

STATE OF ILLINOIS  
POLLUTION CONTROL BOARD  
JAMES R. THOMPSON CENTER  
100 W. RANDOLPH STREET, SUITE 11-500  
CHICGO, ILLINOIS 60601

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

Anielle Lipe )  
Nykole Gillette )  
Complainants )  
v. ) PCB 12-44  
Village of Richton Park, )  
Respondent )

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STATE OF ILLINOIS  
Pollution Control Board

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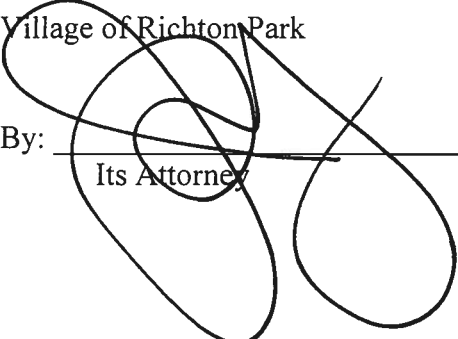
**MOTION TO FILE REPLY MEMORANDUM  
IN SUPPORT OF MOTION TO DISMISS**

Respondent Village of Richton Park ("Village") moves for leave to file its Reply Memorandum In Support of Motion to Dismiss. In support of this Motion the Village states:

1. The Village has filed a Motion to Dismiss the Complaint herein because it is frivolous within the meaning of 35 Illinois Administrative Code Part 101, Section 101.506.
2. The Complainants' Response to this Motion appears to misunderstand the nature of the facility, which was approved by the corporate authorities of the Village pursuant to its zoning special use processes. In particular, Complainants are asserting that the facility in question (a concrete recycling operation) is a "pollution control facility" within the meaning of the Illinois Environmental Protection Act.
3. For the reasons set forth in the proposed Reply, a copy of which is attached hereto, the facility which was approved by the Village is not a pollution control facility.
4. The Village respectfully submits that it be granted leave to file this Reply because it would be materially prejudiced if the misstatements by the Complainants are not corrected.

Wherefore, the Village respectfully prays that it be granted leave to file its Reply Memorandum, *instanter*.

Village of Richton Park  
By: \_\_\_\_\_  
Its Attorney

A large, handwritten signature in black ink is written over a horizontal line. The signature is highly stylized and loops around the text "By:" and "Its Attorney".

John B. Murphey  
Rosenthal, Murphey, Coblenz & Donahue  
30 N. LaSalle Street, Suite 1624  
Chicago, Illinois 60602  
Phone: (312) 541-1070  
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**STATE OF ILLINOIS  
Pollution Control Board**

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Under penalties of perjury, the undersigned certifies as true that she served the foregoing upon:

Anielle Lipe  
22123 Meadow Lake Place  
Richton Park, Illinois 60471

Nykole Gillette  
22232 Scott Drive  
Richton Park, Illinois 60471

by placing a true and correct copy of same into a properly addressed and preposted envelope and depositing it into the U.S. Mail Chute at 30 North LaSalle Street, Chicago, Illinois, on or before the hour of 5:00 P.M. on October 25, 2011.

  
\_\_\_\_\_

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**RESPONDENT VILLAGE OF RICHTON PARK'S REPLY  
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

The overriding error in the Complaint is illustrated in the second full paragraph of the response, where Complainants set forth the essence of their position:

In fact, the local siting decision of the Village of Richton Park approving Ordinance #1497 ... can be appealed. Pursuant to the local siting process found in the Illinois Environmental Protection Act that is located in the Illinois Compiled Statutes (ILCS) at 414 ILCS 5/1 et seq. in Sections 3.3, 30, 39, 39.2 and 40.1 indicates that if the local government grants siting approval a citizen opposed to the development may appeal the decision to the Board.

The Complainants are in error in their belief that the Village's zoning action in this case is subject to PCB review. The local siting review process found in Section 39.2 of the Environmental Protection Act applies only to "pollution control facilities." A facility such as the one approved by Richton Park, that processes concrete for return to the economic mainstream, is not a "pollution control facility" subject to the local siting procedures. 415 ILCS 5/3.330(a)(14). Section 3.330(a) defines a "pollution control facility" to mean "any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility or waste incinerator."

A “pollution control facility” does not include “the portion of a site or facility located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or product. Section 3.330(a)(14).

In the present case, the special use permit approved by the Village does not process waste within the meaning of the Act. The facility approved by the Village is a manufacturing operation, not a waste treatment system. This facility is going to recycle uncontaminated broken concrete for return to the economic mainstream. It is the Village’s understanding that IEPA has reviewed Sexton’s proposed operation, and agrees that no solid waste permit is required because the facility is not going to process solid waste.

Accordingly, the argument of Complainants that the facility amounts to a “pollution control facility” so as to give individuals right to appeal a local zoning decision to PCB is plain error.

Accordingly, the Village respectfully prays that this Complaint herein is frivolous within the meaning of the governing regulations and should be dismissed.

Respectfully submitted,

Village of Richton Park

By: \_\_\_\_\_

Its Attorney

John B. Murphey  
Rosenthal, Murphey, Coblentz & Donahue  
30 N. LaSalle Street, Suite 1624  
Chicago, Illinois 60602  
Phone: (312) 541-1070/Fax: (312) 541-9191

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