

BEFORE THE ILLINOIS 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)	
)	
FAIRMOUNT PARK, INC., a Delaware)	
Corporation,)	
)	
Respondents.)	

NOTICE OF FILING

To:

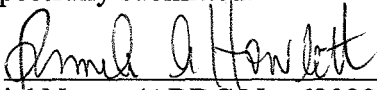
David J. Gerber
Attorney at Law
241 North Main Street
Edwardsville, Illinois 62025
Attorney for Caseyville Sport Choice, LLC

Donald W. Urban
Sprague and Urban
26 E. Washington Street
Belleville, Illinois 62220
Attorneys for Erma I. Seiber

Penni S. Livingston
Attorney at Law
5701 Perrin Road
Fairview Heights, Illinois 62208
Attorney for Fairmount Park, Inc.

PLEASE TAKE NOTICE THAT I have on January 31, 2011 electronically filed with the Office of the Clerk of the Pollution Control Board E.R. 1, LLC, AS ASSIGNEE OF COMPLAINANT CASEYVILLE SPORT CHOICE, LLC, MOTION FOR EXTENSION OF TIME TO RESPOND TO RESPONDENT FAIRMOUNT PARK, INC.'S MOTION FOR SUMMARY JUDGMENT, a copy of which is hereby served upon you.

Respectfully submitted.

By: 

Daniel Nester (ARDC No. 6208872)

Steven J. Poplawski (ARDC No. 6193897)

Pamela Howlett, Esq. (ARDC No. 6281863)

Christopher Blaesing, Esq.

(ARDC No. 6298240)

Bryan Cave LLP

211 North Broadway, Suite 3600

St. Louis, Missouri 63102

(314) 259-2000

(314) 259-2020 (fax)

*Attorneys for E.R. 1, LLC, As Assignee of
Caseyville Sport Choice, LLC*

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E.R. 1, LLC AS ASSIGNEE OF COMPLAINANT CASEYVILLE SPORT CHOICE, LLC, MOTION FOR EXTENSION OF TIME TO RESPOND TO RESPONDENT FAIRMOUNT PARK, INC.'S MOTION FOR SUMMARY JUDGMENT

E.R. 1, LLC ("E.R. 1") as assignee of Complainant Caseyville Sport Choice, LLC ("CSC"), by and through its undersigned counsel, and in support of its Motion for Extension of Time to Respond to Respondent Fairmount Park, Inc.'s ("Fairmount") Motion for Summary Judgment, pursuant to 35 Ill. Admin. Code § 101.522, states as follows:

1. Between 1981 and 1993, Fairmount contracted with James A. Seiber ("Seiber") (Fairmount and Seiber are collectively referred to herein as "Respondents") for Seiber to dispose of Fairmount's waste, including horse manure and other types of municipal trash.
2. Fairmount's waste was dumped on Seiber's property without a permit.
3. As a result of the improper waste disposal operations from 1981-1993, more than 160,000 tons of Fairmount's waste was ultimately disposed on Seiber's property.

4. In 2004, Seiber sold to CSC the property upon which Fairmount's waste was disposed without a permit.

5. Subsequent to its purchase of the property, CSC learned of the existence of and the extent of Fairmount's waste on the property and, in 2005, cleaned up Fairmount's improperly disposed waste, under Illinois Environmental Protection Agency supervision, at a cost exceeding \$4.5 million.

6. In 2008, CSC filed its complaint before the Illinois Pollution Control Board alleging that Respondents violated the Illinois Environmental Protection Act ("Act") and requesting reimbursement of its costs to remediate Fairmount's waste.

7. In 2010, Respondents filed motions to dismiss. In their motions to dismiss, Respondents erroneously assert that, under the Act, the IPCB cannot award clean up costs to CSC as the Act provides no authority to do so.

8. In addition to its motion to dismiss, in July 2010 Fairmount filed its Motion for Summary Judgment against CSC.

9. In January 2011, CSC offered its claims against Respondents to certain creditors.

10. Without waiving their rights to take further action against CSC for repayment of amounts owed and other claims, certain of CSC's creditors accepted assignment of CSC's claims against Respondents on January 31, 2011, and immediately prepared pleadings to respond to Respondents' pending motions.

11. On January 31, 2011, E.R. 1, as assignee of CSC, filed a response to the motions to dismiss filed by Respondents. E.R. 1's response establishes that Respondents have misstated the law in their motions, and cites a line of precedent holding, contrary to Respondents' Motions, that the IPCB has, pursuant to Section 33(a) of the Act, the authority to award clean up costs to

E.R. 1 as assignee of CSC. Given that on short notice, E.R. 1 has been able to determine and file a responsive pleading reflecting that Respondents' Motions to Dismiss are not well founded, the Board should allow E.R. 1 a reasonable period of time to review the record in order to have an adequate opportunity to refute Fairmount's summary judgment motion.

