

ILLINOIS POLLUTION CONTROL BOARD
January 20, 2011

ROLF SCHILLING, PAM SCHILLING, and)
SUZANNE VENTURA,)
)
Complainants,)
)
v.) PCB 10-100
) (Citizens Enforcement - Water)
GARY D. HILL, VILLA LAND TRUST, an)
Illinois land trust, and PRAIRIE LIVING)
WEST, LLC,)
)
Respondents.)

ORDER OF THE BOARD (by G.L. Blankenship):

On June 1, 2010, Rolf Schilling, Pam Schilling, and Suzanne Ventura (collectively, complainants) filed a citizen's water pollution complaint (complaint). Complainants' named as respondents Gary D. Hill, Villa Land Trust, and Prairie Living West, LLC (collectively, respondents). The complaint alleges violations of the Environmental Protection Act (415 ILCS 5 (2008)) and a NPDES permit for the construction site known as the "Prairie Living West" project located at "900/955 Villa Court [in] Carbondale, Jackson County." Comp. at 2. Complainants allege that, from when construction commenced through the present, respondents have allowed construction materials and sediment to fill and pollute complainants' co-owned pond.

On December 2, 2010, the respondents filed a motion for leave to file third-party counterclaim (Motion). Respondents attached a "proposed counterclaim" for indemnity as exhibit A to the motion and stated that the complainants would not be prejudiced if the motion were to be granted. Mot. at 1.

Complainants filed their response in opposition to motion for leave to file third-party counterclaim (Response) on December 6, 2010. In their response, the complainants do not argue that they would be prejudiced by granting the Motion.

Complainants note that the proposed counterclaim references a contractual document attached as an exhibit, yet no such document was attached. Response at 1. Complainants state that they are unable to fully evaluate the respondents' assertions without the contractual document that was to be attached to the counterclaim. Resp. at 1. Furthermore, the complainants question whether all three respondents would be entitled to indemnification. *Id.* at 2. The complainants also believe that the Board lacks jurisdiction to entertain a counterclaim seeking indemnification based upon contractual provisions between parties. *Id.*

Respondents filed their reply to the Response on December 15, 2010. In their reply, the respondents state that the contractual document did not need to be attached to the Motion since

the counterclaim is merely a proposed document. Reply to Complainants' Response to Motion for Leave to File Third-Party Counterclaim (Reply) at 1. Respondents also challenge the complainants' contention regarding Board jurisdiction. *Id.* at 2.

Respondents end their reply by requesting that the Board grant them leave to file a third-party counterclaim. *Id.*

The Board notes that the respondents refer to the counterclaim as a "proposal" on numerous occasions in their Motion and Reply and have not at this time filed the counterclaim for indemnity. Therefore, the only matter presently before the Board is the respondents' motion moving the Board for leave to file a third-party counterclaim. Section 101.500(a) of the Board's procedural rules states:

The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure. 35 Ill. Adm. Code 101.500(a).

The Board grants the respondents' motion for leave to file a third-party counterclaim. The Board withholds any decision on the merits of the counterclaim until such time that a counterclaim is filed. The Complainants may raise their arguments again if the respondents choose to file their counterclaim.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 20, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board