

ILLINOIS POLLUTION CONTROL BOARD  
November 18, 2010

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 10-108
	)	(Enforcement - Water)
WILLIAM CHARLES REAL ESTATE	)	
INVESTMENT, L.L.C., an Illinois limited	)	
liability company,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

The Office of the Attorney General, on behalf of the People of the State of Illinois (People), has filed a three-count complaint against William Charles Real Estate Investment, L.L.C. (William Charles). The complaint concerns William Charles’ subdivision development at the northwest corner of Rotary Road and Ryberg Road in New Milford, Winnebago County. For the reasons below, the Board accepts William Charles’ amended answer and affirmative defense for filing and denies as moot the People’s motion to strike William Charles’ originally-pled affirmative defenses. In this order, the Board describes the procedural history of this proceeding before discussing today’s rulings.

**PROCEDURAL HISTORY**

On June 24, 2010, the People filed the complaint (Comp.). On July 1, 2010, the Board issued an order accepting the complaint for hearing. On August 23, 2010, William Charles timely filed an answer and affirmative defenses (Orig. Ans.). *See* 35 Ill. Adm. Code 103.204(d). On September 17, 2010, the People timely filed a motion to strike all three of William Charles’ alleged affirmative defenses (Mot. Str.). *See* 35 Ill. Adm. Code 101.506.

The hearing officer issued an order on September 23, 2010, documenting that William Charles planned to respond to the People’s motion to strike and that the People had leave to file a reply to the response by October 29, 2010. *See* PCB 10-108, Hearing Officer Order at 1 (Sept. 23, 2010). On October 15, 2010, William Charles filed response to the motion to strike (Resp.), as well as an amended answer and affirmative defense (Am. Ans.). The People have not filed a reply to William Charles’ response to the motion to strike.<sup>1</sup>

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<sup>1</sup> On November 12, 2010, the People filed a motion to strike the affirmative defense alleged in the amended answer, which the Board does not rule upon today.

## DISCUSSION

The People's complaint alleges that William Charles violated Sections 12(a), (d), and (f) of the Environmental Protection Act (415 ILCS 5/12(a), (d), (f) (2008)) by (1) causing, threatening, and allowing the discharge of eroded soil and sediment runoff off-site so as to cause water pollution; (2) depositing contaminants on land so as to cause a water pollution hazard; and (3) failing to adequately implement a Stormwater Pollution Prevention Plan (SWPPP), thereby causing, threatening, or allowing the discharge of contaminants into waters of the State, in violation of the general National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges, No. ILR10G970. Comp. at 7, 8, 10.

In its original answer and affirmative defenses (original answer), William Charles pled three purported affirmative defenses: substantial compliance with the NPDES permit; no evidence of "water pollution"; and any NPDES permit violation "was *de minimis* in its effect, and was immediately resolved." Orig. Ans. at 13. The People filed a motion to strike these claimed affirmative defenses, asserting that all three are factually and legally insufficient. Mot. Str. at 3-6.

In response to the motion to strike, William Charles seeks leave to withdraw its original answer and replace the original answer with an amended answer and affirmative defense (amended answer). Resp. at 2, 3. William Charles concurrently filed the amended answer, which pleads only one purported affirmative defense: the alleged violations were caused by an "act of God" in the form of a "24-hour, 250- or 500-year rain and flood event." Am. Ans. at 13. William Charles represents that withdrawal of the original answer "will effectively moot [the People's] Motion to Strike." Resp. at 1.

The People have not responded to William Charles' request that the original answer be withdrawn and replaced with the amended answer. See 35 Ill. Adm. Code 101.500(d). The Board grants William Charles' request. The amended answer sets forth a single claimed affirmative defense, different from the three pled in the original answer. Under these circumstances, the Board denies as moot the People's motion to strike the purported affirmative defenses of the original answer. The hearing officer is directed to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 18, 2010, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board

