

FORMAL COMPLAINT

Before the Illinois Pollution Control Board

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Paul Christian Pratapas)	
)	
<i>Complainant,</i>)	
)	
v.)	PCB 20 -
)	<i>[For Board use only]</i>
)	
Lexington Homes)	
)	
<i>Respondent</i>)	
)	
)	

1. Your Contact Information

Name: Paul Christian Pratapas
Street Address: 545 N Mendenhall Rd., #8
Memphis
County: Shelby
State: TN
Phone Number: 901-352-1219

2. Name and Address of the Respondent (Alleged Polluter)

Name: Lexington Homes
Street Address: 1731 N Marcey St
Chicago, IL 60614
County: Cook
State: Illinois
Phone Number: 773-360-0300

Address Where Pollution Occurred:

Lexington Trace 2:

Approximately 30W221 Butterfield Rd., Naperville, IL 60563.

Lexington Trace 1:

Approximately 3S490 Barkley Ave., Naperville, IL 60563

The required signage and regulatory information for Lexington Trace 1 were intentionally and knowingly not placed as required or where required. The permit number, address, contact person etc. should have been posted conspicuously, like at the entrance to the site. This information serves in part to secure the primary enforcement mechanism, citizen enforcement.

3. Describe the type of business or activity that you allege is causing or allowing pollution

Lexington Homes constructed multifamily housing as part of a larger area of development. This complaint involves two different NPDES permits for construction. For the purposes of this complaint, they will be referred to as Lexington Trace 1 and Lexington Trace 2. These permits are implemented by and have standards set/enforced by the ILEPA and their contractors. This was new construction from scratch and required the implementation of an approved Stormwater Pollution Prevention Plan (SWPPP) and the signing of contractor certifications acknowledging under penalty of law, contractors understood and accepted their stormwater related responsibilities. All records contained in the SWPPP and SWPPP binder were to be made available to the public within a reasonable amount of time as protected by the NPDES permit and the US Constitution.

4. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.

1. 415 ILCS 5.12(a) at both sites
2. 415 ILCS 5/12 (d) at both sites
3. IL Admin Code Title 35, 304.141(b) at both sites
4. 415 ILCS 5/44 (j)(1)(G) & 415 ILCS 5/44 (j)(2) at both sites

5. Describe the type of pollution you allege

Lexington Trace 2

Water: Site had insufficient BMPs and did not implement a plan which would qualify for approval. Sediment laden water freely entering streets and inlets. The retention pond which had not been completed was full of sediment laden water in the open where it was accessible by animals, including those from the adjacent wetlands.

Lexington Trace 1

Water: Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Sediment and sediment laden water freely allowed to enter the street and inlets. Failure to protect special management area (Wetland?). Contractor handling SWPPP began threatening Complainant after making a SWPPP request and asking if they were "minimizing pollutants from entering the street".

6. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known).

This is a slightly loaded question because different types of pollution overseen by The Board have their own respective ways of determining, predicting and describing the duration and frequency. For example, if this were an accidental release to air from a regulated stack, dispersion modeling could be used to pinpoint the duration and frequency by which different communities experienced the pollution event. Similarly, if it were a spill to the ground, characteristics of the soil, item spilled etc.. could be used to understand how the pollutant leached in and around the soil/groundwater. These are somewhat standardized.

With these types and with this level of egregiousness in violating NPDES Permit and SWPPP requirements the situation is far more dynamic and relies on timely access to the SWPPP, engineering plans and construction site progress plans/maps. As well as, the logged rain data, BMPs selected and inspection reports. Inspection reports would also have the weather at the time of inspection for comparison against the site progress map, etc..

It is only with timely access to these materials as required by the NPDES Permit and protected by the US Constitution, that connections and determinations can be made regarding the duration and frequency of the alleged pollution as photographed and submitted to the Board. Otherwise, an individual would have to watch everything all the time, including when it rained after work hours.

Issuing of and work under the NPDES permit is dependent on understanding and accepting these parameters and dynamics under penalty of law as found in the contractor certification. It will likely continue occurring at all Lexington Home build sites without intervention from the board.

Lexington Trace 2

The polluting activities would have been occurring the entire build as they were not attempting to, and likely were not capable of complying because they never had to. Managers for Lexington Trace 1 became aggressive and threatening when I attempted to view the SWPPP binder and this site tried to interfere with me by posting no trespassing signs on an area where public natural assets were being endangered. The photographs were taken on 01/02/2023 at 10:21am

Lexington Trace 1

Photographed and reported to City of Warrentonville and ILEPA on or around 4/21/2022 and 4/24/2022. The site was viewed the first time in the late morning while complainant was making a delivery to an occupied portion of the development. Complainant again returned during morning attempting to view the SWPPP binder on site with competent staff.

7. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property.

