

ILLINOIS POLLUTION CONTROL BOARD

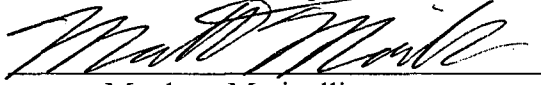
PEOPLE OF THE STATE OF ILLINOIS)	
)	
Complainant,)	
vs.)	
)	
FIRST COUNTRY HOMES, L.L.C., an)	PCB 06-173
Illinois Limited liability company,)	(Enforcement – Water)
)	
Respondents)	

NOTICE OF FILING

TO: Thomas G. Gardiner
 Gardiner Koch & Weisberg
 53 West Jackson Blvd.
 Suite 950
 Chicago, Illinois 60604-3849

Mr. Bradley P. Halloran
 Hearing Officer
 Illinois Pollution Control Board
 James R. Thompson Center, Suite 11-500
 100 West Randolph
 Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board a Certificate of Service, a copy of which is attached and herewith served upon you, certifying that I have served First Country Homes, L.L.C. with Complainant's Motion to Compel Answers or Responses to Written Discovery.

By:  Dated: January 31, 2007
 Matthew Marinelli

PEOPLE OF THE STATE OF ILLINOIS
 LISA MADIGAN
 Attorney General of the State of Illinois
 By: Assistant Attorney General Matthew Marinelli
 Environmental Bureau
 188 West Randolph St., 20th Floor
 Chicago, IL 60601
 312-814-0608

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)	
)	
Complainant,)	
)	
vs.)	PCB No. 06-173
)	(Enforcement - Water)
FIRST COUNTRY HOMES, L.L.C., an)	
Illinois corporation,)	
)	
Respondent.)	

COMPLAINANT'S MOTION TO COMPEL ANSWERS OR RESPONSES TO WRITTEN DISCOVERY

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Supreme Court Rule 219 and Section 101.616 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.616, hereby moves for entry of an order to compel Respondent, FIRST COUNTRY HOMES, LLC, to provide answers or responses to all written discovery requests served upon it by Complainant. Pursuant to Section 101.502(a) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.502(a), this motion is directed to the hearing officer. In support of its motion, Complainant states as follows:

1. On September 12, 2006, Hearing Officer Halloran issued an order setting a discovery schedule in this case. The discovery schedule stated that written discovery "must be propounded on or before October 2, 2006" and that "[r]esponses to written discovery must be completed on or before November 1, 2006.
2. On September 29, 2006, the State served Complainant's First Set of Interrogatories to Respondent First Country Homes, L.L.C. ("First

Country”) pursuant to Supreme Court Rule 213 and Illinois Pollution Control Board Rule 101.620, 35 Illinois Administrative Code Section 101.620.

3. On September 29, 2006, the State served Complainant’s First Request for Production of Documents, Objects, and Tangible Things to Respondent First Country Homes, L.L.C. pursuant to Supreme Court Rule 214 and Illinois Pollution Control Board Rule 101.616, 35 Illinois Administrative Code Section 101.616.
4. First Country failed to respond to the State’s Interrogatories and Requests for Production by November 1, 2006.
5. On November 2, 2006, Hearing Officer Halloran granted First Country’s request for an extension of time, thereby ordering First Country to respond to the Requests for Production and Interrogatories by December 1, 2006.
6. On December 1, 2007, First Country faxed the State a document titled Respondents’ Answers to Complainant’s First Request for Production of Documents, Objects, and Tangible Things to Respondent First Country Homes, LLC (“First Country’s Answers”). Attached as Exhibit A.
7. First Country’s Answers repeatedly represented that responsive “documents are available for inspection.” *Id.* First Country’s Answers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, and 22.
8. First Country’s Answers contained an “Attestation,” which was signed by Matthew Sidor, one of its attorneys. First Country’s attorney swore that “Under penalties as provided by law pursuant to 5/1-109 of the code of

Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct”

