

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
J. B. TIMMERMANN FARMS, LTD. )  
an Illinois Corporation, )  
 )  
Respondent. )

RECEIVED  
CLERK'S OFFICE

OCT 17 2008

STATE OF ILLINOIS  
Pollution Control Board

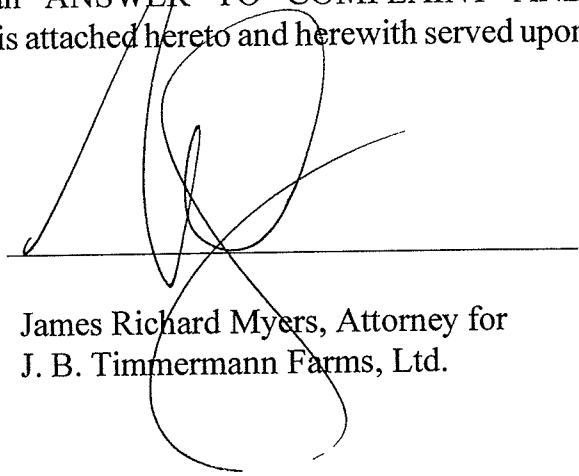
PCB No. 07-70  
(Enforcement-Water)

NOTICE OF FILING

TO: Andrew J. Nicholas, Assistant Attorney General, State of Illinois, Attorney General  
of the State of Illinois, 500 South Second Street, Springfield, Illinois 62706.

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution  
Control Board of the State of Illinois, an ANSWER TO COMPLAINT AND  
AFFIRMATIVE DEFENSES, a copy of which is attached hereto and herewith served upon  
you.

Dated: OCTOBER 15, 2008



James Richard Myers, Attorney for  
J. B. Timmermann Farms, Ltd.

James Richard Myers  
Reg. No. 06225705  
Attorney for J. B. Timmermann Farms, Ltd.  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 S. Seventh St., P.O. Box 399  
Vandalia, IL 62471  
Telephone: (618) 283-3034  
Fax: (618) 283-3037  
File #5753/9601

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 J. B. TIMMERMANN FARMS, LTD. )  
 an Illinois Corporation, )  
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 Respondent. )

PCB No. 07-70  
(Enforcement-Water)

**ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

**COUNT I**

*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Answer to the allegations of Count I of the Complaint filed against it states:

1. Respondent lacks sufficient information as to the matters alleged in Paragraph 1 of Count I of the Complaint, and therefore denies same.
2. Respondent admits the allegations of Paragraph 2 of Count I of the Complaint.
3. Respondent admits the allegations of Paragraph 3 of Count I of the Complaint.
4. Respondent admits the allegations of Paragraph 4 of Count I of the Complaint.
5. Respondent admits the allegations of Paragraph 5 of Count I of the Complaint.
6. Respondent admits the allegations of Paragraph 6 of Count I of the Complaint.
7. Respondent admits the allegations of Paragraph 7 of Count I of the Complaint.
8. Respondent admits the allegations of Paragraph 8 of Count I of the Complaint.

9. Respondent admits the allegations of Paragraph 9 of Count I of the Complaint.
10. Respondent lacks sufficient information as to the matters alleged in Paragraph 10 of Count I of the Complaint, and therefore denies same.
11. Respondent lacks sufficient information as to the matters alleged in Paragraph 12 of Count I of the Complaint, and therefore denies same.
12. Respondent admits the allegations of Paragraph 12 of Count I of the Complaint.
13. Respondent denies the allegations of Paragraph 13 of Count I of the Complaint.
14. Respondent lacks sufficient information as to the matters alleged in Paragraph 14 of Count I of the Complaint, and therefore denies same.
15. Respondent lacks sufficient information as to the matters alleged in Paragraph 15 of Count I of the Complaint, and therefore denies same.
16. Respondent admits the allegations of Paragraph 16 of Count I of the Complaint.
17. Respondent lacks sufficient information as to the matters alleged in Paragraph 17 of Count I of the Complaint, and therefore denies same.
18. Respondent lacks sufficient information as to the matters alleged in Paragraph 18 of Count I of the Complaint, and therefore denies same.
19. Respondent admits receiving a Violation Notice from the Illinois EPA. Respondent denies all the remaining matters alleged in Paragraph 19 of Count I of the Complaint.
20. Respondent admits receiving a Notice of Intent to Pursue Legal Action from the Illinois EPA and a meeting with the Illinois EPA on March 2, 2005. Respondent denies all the remaining matters alleged in Paragraph 20 of Count I of the Complaint.

21. Respondent admits the allegations of Paragraph 21 of Count I of the Complaint.
22. Respondent lacks sufficient information as to the matters alleged in Paragraph 22 of Count I of the Complaint, and therefore denies same.
23. Respondent lacks sufficient information as to the matters alleged in Paragraph 23 of Count I of the Complaint, and therefore denies same.
24. Respondent lacks sufficient information as to the matters alleged in Paragraph 24 of Count I of the Complaint, and therefore denies same.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests that the Board enter an Order dismissing Count I of the Complaint with prejudice and further ordering Complainant to pay Respondent's costs and fees.

