

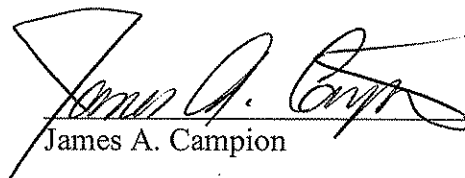
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
 )  
Complainant, )  
 )  
v. ) No. PCB 07-133  
 ) (Enforcement-Water)  
THOMAS P. MATHEWS, an individual, )  
 )  
Respondent. )

**NOTICE OF FILING**  
(Electronic Filing)

TO: Katherine M. Hausrath  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St, 18<sup>th</sup> Fl.  
Chicago, IL 60602

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the Respondent's Appearance and Answer to the Complaint, copies of which are attached and herewith served upon you.

  
James A. Campion

Campion, Curran, Dunlop & Lamb, P.C.  
Attorneys for Respondent  
8600 U.S. Highway 14, Suite 201  
Crystal Lake, IL 60012  
(815) 459-8440  
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4, Respondent states that the Complainant fails to adequately identify the site for the Respondent to accurately respond for purposes of this allegation. The Respondent either owns or controls land which is north, east, west and south of the intersection of Westmoor Dr. and East Oakwood Dr. in Wonder Lake, McHenry County, Illinois.

5. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA or the McHenry County Soil and Water Conservation District inspected the site on April 22, 2005, and therefore, neither admits nor denies same, but demands strict proof thereof.

6. Respondent denies the allegations of paragraph 6.

7. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA inspected the site on April 27, 2005, and therefore, neither admits nor denies same, but demands strict proof thereof.

8. Respondent denies the allegations of paragraph 8.

9. In answer to paragraph 9, Respondent again objects to the lack of a clear definition of the site. See response to paragraph 4. In further answer, the Respondent states that he was on his property at times with representatives of the McHenry County Soil and Water Conservation District, but does not recall ever being on his property when representatives of the Illinois EPA were there.

10. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA inspected the site on May 5, 2005, and therefore, neither admits nor denies same, but demands strict proof thereof.

11. Respondent denies the allegations of paragraph 11.

12. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA inspected the site on July 28, 2005, and therefore, neither admits nor denies same, but demands strict proof thereof.

13. Respondent denies the allegations of paragraph 13.

14. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA or the McHenry County Soil and Water Conservation District inspected the site on August 5, 2005, and therefore, neither admits nor denies same, but demands strict proof thereof.

15. Respondent denies the allegations of paragraph 15.

16. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA or the McHenry County Soil and Water Conservation District inspected the site on August 30, 2006, and therefore, neither admits nor denies same, but demands strict proof thereof.

17. In answer to paragraph 17, Respondent states that at the request of the Village of Wonder Lake, silt fencing was placed on portions of his property. As to any remaining allegations in paragraph 17, Respondent denies same.

18. Respondent is without sufficient knowledge with which to form a belief as to whether the Illinois EPA inspected the site on May 11, 2007, and therefore, neither admits nor denies same, but demands strict proof thereof.

19. In answer to paragraph 19, Respondent again states that because the site is not accurately identified, he cannot properly respond to this allegation. Notwithstanding this, Respondent states that none of the properties that he owned or controlled in that area was

unstabilized.

20. The statute speaks for itself

21. The statute speaks for itself.

22. Admit Respondent is a person.

23. The statute speaks for itself, but denies that any action by Respondent resulted in a

contaminant entering the water stream.

24. Respondent denies the allegations of paragraph 24.

25. The statute speaks for itself.

26. Respondent denies the allegations of paragraph 26.

27. The statute speaks for itself.

28. Respondent denies the allegations of paragraph 28.

29. Respondent denies the allegations of paragraph 29.

30. Respondent denies the allegations of paragraph 30.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, respectfully requests that the Board enter an Order:

A. Dismissing the Complaint with prejudice; and

B. Ordering Complainant to pay Defendant's costs and attorney's fees herein.

**COUNT II**  
**CREATING A WATER POLLUTION HAZARD**

1-26. Respondent repeats and realleges paragraphs 1-26 of Count I as and for Respondent's answers to paragraphs 1-26 of this Count II.

27. The statute speaks for itself.

28. Respondent denies the allegations of paragraph 28.

29. Respondent denies the allegations of paragraph 29.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, respectfully requests that the Board enter an Order:

- A. Dismissing the Complaint with prejudice; and
- B. Ordering Complainant to pay Defendant's costs and attorney's fees herein.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense-No Contamination**

- 1. Complainant alleges that "soil and stone" were located on the site near a stream.
- 2. All lands adjoining all streams and ditches leading to the lake of Wonder Lake contain "soil and stone."
- 3. "Soil and stone" are not contaminants, but occur in nature.
- 4. The Complaint does not reference any actual water pollution, nor does it allege that Respondent placed any "soil and stone" in the alleged small stream adjoining the site.
- 5. The Complainant has failed to state a claim for water pollution or a water pollution hazard, and the case should be dismissed.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, prays that the Board enter an Order dismissing the Complaint, grant Respondent his attorney fees and costs herein, and grant such other a further relief as the Board deems just.

**Second Affirmative Defense-Act of God**

- 1. Complainant alleges that storm water could run off the site into the stream adjoining the site. (Complaint at 6, 8, 11.)