9. On December 1, 2006 First Country's attorney confirmed in a teleconference with the undersigned attorney that First Country had responded to the State's Requests for Production and that those responsive documents were available for copying. First Country's attorney also stated that First Country would serve its responses to the State's Interrogatories "shortly."
10. On December 7, 2007, the undersigned attorney participated in a teleconference with Mr. Sidor. In this conversation, Mr. Sidor stated that he had received responses to the State's Interrogatories from First Country and would serve responses to the Interrogatories within one week.
11. On December 7, 2007, during a scheduled telephonic status hearing, Assistant Attorney General Matthew Marinelli related Mr. Sidor's representation that First Country would serve its responses to the State's Interrogatories within one week to Hearing Officer Halloran. Mr. Sidor confirmed the truth of these representations.
12. On December 7, 2007, Hearing Officer Halloran noted that the Complainant had no objection to allowing the additional time requested by First Country.
13. The State's acquiescence to this extension of time was based on Mr. Sidor's representations that First Country would fully respond to written discovery within one week.

14. On several occasions between December 7, 2007 and December 14, 2007, Eric Schmidt of Document Technologies, Inc., the copying service retained by the State, attempted to arrange copying of the documents purportedly "available for inspection." According to Mr. Schmidt, on each of these occasions Mr. Sidor stated that the documents were not ready for copying. This information represents the first indication that First Country's Answers were inaccurate.
15. On December 14, 2006, the undersigned attorney emailed Mr. Sidor to determine whether the documents were available for copying.
16. On December 14, 2006, Mr. Sidor responded to the undersigned attorney's email by stating, via email, that he "need[ed] to organize" the documents and that they would be ready during the week of December 18, 2006.
Attached as Exhibit B.
17. On December 14, 2006, the undersigned attorney participated in a teleconference with Mr. Sidor, who stated that only the documents related to the closings on the Phase VIII homes were available, but that First Country's responses to the remainder of the State's Requests for Production were not available for copying. In response to the undersigned attorney's question as to when First Country expected to respond to the written discovery served by the State, Mr. Sidor stated that he hoped that that First Country would serve its responses within a week.
18. First Country's admissions that its responses to the State's Requests for Production were not available for copying contradicted its sworn

representation that the responsive documents were "available for inspection."

19. As of January 12, 2007, First Country had failed to provide meaningful responses to the written discovery served by the State.
20. On January 12, 2007, the State sent a letter to First Country outlining the above deficiencies in First Country's responses to the State's Requests for Production and Interrogatories and requesting that First Country furnish complete responses by January 19, 2007. Attached as Exhibit C. This letter indicated that the State would seek all costs associated with any Motion to Compel necessitated by First Country's continued failure to respond. *Id.*
21. On January 21, 2007 and January 23, 2007, Tom Gardiner and Cary Pumphrey replied to the State's 201(k) letter on behalf of First Country by leaving voicemails with the undersigned attorney.
22. On January 25, 2007, the undersigned attorney contacted Cary Pumphrey, who stated that First Country was unable to respond to the written discovery served by the State and requested additional time to complete such responses.
23. Pursuant to Supreme Court Rule 201(k), the State has made numerous attempts to resolve this discovery dispute informally.
24. To date, First Country has failed to provide meaningful responses to the written discovery served by the State. It has provided no response to the State's Interrogatories and responded to only a fraction of the State's

Requests for Production. Every discussion between the State and First Country concerning First Country's responses to the discovery served by the State has resulted in First Country either requesting additional time to respond or notifying the State that it would be unable to respond pursuant to the deadlines set by Hearing Officer Halloran.

25. From December 13, 2007 through January 31, 2007, Assistant Attorney General Matthew Marinelli has spent at least five hours corresponding with First Country regarding these issues and drafting this Motion to Compel. First Country's delay has also impeded the State's preparation of its expert witness.
26. First Country's failure to respond to the State's Interrogatories and incomplete and inaccurate response to the State's Requests for Production stand in stark contrast to the State's responses to written discovery served by First Country.
27. The State fully and completely responded to First Country's Interrogatories and Requests for Production on January 12, 2007, within one day of the date set by Mr. Halloran.

