972, and being more particularly described as follows:

Beginning at an iron bar marking the Northeast corner of said Lot 4; thence in a Southerly direction along the East line of said Lot 4, a distance of 70.15 feet to an iron bar marking the Northeast corner of a tract of land conveyed to Carlton W. Hill and Lois R. Hill, his wife, as joint tenants and not as tenants in common, by Deed recorded in Book 1776 on page 501; thence in a Westerly direction along the North line of said Hill Tract, and making an interior counterclockwise angle of 88°15'10" with the last described line, a distance of 71.51 feet to the Northwest corner of said Hill Tract; thence in a Southerly direction along said Hill West line and making an exterior clockwise angle 89°59'23" with the last described line, a distance of 69.14 feet to a point; thence in a Northwesterly direction along a line that makes an interior counterclockwise angle of 24°23'09" with the last described line, a distance of 711.24 feet to an iron rod; thence in a Northeasterly direction along a line that makes an interior counterclockwise angle of 118°21'20" with the last described line, a distance of 319.72 feet; thence in a Northeasterly direction along a line that makes an interior counterclockwise angle of 160°58'36" with the last described line, a distance of 165.03 feet to a point; thence in a Northeasterly direction along a line that makes an exterior clockwise angle of 124°45'46" with the last described line, a distance of 360.14 feet to an old pipe that marks the Northwest corner of a tract of land conveyed to Amos B. Emrich by Deed recorded in Book 869 on page 610; thence in a Southerly direction along the said Emrich West line and; making an interior counterclockwise angle of 03°24'49" with the last described line, a distance of about 1214.9 feet to the Southwest corner of said Emrich Tract and being a point on the East-West center line of said Section 8; thence in a Westerly direction along said Section center line and making an interior counterclockwise angle of 89°32'14" with the last described line, a distance of 24.56 feet to the Point of Beginning.

Containing 76.02 acres, more or less.

Permanent Parcel # 03-08.0-200-008