

BEFORE THE ILLINOS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
FAIRMONT PARK, INC.,)	
a Delaware Corporation,)	
)	
Cross-Claimant,)	
)	
v.)	PCB 2008-030
)	
ERMA I. SEIBER, Administratrix of the)	
Estate of James A. Seiber, Deceased, and)	
ERMA I. SEIBER, in Her Individual)	
Capacity,)	
)	
Cross-Defendent.)	

ANSWER TO COUNTERCLAIM

Now comes the Cross-Defendant, Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber, in Her Individual Capacity, and in response to the Counterclaim filed by Fairmont Park, Inc. respectfully states as follows:

1. The Cross-Defendant hereby denies all allegations contained in the Affirmative Defenses and Answers filed by the Cross-Claimant in this cause of action.
2. The Cross-Defendant admits the allegations contained in paragraph 2.
3. The Cross-Defendant denies the allegations contained in paragraph 3.
4. The Cross-Defendant denies the allegations contained in paragraph 4.
5. The Cross-Defendant denies the allegations contained in paragraph 5.
6. The Cross-Defendant denies the allegations contained in paragraph 6.
7. The Cross-Defendant denies the allegations contained in paragraph 7.

WHEREFORE, the Cross-Defendant prays that the relief sought by the Cross-Claimant be denied and for such other and further relief as to the Court is just and equitable.

ERMA I. SEIBER, Administratrix of
the Estate of James A. Seiber, Deceased,
and ERMA I. SEIBER, in Her Individual
Capacity,

By: /s/ Donald W. Urban

DONALD W. URBAN#3125254
SPRAGUE & URBAN
Attorneys at Law
26 East Washington Street
Belleville, IL 62220
(618) 233-8383
(618) 233-5374 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was forwarded to the below listed counsel by enclosing same in an envelope, with proper first class postage fully prepaid and depositing said envelope in a United States mail box in Belleville, Illinois this 3rd day of February, 2009.

Mr. John P. Long
Attorney at Law
1002 E. Wesley Drive, Suite 100
O'Fallon, IL 62269

Ms. Penni S. Livingston
Attorney at Law
5701 Perrin Road
Fairview Heights, IL 62208

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

/s/ Donald W. Urban

BEFORE THE ILLINOS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
FAIRMONT PARK, INC.,)	
a Delaware Corporation,)	
)	
Cross-Claimant,)	
)	
v.)	PCB 2008-030
)	
ERMA I. SEIBER, Administratrix of the)	
Estate of James A. Seiber, Deceased, and)	
ERMA I. SEIBER, in Her Individual)	
Capacity,)	
)	
Cross-Defendent.)	

ANSWERS TO AFFIRMATIVE DEFENSES

Now comes Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber, in Her Individual Capacity, and in response to Affirmative Defenses filed by Fairmont Park, Inc. respectfully responds as follows:

Response to First Affirmative Defense

Defendant, Seiber, states that the First Affirmative Defense is directed at Caseyville Sport Choice and not at Defendant, Seiber, and therefore makes no response.

Response to Second Affirmative Defense

Defendant, Seiber, denies the Second Affirmative Defense and states that all activities conducted by Defendant, Seiber, were done with the full knowledge and approval of Fairmont.

Response to Third Affirmative Defense

Defendant, Seiber, states that the Third Affirmative Defense is directed against the Plaintiff only and makes no response.

Response to Fourth Affirmative Defense

Defendant, Seiber, states that the Fourth Affirmative Defense is directed at the Plaintiff and not against Defendant, Seiber, but to the extent that the Affirmative Defense references Defendant, Seiber, as “clearly the guilty party” respectfully denies the allegations contained therein.

Response to Fifth Affirmative Defense

Defendant, Seiber, states that the Fifth Affirmative Defense is directed at the Plaintiff alone and makes no response. To the extent that the Fifth Affirmative Defense does pertain to Defendant, Seiber, she would join with Defendant, Fairmont, in stating that the Plaintiff has unclean hands in either failing to perform due diligence through proper and prior environmental assessment prior to purchase or by knowing the information is disclosed.

Response to Sixth Affirmative Defense

Defendant, Seiber, states that the Sixth Affirmative Defense pertains only to the Plaintiff and therefore makes no response.

Response to Seventh Affirmative Defense

Defendant, Seiber, states that the Seventh Affirmative Defense pertains only to the Plaintiff and therefore makes no response.

Response to Eighth Affirmative Defense

Defendant, Seiber, states that the Eighth Affirmative Defense pertains only to the Plaintiff and therefore makes no response.

Response to Ninth Affirmative Defense

Defendant, Seiber, denies the allegations contained in the Ninth Affirmative Defense.