12. Due to the short time period that E.R. 1 has been involved in the case, E.R. 1 has not yet had the opportunity to review the record from which the materials Fairmount cites in its motion for summary judgment were culled, and, as a result, require additional time in order to review the record that has been developed in the case.

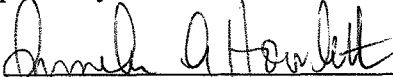
13. If E.R. 1's Motion for Extension of Time is granted, E.R. 1 will file its response to Fairmount's motion for summary judgment no later than March 31, 2011.

14. Respondents will not be prejudiced if the extension is granted.

WHEREFORE, E.R. 1, as assignee of Complainant Caseyville Sport Choice, LLC, respectfully requests that the IPCB grant CSC an extension of time to respond to Fairmount's motion for summary judgment to and including March 31, 2011, and grant any other and further relief as the IPCB deems just and proper.

Dated: January 31, 2011

Respectfully submitted.

By: 
Daniel Nester (ARDC No. 6208872)
Steven J. Poplawski (ARDC No. 6193897)
Pamela Howlett, Esq. (ARDC No. 6281863)
Christopher Blaesing, Esq.
(ARDC No. 6298240)
Bryan Cave LLP
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2000
(314) 259-2020 (fax)
*Attorneys for E.R. 1, LLC, As Assignee of
Caseyville Sport Choice, LLC*

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ERMA I. SEIBER, in Her Individual)	
Capacity, and)	
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FAIRMOUNT PARK, INC., a Delaware)	
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Respondents.)	

CERTIFICATE OF SERVICE

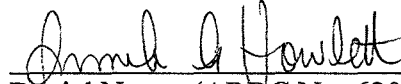
I, the undersigned, on January 31, 2011, caused the foregoing E.R. 1, LLC AS ASSIGNEE OF COMPLAINANT CASEYVILLE SPORT CHOICE, LLC, MOTION FOR EXTENSION OF TIME TO RESPOND TO RESPONDENT FAIRMOUNT PARK, INC.'S MOTION FOR SUMMARY JUDGMENT and NOTICE OF FILING to be electronically filed with the Office of the Clerk, and caused a true and correct copy of said documents to be served upon:

David J. Gerber
Attorney at Law
241 North Main Street
Edwardsville, Illinois 62025
Attorney for Caseyville Sport Choice, LLC

Donald W. Urban
Sprague and Urban
26 E. Washington Street
Belleville, Illinois 62220
Attorneys for Erma I. Seiber

Penni S. Livingston
Attorney at Law
5701 Perrin Road
Fairview Heights, Illinois 62208
Attorney for Fairmount Park, Inc.

By placing same in U.S. Mail at St. Louis, Missouri.



Daniel Nester (ARDC No. 6208872)

Steven J. Poplawski (ARDC No. 6193897)

Pamela Howlett, Esq. (ARDC No. 6281863)

Christopher Blaesing, Esq.

(ARDC No. 6298240)

Bryan Cave LLP

211 North Broadway, Suite 3600

St. Louis, Missouri 63102

(314) 259-2000

(314) 259-2020 (fax)

*Attorneys for E.R. 1, LLC, As Assignee of
Caseyville Sport Choice, LLC*



Pamela A. Howlett
Associate
Direct: (314)259-2195
pamela.howlett@bryancave.com

January 31, 2011

VIA ELECTRONIC FILING

Illinois Pollution Control Board
Clerk's Office
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601
<http://www.ipcb.state.il.us>

Re: Caseyville Sport Choice, LLC v. Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased and In Her Individual Capacity and Fairmount Park, Inc. (PCB 2008-030)

This law firm represents E.R. 1, LLC, as assignee of Caseyville Sport Choice, LLC in the above-described case. Please find enclosed the pleading entitled E.R. 1, LLC, as Assignee to Caseyville Sport Choice, LLC, Motion for Extension of Time to Respond to Respondent Fairmount Park, Inc.'s Motion for Summary Judgment. A Notice of Filing and Certificate of Service are enclosed as well.

Sincerely,

A handwritten signature in cursive script that reads "Pamela A. Howlett".

Pamela A. Howlett

PAH

Bryan Cave LLP
One Metropolitan Square
211 North Broadway
Suite 3600
St. Louis, MO 63102-2750
Tel (314) 259-2000
Fax (314) 259-2020
www.bryancave.com
Chicago
Hamburg
Hong Kong
Irvine
Jefferson City
Kansas City
Kuwait
London
Los Angeles
Milan
New York
Phoenix
Shanghai
St. Louis
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