WHEREFORE, the People of the State of Illinois respectfully requests that the hearing officer enter an order:

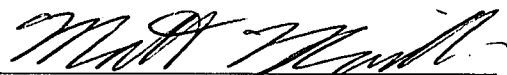
- A. Compelling Respondent, First Country Homes, LLC, to immediately provide full and complete responses to Complainant's First Request for the Production of Documents, Objects, and Tangible Things to Respondent First Country Homes L.L.C.;

- B. Compelling Respondent, First Country Homes, LLC, to immediately provide full and complete answers to Complainant's First Set of Interrogatories to Respondent First Country Homes L.L.C.; and
- C. Granting the State leave to file a petition for attorney fees and an accounting of its fees and costs incurred as a result of Respondent's noncompliance with the Board's ordered discovery deadline.
- D. Ordering such other and further relief as is appropriate under the circumstances.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney
General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 

MATTHEW MARINELLI
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0608

GARDINER KOCH & WEISBERG

53 West Jackson Boulevard

Suite 950

Chicago, Illinois 60604

312/362-0000

FAX 312/362-0440

PLEASE DELIVER THE FOLLOWING MATERIAL AS SOON AS POSSIBLE

IF DIFFICULT RECEPTION, PLEASE NOTIFY GARDINER KOCH & WEISBERG IMMEDIATELY

TO: Matt Marinelli

FROM: Matt Sidor

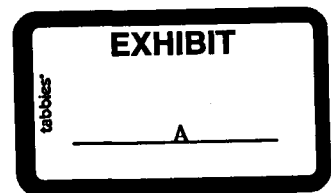
DATE: December 1, 2006

FAX NO: 312-814-2347

NUMBER OF PAGES INCLUDING COVER SHEET: 18

MESSAGE:

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE PERSON OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS BY MAIL. THANK YOU.



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complaint,)

vs.)

FIRST COUNTRY HOMES, L.L.C., an)
Illinois Limited Liability Company,)

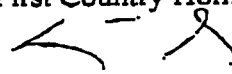
Respondent.)

PCB 06-173
(Enforcement—Water)

CERTIFICATE OF SERVICE

TO: Lisa Madigan
Matthew Marinelli
Attorney General of the State of Illinois
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 1st day of December, 2006, we issued our **Answers to Complainant's First Request for Production of Documents, Objects and Tangible Things to Respondent First Country Homes, LLC**, in the above-captioned cause, a copy of which is hereby served upon you.

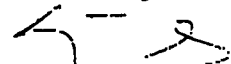
First Country Homes, LLC
By: 

One of Its Attorneys

Thomas G. Gardiner/Matthew A. Sidor
GARDINER KOCH & WEISBERG
53 W. Jackson Blvd., Suite 950
Chicago, Illinois 60604
Telephone 312.362.0000
Facsimile 312.362.0440

CERTIFICATE OF SERVICE

I, Matthew A. Sidor, an attorney, do hereby affirm under oath that I served copies of the above-mentioned documents, by facsimile and U.S. Mail, from 53 W. Jackson Blvd., Chicago, IL, to the attorneys for the aforementioned parties, before 6:00 pm on the 1st day of December, 2006.



Matthew A. Sidor

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complaint,)

vs.)

FIRST COUNTRY HOMES, LLC, an)
Illinois Limited Liability Company,)

Respondent.)

PCB 06-173

(Enforcement—Water)

**RESPONDENTS' ANSWERS TO COMPLAINANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS, OBJECTS, AND TANGIBLE THINGS TO
RESPONDENT FIRST COUNTRY HOMES, LLC**

Respondent, First Country Homes, LLC., by and through its attorneys, Gardiner, Koch & Weisberg, and pursuant to Illinois Pollution control Board Rule 101.616, 35 Ill. Admin. Code 101.616, answers Complainant's first request for production of documents as follows:

General Objections

Respondent objects to any request that calls for privileged attorney-client communications, work product, or on any other statutory objectionable basis.

Request No. 1:

Produce copies of all signed and filed state and federal tax returns filed for First Country, including all schedules and attachments, for the past three years.

ANSWER: Documents are available for inspection.