Response to Tenth Affirmative Defense

Defendant, Seiber, states that the Tenth Affirmative Defense pertains only to the Plaintiff and therefore makes no response.

Response to Eleventh Affirmative Defense

Defendant, Seiber, states that the Eleventh Affirmative Defense pertains only to the Plaintiff and therefore makes no response.

ERMA I. SEIBER, Administratrix of
the Estate of James A. Seiber, Deceased,
and ERMA I. SEIBER, in Her Individual
Capacity,

By: /s/ Donald W. Urban

DONALD W. URBAN#3125254
SPRAGUE & URBAN
Attorneys at Law
26 East Washington Street
Belleville, IL 62220
(618) 233-8383
(618) 233-5374 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was forwarded to the below listed counsel by enclosing same in an envelope, with proper first class postage fully prepaid and depositing said envelope in a United States mail box in Belleville, Illinois this 3rd day of February, 2009.

Mr. John P. Long
Attorney at Law
1002 E. Wesley Drive, Suite 100
O'Fallon, IL 62269

Ms. Penni S. Livingston
Attorney at Law
5701 Perrin Road
Fairview Heights, IL 62208

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

/s/ Donald W. Urban

BEFORE THE ILLINOS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
CASEYVILLE SPORT CHOICE, LLC,)	
an Illinois Limited Liability Company)	
)	
Complainant,)	
)	
v.)	PCB 2008-030
)	
ERMA I. SEIBER, Administratrix of the)	
Estate of James A. Seiber, Deceased, and)	
ERMA I. SEIBER, in Her Individual)	
Capacity and FAIRMONT PARK, INC.,)	
a Delaware Corporation,)	
)	
Respondents.)	

ANSWER TO FIRST
AMENDED FORMAL COMPLAINT

Count I

Now comes the Respondent, Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and ERMA I. SEIBER, in Her Individual Capacity, by and through her attorneys, Sprague & Urban, and an Answer to Count I of the First Amended Complaint filed by Caseyville Sport Choice, LLC, an Illinois Limited Liability Company, respectfully states as follows:

1. The Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph and therefore denies same and demands strict proof of same.
2. The Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph and therefore denies same and demands strict proof of same.
3. The Respondent admits the allegations contained in paragraph 3.

4. Respondent admits that they operated a business which hauled away from a nearby race track large amounts of horse manure and that said manure placed on land in St. Clair County. Respondent lacks sufficient knowledge to admit or deny whether “municipal trash” was included in said disposal and demands strict proof of same.
5. The Respondent denies the allegations contained in paragraph 5 and by way of affirmative defense states that the Respondent has previously complied with all enforcement orders issued by the Illinois Pollution Control in regards to this site.
6. Respondent lacks sufficient knowledge to admit or deny the amount of horse manure placed on site or the municipal trash and therefore denies same and demands strict proof of same.
7. Respondent lacks sufficient knowledge to admit or deny the exact dates that the horse manure was placed on the property but admits that all dumping ceased in conjunction with the enforcement action of the Illinois Pollution Control Board (most likely in the early 1990's) and denies that the Complainant only became aware of these factors in April 2005 in the course of developing the land.
8. Respondent lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 8 and therefore denies same and demands strict proof of same.
9. Respondent denies that the Complainant should receive the relief sought.
10. Respondent admits the allegations contained in paragraph 10.
11. Respondent admits the allegations contained in paragraph 11.
12. Respondent admits the allegations contained in paragraph 12.

Count II

Now comes the Respondent Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and ERMA I. SEIBER, in Her Individual Capacity, and represents that no answer in filed in connection with Count II in that said count is directed against Fairmont Park, Inc.

WHEREFORE, the Respondent would petition this board to deny the prayer for relief sought by the Petitioners and for such other and further relief is just and equitable.

ERMA I. SEIBER, Administratrix of
the Estate of James A. Seiber, Deceased,
and ERMA I. SEIBER, in Her Individual
Capacity,

By: /s/ Donald W. Urban

DONALD W. URBAN#3125254
SPRAGUE & URBAN
Attorneys at Law
26 East Washington Street
Belleville, IL 62220
(618) 233-8383
(618) 233-5374 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was forwarded to the below listed counsel by enclosing same in an envelope, with proper first class postage fully prepaid and depositing said envelope in a United States mail box in Belleville, Illinois this 3rd day of February, 2009.

Mr. John P. Long
Attorney at Law
1002 E. Wesley Drive, Suite 100
O'Fallon, IL 62269

Ms. Penni S. Livingston
Attorney at Law
5701 Perrin Road
Fairview Heights, IL 62208

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

/s/ Donald W. Urban