2. Storm waters are an act of God, and not within the control of Respondent.

3. No allegation is made indicating that Respondent had altered the site in a way that channeled or forced water or any "stone or soil" into any stream, any storm ditch, or Wonder Lake.

4. The Complainant has failed to state a claim for water pollution or a water pollution hazard, and the case should be dismissed.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, prays that the Board enter an Order dismissing the Complaint, grant Respondent his attorney fees and costs herein, and grant such other a further relief as the Board deems just.

**Third Affirmative Defense-Third Party Intervention**

1. Complainant alleges that the placement of "soil and stone" on the site, should it be hit by storms, could result in "silt-laden storm water" running off the site into the adjacent stream.

2. The Complaint does not allege that this site actually caused pollution.

3. The Complaint does not allege any measurement of "silt-laden storm water" had actually entered any ditch or stream or Wonder Lake.

4. Wonder Lake has a long history of being silt-laden, through the erosion of the shoreline over the past century.

5. More than 100 acres of the 830 acres within Wonder Lake are inaccessible because they are shallow from sediment running into the lake from Nippersink Creek.

6. An island, referred to by the locals as Goose Island, has sprung up the lake's west bay as a result of sedimentation.



7. None of these natural occurrences of sedimentation of Wonder Lake are attributable to the Respondent.

8. For many years preceding the alleged "soil and stone" piles on the site in question, the Master Property Owners Association for Wonder Lake has been attempting to secure \$13 million in funding to dredge the lake, which is referred to as "Wonder Puddle."

9. The Master Property Owners Association estimates that 2.5 million yards of mud needs to be removed from the lake bottom.

10. The lake has a long-standing sedimentation problem which cannot be causally related to the Respondent in this matter so the Complainant is unable to meet its burden of proof and the case should be dismissed.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, prays that the Board enter an Order dismissing the Complaint, grant Respondent his attorney fees and costs herein, and grant such other a further relief as the Board deems just.

**Fourth Affirmative Defense-Mitigation**

1. Complainant alleges that the Respondent installed silt fencing on the site, graded it, and it has significant weed cover.

2. If, in fact, the allegations contained in the Complaint are true, then Respondent has taken corrective action on the site to mitigate the possibility of the soil and stone occurring in nature being carried into the adjoining unnamed creek or ditch by an act of God.

3. The issues complained of by Complainant have thus been ameliorated by Respondent and there is no evidence of past water pollution and no probability of future water pollution, so the case should be dismissed.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, prays that the Board enter an Order dismissing the Complaint, grant Respondent his attorney fees and costs herein, and grant such other a further relief as the Board deems just.

**Fifth Affirmative Defense-Laches**

1. Complainant alleges that it first new of the "soil and stone" on April 22, 2005.
  2. The Illinois EPA or the McHenry County Soil and Water Conservation District, or both, allegedly reinspected the site on April 27, 2005, May 5, 2005, July 28, 2005, and August 5, 2005.
  3. During that period of time, the Respondent did install silt fencing on property that he owns and controls and he graded portions of said property.
  4. The Illinois EPA did not return to the alleged site for more than a year, next inspecting the property on August 30, 2006.
  5. The Illinois EPA did not return again until May 11, 2007.
  6. The Complaint alleges that from April 22, 2005 through May 11, 2007, the soil and stone was deposited on the site in manner that allowed material and silt-laden storm water to flow into the stream that leads to Wonder Lake, altering or threatening to alter the physical, chemical, thermal or biological properties of the stream.
- 7-13. Respondent readopts and realleges paragraphs 4-10 of the Third Affirmative Defense as and for paragraphs 7-13 of this Fifth Affirmative Defense as if fully set forth herein.
14. The Complaint in this matter was not brought until June 13, 2007.
  15. Because of the lengthy time between the first inspection of the site and the filing of this action, Respondent cannot prove that the "soil and stone" on Respondent's property has

not and would not have caused water pollution or a water pollution hazard.

16. Because the site has been mitigated, silt fencing installed, and grading completed, the Respondent cannot prove that the "soil and stone" on Respondent's property has not and would not have caused water pollution or a water pollution hazard.

17. The Complainant never requested testing to be completed ascertaining that there was no impact by the site and the Respondent complied with all reasonable instructions to protect the site, such that the Respondent is now impaired in defending this action through the long delays by Complainant.

18. Complainant should be barred by the doctrine of laches from proceeding in this matter.

**WHEREFORE**, Respondent, THOMAS P. MATHEWS, prays that the Board enter an Order dismissing the Complaint, grant Respondent his attorney fees and costs herein, and grant such other a further relief as the Board deems just.

DATED: 8/31/07

Respondent

  
Thomas P. Mathews

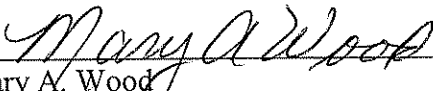
CAMPION, CURRAN, DUNLOP & LAMB, P.C.,  
Attorneys for Respondent

By:   
James A. Campion


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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, does certify that she caused to be mailed this 31<sup>st</sup> day of August, 2007, by U.S. First Class Mail, the foregoing Notice of Filing and Certificate of Service, as well as the Appearance and Answer to Complaint, on the party named on the Notice, by depositing same in a postage prepaid envelope with the U.S. Postal Service in Crystal Lake, Illinois, on or before 5 p.m.

  
Mary A. Wood

Subscribed and sworn to before me this  
31<sup>st</sup> day of August, 2007.

  
Notary Public