Request No. 2:

Provide all documents related to all First Country's accounts held at financial institutions, including but not limited to banks, savings and loans, trust companies, credit unions, mutual fund companies, and brokerage companies, where First Country held assets including, but not limited to, deposit and withdrawal slips, electronic transfer notices,

checks and direct deposit notices and monthly and annual account statements between October 2004 and the date of filing of these requests.

ANSWER: Documents are available for inspection.

Request No. 3:

Provide all documents including, but not limited to, financial statements, balance sheets, corporate minutes, annual reports, profit loss statements, statements of income and retained earnings, statements of cash flows or any other reports that were prepared by or for First Country between October 2004 and the date of filing of these requests for the purpose of reporting First Country's financial condition. Financial statements should include all footnotes and schedules.

ANSWER: Documents are available for inspection.

Request No. 4:

Produce any independent auditors' reports relating to First Country with any attached integral notes, comments, and opinions for the last three years.

ANSWER: Documents are available for inspection.

Request No. 5:

Produce any and all documents from the past three years relating to the formation, dissolution, and governance of First Country, including but not limited to lists of shareholders, directors, officers, and managers, articles of incorporation and dissolution, and financial reports.

ANSWER: Documents are available for inspection.

Request No. 6:

Provide all documents related to all assets owned by First Country and if First Country no longer owns any assets that it possessed between October 1, 2004 and July 31, 2005, provide all documents related to the transfer or sale of the asset(s) and that indicate how that asset was transferred or sold, the person the asset was transferred or sold to, and the amount of money or other consideration received by First Country for the transferred or sold asset. Documents shall include those listed in the definition in addition to bills of sale, purchase orders, receipts, invoices, deeds, titles, and contracts.

ANSWER: Respondent affirmative states that the documentation as to the specific contents of the office equipment transferred from First Country has been lost. Notwithstanding the foregoing, responsive documents are available for inspection.

Request No. 7:

Produce all documents, objects and tangible things First Country will introduce into evidence at a hearing in this case.

ANSWER: Respondent has not yet determined the full extent of documents which it will introduce at trial. Notwithstanding the foregoing, Respondent intends to introduce the utility service agreement dated October 16, 1986, by and between Aqua and Monee; the Annexation Agreement dated November 16, 1994, by and between Monee and certain third parties; the Aqua communication issued April 15, 2004, to Monee Village President, Timothy P. O'Donnell; the Aqua communication dated November 18, 2004, to Illinois Environmental Protection Agency Manager, Al Keller, P.E.; the Illinois Environmental Protection Agency Opinion Letter dated December 3, 2004, to Aqua; certain building permits and other consents to proceed with construction issued by Monee; an Affidavit of Kirsea Builders; the Complaint at Law filed by First Country against Aqua on March 30, 2005; the Emergency Motion for a Temporary Restraining Order and Preliminary Injunction; the settlement agreement entered by and between First Country, the State Bank of Countryside as Trustee under Trust No. 03-2603, and Aqua; the settlement statements pertaining to each home sold on the property and other documents which will evidence the dates on which any purported discharge may have occurred, if at all; any and all documents which evidence Respondent's standard business practices and method of construction; and non-privileged and non-confidential communications issued by any third parties going to the cause for the delay in obtaining a fully executed construction permit, should Complainant's allegations be proven true; any and all communication issued to and from the Illinois Environmental Protection Agency evidencing the recommended course of construction at the Site; and any other documents which may disprove the allegations set forth in the Complaint. Documents are available for inspection.

Request No. 8:

Produce all documents, objects and tangible things First Country relies on and/or references in its Answer to the Complaint, including, but not limited to, correspondence from and to the Illinois EPA.

ANSWER: See answer to request number 7. Respondent reserves the right to supplement this answer prior to hearing of this matter. Documents are available for inspection.

Request No. 9:

Produce all documents referenced in, relied on, or referred to in First Country's Answers to Complainant's First Set of Interrogatories.

ANSWER: Documents are available for inspection.

Request No. 10:

Produce all documents, objects and tangible things which tend to contradict or disprove any of the factual allegations contained in the Complaint filed by the Complainant in this case and include the specific factual allegation you claim the documents, objects and tangible things contradicts or disproves.