## **COUNT II**

*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Answer to the allegations of Count II of the Complaint filed against it states:

- 1-22. Respondent reanswers and incorporates herein by reference its answers to Paragraphs 1 to 22 of Count I as its answers to Paragraphs 1 to 22 of Count II of the Complaint.
23. Respondent admits the allegations of Paragraph 23 of Count II of the Complaint.
24. Respondent admits the allegations of Paragraph 24 of Count II of the Complaint.
25. Respondent admits the allegations of Paragraph 25 of Count II of the Complaint.
26. Respondent denies the allegations of Paragraph 26 of Count II of the Complaint.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests that the Board enter an Order dismissing Count II of the Complaint with prejudice and further ordering Complainant to pay Respondent's costs and fees.

### **COUNT III**

*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Answer to the allegations of Count III of the Complaint filed against it states:

- 1-22. Respondent reanswers and incorporates herein by reference its answers to Paragraphs 1 to 22 of Count I as its answers to Paragraphs 1 to 22 of Count III of the Complaint.
23. Respondent denies the allegations of Paragraph 23 of Count III of the Complaint.
24. Respondent admits the allegations of Paragraph 24 of Count III of the Complaint.
25. Respondent admits the allegations of Paragraph 25 of Count III of the Complaint.
26. Respondent denies the allegations of Paragraph 26 of Count III of the Complaint.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests that the Board enter an Order dismissing Count III of the Complaint with prejudice and further ordering Complainant to pay Respondent's costs and fees.

**AFFIRMATIVE DEFENSES TO ALL COUNTS**

**AFFIRMATIVE DEFENSE NUMBER 1 - ACT OF GOD**

*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Affirmative Defense Number 1 to all Counts of the Complaint filed against it states:

1. The lagoon overflow referenced in the Complaint occurred subsequent to a unusually heavy rainfall.
2. Rainfall is an act of God, not within the control of the Respondent.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests that the Board enter an Order dismissing the Complaint with prejudice and further ordering Complainant to pay Respondent's costs and fees.

**AFFIRMATIVE DEFENSE NUMBER 2 - THIRD PARTY INTERVENTION**

*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Affirmative Defense Number 2 to all Counts of the Complaint filed against it states:

1. The lagoon overflow referenced in the Complaint occurred subsequent to a unusually heavy rainfall.
2. Several other landowners in the area of Respondent have waste and water retention systems which failed at the same time as Respondent's.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests

that the Board enter an Order dismissing the Complaint with prejudice and further ordering Complainant to pay Respondent's costs and fees.

**AFFIRMATIVE DEFENSE NUMBER 3 - MITIGATION**

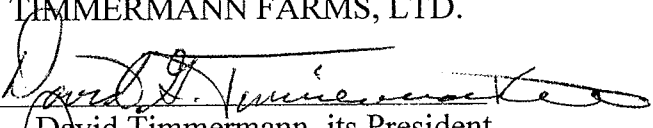
*COMES NOW* the Respondent, J. B. Timmermann Farms, Ltd., by and through its attorney, James Richard Myers of LeFevre Oldfield Myers Apke & Payne Law Group, Ltd., and for its Affirmative Defense Number 3 to all Counts of the Complaint filed against it states:

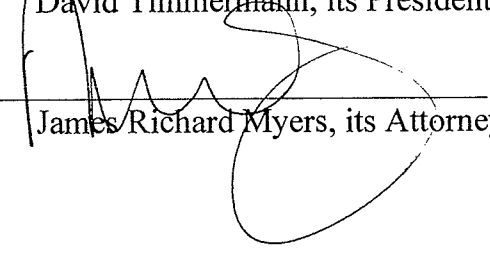
1. The lagoon overflow referenced in the Complaint occurred subsequent to a unusually heavy rainfall.
2. Respondent has acted with all due attentiveness and speed to rectify the situation and to prevent further overflows of its lagoon at its significant cost and expense.

*WHEREFORE*, the Respondent, J. B. Timmermann Farms, Ltd., respectfully requests that the Board enter an Order dismissing the Complaint with prejudice and further ordering Complainant to pay Respondent's costs and fees.

Dated: OCTOBER 15, 2008

J. B. TIMMERMANN FARMS, LTD.

By:   
David Timmermann, its President

By:   
James Richard Myers, its Attorney

James Richard Myers  
Reg. No. 06225705  
Attorney for J. B. Timmermann Farms, Ltd.  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 S. Seventh St., P.O. Box 399  
Vandalia, IL 62471  
Telephone: (618) 283-3034  
Fax: (618) 283-3037  
File #5753/9601

## CERTIFICATE OF SERVICE

I hereby certify that I did on October 15, 2008, send by U.S. mail, first class with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled **NOTICE OF FILING** and **ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

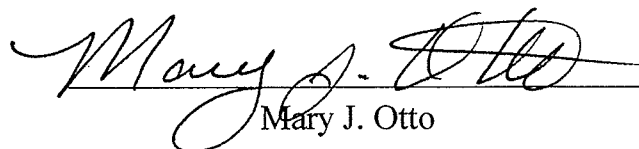
Andrew J. Nicholas  
Assistant Attorney General  
State of Illinois  
Attorney General of the State of Illinois  
500 South Second Street  
Springfield, IL 62706

and the original and ten copies of the Notice of filing by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

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

A copy of the Notice of Filing was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
Mary J. Otto