

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PHILIP CARPER,)
)
Complainant,)
)
v.) PCB No. 2022-012
) (Enforcement)
TOPFLIGHT GRAIN COOPERATIVE,)
)
Respondent.)

MOTION TO DISMISS AFFIRMATIVE DEFENSES

Complainant, PHILIP CARPER, by his attorneys, Webber & Thies, P.C., respectfully moves the Board pursuant to 35 Illinois Administrative Code [“IAC”] Section 101.506 to dismiss the Affirmative Defenses asserted by the Respondent in its Answer To Formal Complaint. In support hereof, Respondent states as follows:

1. Fact-pleading of affirmative defenses is required in Illinois, pursuant to 735 ILCS § 5/2-613 and 35 IAC 103.204.
2. In the instant case, Respondent has failed to provide any facts in support of either of its Affirmative Defenses. Rather, it has simply alleged that [Affirmative Defense no. 1] “Complainant's allegations are barred by the applicable statute of limitations.” and [Affirmative Defense no. 2] “Complainant's allegations are barred by the doctrine of laches”.
3. In consequence thereof, with respect to the Respondent’s first asserted Affirmative Defense, the Board is neither advised as to which, if any, statute of limitation Respondent asserts is applicable, or as to what, if any, facts it relies in making its assertion, including without limitation, the date or dates upon which it asserts any such statute first applied.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, certify that I have on this date, December 10, 2021, served the foregoing **MOTION TO DISMISS AFFIRMATIVE DEFENSES** and **NOTICE OF FILING** on behalf of the Complainant, PHILIP CARPER, by e-mail and/or electronic filing, as described on the attached Service List.

Dated: December 10, 2021.

PHILIP CARPER, Complainant

BY: WEBBER & THIES, P.C.

By:: s/Phillip R. Van Ness
Phillip R. Van Ness
One of Its Attorneys

PHILLIP R. VAN NESS
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SERVICE LIST

Don Brown, Clerk
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218
(via electronic filing)

HEYL, ROYSTER, VOELKER & ALLEN, P.C.
105 West Vandalia, Suite 100
Edwardsville, IL 62025-0467
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Phillip E. Carper
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Complainant,)	
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v.)	PCB No. 2022-012
)	(Enforcement)
TOPFLIGHT GRAIN COOPERATIVE,)	
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NOTICE OF FILING

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the foregoing **MOTION TO DISMISS AFFIRMATIVE DEFENSES**, of Webber & Thies, P.C., by Phillip R. Van Ness, on behalf of the Complainant, PHILIP CARPER, which document is attached and hereby served upon you.

To: Don Brown, Clerk
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218
(via electronic filing)

HEYL, ROYSTER, VOELKER & ALLEN, P.C.
105 West Vandalia, Suite 100
Edwardsville, IL 62025-0467
(via electronic filing & email)
edwecf@heyloyster.com
abarron@heyloyster.com

Dated: December 10, 2021

PHILIP CARPER, Complainant

BY WEBBER & THIES, P.C.

By: s/Phillip R. Van Ness
Phillip R. Van Ness
One of Its Attorneys

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