ANSWER: See answer to request number 7. Respondent reserves the right to supplement this answer prior to hearing of this matter. Documents are available for inspection.

Request No. 11:

Produce any and all communications between Kirsea Builders, Location Finders, Northern Builders, Eagle Fair, Bailly Ridge, Trust 03-2603, Monee or First Country and other documents relating to any decision of Kirsea Builders, Location Finders, Northern Builders, Eagle Fair, Bailly Ridge, Trust 03-2603, Monee or First Country to start, continue or stop construction of any sewer system served or otherwise related to Aqua Illinois, including discussions concerning any decision to start, continue, or stop construction of any sewer without a sewer construction permit approved by Illinois EPA.

ANSWER: Documents are available for inspection.

Request No. 12:

Produce any and all documents related to loans or other financial devices involved in or relating to the financing of the Phase 8 homes.

ANSWER: Documents are available for inspection.

Request No. 13:

Produce any and all insurance policies covering the development of the Phase 8 homes or the Site.

ANSWER: Documents are available for inspection.

Request No. 14:

Produce any and all documents relating to the financial information, sales, and delivery associated with each and every one of the Phase 8 homes, including, but not limited to:

- a. The price or prices at which First Country purchased the land associated with each home, or, in the alternative, the purchase price for the entire Site;

ANSWER: Documents are available for inspection.

b. The cost of constructing each individual home;

ANSWER: Documents are available for inspection.

c. The sale price of each individual home;

ANSWER: Documents are available for inspection.

d. Each contract, including contracts with the homebuyer and contracts with general contractors and subcontractors;

ANSWER: Documents are available for inspection.

e. The connection of each home to the sewer system;

ANSWER: Documents are available for inspection.

f. The delivery or other transfer of each home to its purchaser;

ANSWER: Documents are available for inspection.

g. The payment for each home, including copies of any asset transfers relating to the purchase of each home.

ANSWER: Documents are available for inspection.

Request No. 15:

Produce any and all documents related to Aqua Illinois and either the Phase 8 homes or the related sewer system.

ANSWER: Documents are available for inspection.

Request No. 16:

Produce any and all documents related to the payment of First Country's attorney's fees in the litigation of *First Country Homes, LLC v. Aqua Illinois*, Case No. 05 CH 664 (Will County).

ANSWER: Objection. Respondent object to the foregoing request as pertaining to privileged attorney-client communications. Notwithstanding the foregoing, Respondent intends to introduce a redacted version of the billing statements pertaining to the referenced litigation at the time of hearing of this matter. Respondent reserves the right to supplement this answer prior to hearing of this matter.

Request No. 17:

Produce any and all documents related to any and all settlement agreements related to the litigation of *First Country Homes, LLC v. Aqua Illinois*, Case No. 05 CH 664 (Will County).

ANSWER: Documents are available for inspection.

Request No. 18:

Produce any and all documents related to any and all claims for damages made by First Country related to the litigation of *First Country Homes, LLC v. Aqua Illinois*, Case No. 05 CH 664 (Will County).

ANSWER: Documents are available for inspection.

Request No. 19:

Produce any and all environmental permit applications, and any and all correspondence related to such permit applications, related to the Phase 8 homes.

ANSWER: Documents are available for inspection.

Request No. 20:

Produce any and all documents relating to the costs associated with proceeding, or not proceeding, with sewer construction for the Phase 8 homes.

ANSWER: See answer to request number 7. Notwithstanding the foregoing, documents are available for inspection. Respondent reserves the right to supplement this answer prior to hearing of this matter.

Request No. 21:

Produce any and all documents related to First Country's use of the revenue it obtained from the sale of the Phase 8 homes.

ANSWER: Objection. Respondent object to the foregoing request as irrelevant, privileged and proprietary.

Request No. 22:

Produce any and all documents related to any allegations made by Illinois EPA or any governmental agency that James Sylvester or any corporate entity owned, managed, or otherwise operated by him, have violated provisions of Federal, State and/or local environmental and/or public health laws and regulations, including but not limited to, instances in which James Sylvester or his corporate entities started work on a project prior to obtaining a required permit for that project.