While I could speculate, it would be far more appropriate for this to wait until all the information could be examined. The pollution at both sites was uncontrolled and entered wetland areas. At least one of which had signage with the word "Protected. A contractor was photographed at Lexington Trace 1 washing a cement truck chute directly into the curbside inlet in an occupied community and visible from occupied residences.

8. Describe the relief that you seek from the Board.

1. Find that Respondent has violated their permit(s)
2. Assess a civil penalty of Fifty Thousand Dollars (\$ 50,000.00) against Respondent for each violation of the Act and Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation
3. Assess a civil penalty against Respondent for each day violating 415 ILCS (j)(2) of Twenty Five Thousand Dollars (\$25,000)
4. An order stating SWPPP plan(s) for phasing and concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual
5. The Board to issue a statement on permit holders intentionally and knowingly using "No Trespassing" signs alongside signs welcoming the public to view the site and available lots for the sole purpose of interfering with citizen enforcement actions, the primary enforcement mechanism for the NPDES SWPPP Permit Program and a violation of rights guaranteed by The US Constitution
6. Find Respondent has committed felonious criminal offense(s) as defined by 415 ILCS 5/44.J(1) and 415 ILCS 5/44.J(2)
7. Order the forfeiture to the State an amount equal to the value of all profits earned, savings realized, and benefits incurred as a direct or indirect result of violations, and (2) any vehicle or conveyance used in the perpetration of violations as defined by 415 ILCS 5/44(a)(1) and 415 ILCS 5/44(a)(2)

9. Identify any identical or substantially similar case you know of brought before the Board or in another forum against this respondent for the same alleged pollution.

These cases were brought before the board previously in a different format and dismissed without prejudice on procedural grounds.

10. Complainant is an Individual and this a Citizen Enforcement Action

11. *Paul Christian Kratocha*

Complainant's Signature

CERTIFICATION

I, _____, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

Complainant's Signature

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My Commission Expires: _____

NOTICE OF FILING

Note to the Complainant: This Notice of Filing must accompany the Formal Complaint and the Documentation of Service. Once you have completed the Notice of Filing, the Formal Complaint, and the Documentation of Service, you must file these three documents with the Board's Clerk *and* serve a copy of each document on each respondent.

Please take notice that today I, Paul Christian Pratapas, filed with the Clerk of the Illinois Pollution Control Board (Board) a Formal Complaint, a copy of which is served on you along with this Notice of Filing. You may be required to attend a hearing on a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).



Complainant's Signature

Street: 545 N Mendenhall Rd., #8

City/State/Zip: Memphis, TN 38117

Date: 12/14/2023

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

The following information has been prepared by the Board for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation. Information about the Formal Complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5) and the Board's procedural rules (35 Ill. Adm. Code 101, 103). These can be accessed on the Board's website (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules.

Board Accepting Formal Complaint for Hearing: Motions

The Board will not accept this Formal Complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code

101.202 (definitions of the terms “duplicative” and “frivolous”). “Duplicative” means the complaint is identical or substantially similar to a case brought before the Board or another forum. See 35 Ill. Adm. Code 103.212(a) and item 10 of the Formal Complaint.

“Frivolous” means that the Formal Complaint seeks relief that the Board does not have the authority to grant or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 through 9 of the Formal Complaint.

If you believe that this Formal Complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you received the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. See 35 Ill. Adm. Code 101.504, 103.212(b). If you need more than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after you received the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the Formal Complaint is duplicative or frivolous will stay the 60-day period for filing an Answer to the complaint. See 35 Ill. Adm. Code 103.204(e), 103.212(b); see *also* 35 Ill. Adm. Code 101.506 (generally, all motions to strike, dismiss, or challenge the sufficiency of any pleading must be filed within 30 days after service of the challenged document).

The party making a motion must “file” the motion with the Board’s Clerk and “serve” a copy of the motion on each of the other parties to the proceeding. The Board’s filing and service requirements are set forth in its procedural rules (35 Ill. Adm. Code 101.300, 101.302, 101.304), which are located on the Board’s website (pcb.illinois.gov).

If you do not file a motion with the Board within 30 days after the date on which you received the Formal Complaint, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing without any input from you. The Board will then assign a hearing officer who will contact you to schedule times for holding telephone status conferences and a hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an Answer to this Formal Complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an Answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

Failing to file an Answer to the Formal Complaint within 60 days after you were served with the complaint may have severe consequences. Failure to timely file an Answer will mean that all allegations in the Formal Complaint will be taken as if you admitted them for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney. See 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an Answer and any motions or briefs and present a defense at hearing.

Costs

In defending against this Formal Complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file with the Board your Answer or any other document in the enforcement proceeding. The Board will pay its own hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3461.

DOCUMENTATION OF SERVICE

Note to the Complainant: This Documentation of Service must accompany the Formal Complaint and the Notice of Filing. Once you have completed the Documentation of Service, the Formal Complaint, and the Notice of Filing, you must file these three documents with the Board's Clerk *and* serve a copy of each document on each respondent.