ANSWER: None other than the matter at hand.

Respectfully submitted,

FIRST COUNTRY HOMES, LLC

By: 

One of Its Attorneys

Prepared by:

Thomas G. Gardiner
Matthew A. Sidor
GARDINER KOCH & WEISBERG
53 West Jackson, Suite 950
Chicago, Illinois 60604
312-362-0000
312-362-0440 (f)

STATE OF ILLINOIS)
) S.S.
COUNTY OF COOK)

ATTESTATION

The attorney for Plaintiff, being first duly sworn on oath, deposes and states that he is a member of the law firm Gardiner Koch & Weisberg, that he prepared the foregoing Response to Plaintiff's First Request for Production of Documents, Objects, and Tangible Things to Respondent First Country Homes, LLC, and that he answered and fully complied with Illinois Supreme Court Rule 214.



Matthew A. Sidor

Under penalties as provided by law pursuant to 5/1-109 of the code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: 12/1/06

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complaint,)

vs.)

PCB 06-173)

(Enforcement—Water))

FIRST COUNTRY HOMES, L.L.C., an)
Illinois Limited Liability Company,)

Respondent.)

CERTIFICATE OF SERVICE

TO: Lisa Madigan
Matthew Marinelli
Attorney General of the State of Illinois
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 1st day of December, 2006, we issued our Respondent's First Set of Interrogatories and Requests to Produce to Complainant, in the above-captioned cause, a copy of which is hereby served upon you.

First Country Homes, LLC

By: 

One of Its Attorneys

Thomas G. Gardiner/Matthew A. Sidor
GARDINER KOCH & WEISBERG
53 W. Jackson Blvd., Suite 950
Chicago, Illinois 60604
Telephone 312.362.0000
Facsimile 312.362.0440

CERTIFICATE OF SERVICE

I, Matthew A. Sidor, an attorney, do hereby affirm under oath that I served copies of the above-mentioned documents, by facsimile and U.S. Mail, from 53 W. Jackson Blvd., Chicago, IL, to the attorneys for the aforementioned parties, before 6:00 pm on the 1st day of December, 2006.


Matthew A. Sidor

Marinelli, Matthew

From: Matt Sidor [msidor@gkw-law.com]
Sent: Thursday, December 14, 2006 3:07 PM
To: Marinelli, Matthew
Subject: RE: People v. First Country Homes, LLC (PCB 06-173)

Matt,

I need to organize them. I informed the copy service that I would be back in touch shortly. I must address a deadline in Federal Court which is taking up most of my time. I should have them ready early next week. Or, they can come copy the majority of the documents tomorrow, and return early next week to obtain the remaining box of documents which are the subject of my concern. I imagine the delay will not cause any harm to the People, but let me know if you are under other time constraints and require the documents immediately.

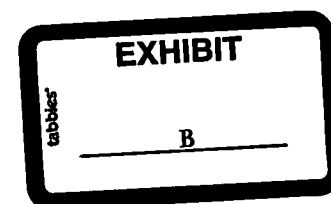
Matt

From: Marinelli, Matthew [mailto:mmarinelli@atg.state.il.us]
Sent: Thursday, December 14, 2006 2:30 PM
To: Matt Sidor
Subject: People v. First Country Homes, LLC (PCB 06-173)

Matt,

I was puzzled to hear from the copying service retained by the State that First Country Homes' responses to the State's Requests for Production are not available for copying. This directly contradicts your statement on December 1, 2006 that the documents had been produced and were available for copying as of that date. Was the copying service correct that the documents are unavailable, or can I send them over to copy the documents tomorrow?