This form for the Documentation of Service is designed for use by a non-attorney and must be notarized, *i.e.*, it is an "affidavit" of service. An attorney may modify the form for use as a "certificate" of service, which is not required to be notarized.

Affidavit of Service

I, the undersigned, on oath or affirmation, state that on the date shown below, I served copies of the attached Formal Complaint and Notice of Filing on the respondent at the address listed below by one of the following methods: [*check only one—A, B, C, D, or E*]

A. U.S. Mail or third-party commercial carrier with the recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery. Attached is the delivery confirmation from the U.S. Postal Service or the third-party commercial carrier containing the recipient's signature and showing the date of delivery as _____ [month/date], 20___. [*Attach the signed delivery confirmation showing the date of delivery.*]

B. U.S. Mail or third-party commercial carrier with a recipient's signature recorded or to be recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery. However, the delivery confirmation from the U.S. Postal Service or the third-party commercial carrier containing the recipient's signature is not available to me at this time. On 12/14/2023 [month/date], 2023, by the time of 5:00 PM AM/PM, at US Post OFFICE [address where you provided the documents to the U.S. Postal Service or the third-party commercial carrier], copies of the attached Formal Complaint and Notice of Filing were provided to the U.S. Postal Service or the third-party commercial carrier, with the respondent's address appearing on the envelope or package containing these documents, and with proper postage or delivery charge prepaid. [*Within seven days after it becomes available to you, file with the Board's Clerk the delivery confirmation—containing the recipient's signature and showing the date of delivery—and identify the Formal Complaint to which that delivery confirmation corresponds.*]

C. Personal service and I made the personal delivery on _____ [month/date], 20__, by the time of __:__ AM/PM.

D. _____ Personal service and another person made the personal delivery. Attached is the affidavit of service signed by the other person (or the declaration of service signed by the process server) who made the personal delivery, showing the date of delivery as _____ [month/date], 20___. [Attach the other person's signed affidavit or declaration showing the date of delivery.]

E. _____ Personal service and I will make the personal delivery. However, the affidavit of service is not available to me currently.

RESPONDENT'S ADDRESS:

Name: Lexington Homes

Street: 1731 Marcey St.

City/State/Zip: Chicago, IL 60614

Paul Christian Protopop

Complainant's Signature

Street: 545 N Mendenhall Rd #8

City, State, Zip Code: Memphis, TN 38117

Date: 12/14/2023

Subscribed to and sworn before me

this 14th day

of December, 2023

Jaivon C.
Notary Public



My Commission Expires: 12/02/2025



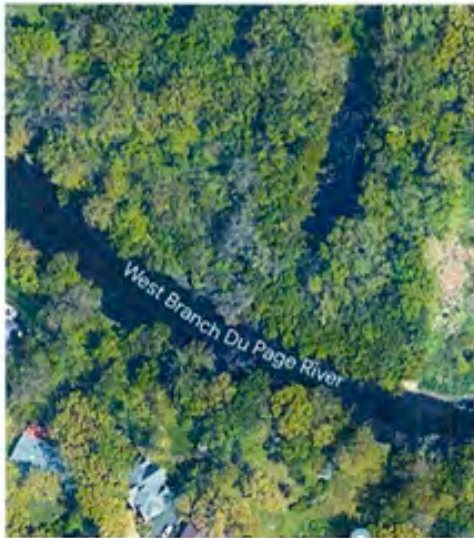
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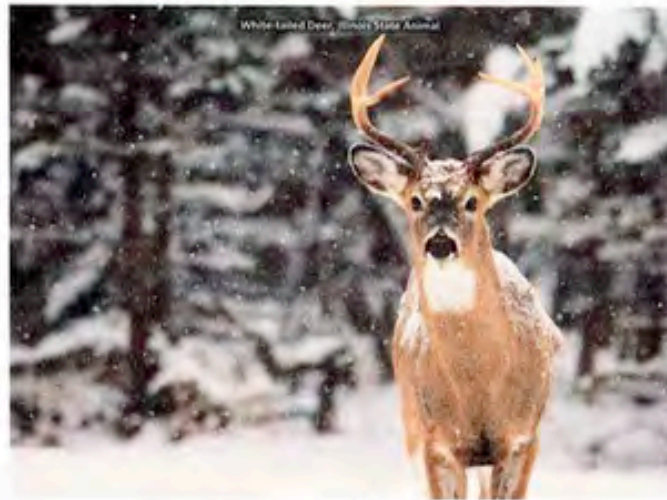
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LEXINGTON TRACE 2

(f) This Section does not prohibit a person from entering a building or upon the land of another for emergency purposes. For purposes of this subsection (f), "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person to be in imminent danger of serious bodily harm or in which property is or is reasonably believed to be in imminent danger of damage or destruction.



A



B



C



F



G

Receiving Inlet



H



I



J



K

LEXINGTON TRACE 1