Matt Marinelli
Assistant Attorney General
Illinois Attorney General
Environmental Bureau
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
Telephone: (312) 814-0608
Fax: (312) 814-2347



1/31/2007



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 12, 2007

Sent Via Facsimile and U.S. Mail

Matthew Sidor
Gardiner, Koch and Weisberg
53 W. Jackson Blvd., Suite 950
Chicago, Illinois 60604

**Re: People of the State of Illinois v. First Country Homes, LLC
PCB 06-173**

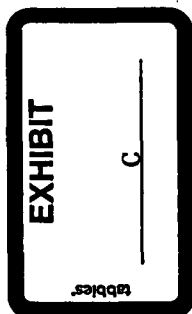
• Attempt to resolve discovery dispute pursuant to Rule 201(k)

Dear Mr. Sidor:

On September 29, 2006, the State served upon you its First Set of Interrogatories and First Request for Production of Documents, Objects, and Tangible Things to Respondent First Country Homes, LLC ("First Country") in the above-referenced case. Pursuant to Hearing Officer Halloran's September 12, 2006 Order, First Country's responses were due by November 1, 2006. Upon First Country's request, Hearing Officer Halloran extended that deadline by Order on November 8, 2006. In that Order Hearing Officer Halloran allowed First Country until December 1, 2006 to respond to written discovery.

On December 1, 2006, you served me with a copy of Respondents' Answers to Complainant's First Request for Production of Documents, Objects, and Tangible Things to Respondent First Country Homes, LLC ("Respondent's Answers"). You signed the Answers, in which you repeatedly represented that "documents are available for inspection." Answers to Requests 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 22. Respondent's Answers contained an "Attestation," which you similarly signed, in which you swore that "Under penalties as provided by law pursuant to 5/1-109 of the code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct . . ." On December 1, 2006 you confirmed in a teleconference that First Country had responded to the State's Requests for Production and that those responsive documents were available for copying. You also stated that you would serve First Country's responses to the State's Interrogatories "shortly."

On December 7, 2006 you assured Hearing Officer Halloran and me that (1) First Country's responses to the State's Requests for Production were available for copying and (2) First Country would respond to the State's request for Interrogatories within a week.



Matthew Sidor
January 12, 2007
Page 2

Neither one of these representations appears to have been accurate. On several occasions between December 7, 2006 and December 14, 2006, Eric Schmidt of Document Technologies, Inc., the copying service retained by the State, called you to arrange copying of the documents. On each of these occasions you stated that the documents were not ready for copying. On December 14, 2006, you told me that only the documents related to the closings on the Phase VIII homes were available. You stated that First Country's responses to the remainder of the State's Requests for Production were not available for copying and that you hoped they would be ready for copying this week. You also indicated that First Country's responses to the State's Interrogatories were similarly delayed.

To date, the Responses to the majority of the State's Requests for Production have not been made "available for inspection." Additionally, the State has not received First Country's responses to any of the State's Interrogatories.

First Country's failure to respond to the written discovery served by the State on September 29, 2006 stands in stark contrast to the State's responses to the written discovery served by First Country. The State response to First Country's interrogatories and requests to produce on this date constitutes a timely response, as Hearing Officer Halloran ordered the State to respond to First Country's written discovery by January 11, 2007.

Accordingly, I am requesting, pursuant to Illinois Supreme Court Rule 201(k), that by **January 19, 2007**, you furnish to this Office *complete* responses on behalf of First Country to the State's Requests for Production and Interrogatories. I anticipate that these responses will include documents responsive to the State's 21st request for production, as the objections raised in Respondent's Answers are invalid. Furthermore, I inform you that the State will seek all costs associated with any Motion to Compel First Country's answer to the State's written discovery which is necessitated by First Country's continued failure to respond. First Country's failure to respond is a violation of the discovery process, as the State is now the only party to have responded meaningfully to any written discovery. This is particularly problematic because First Country served its written discovery upon the State more than two months after the State served its written discovery on First Country. Thank you for your anticipated compliance.

Sincerely,



MATTHEW MARINELLI

Assistant Attorney General

Environmental Bureau

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CERTIFICATE OF SERVICE

I, MATTHEW MARINELLI, an Assistant Attorney General, do certify that I caused the foregoing Notice of Filing and Complainant's Motion to Compel Answers or Responses to Written Discovery to be served upon First Country Homes, L.L.C. on this 31st day of January, 2007, by facsimile and first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 188 West Randolph Street, Chicago, Illinois, 60601.

It is hereby certified that a true copy of the foregoing Notice of Filing was electronically filed with the following on January 31, 2007:

Ms Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601



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