

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 09-30
)	(Enforcement - Water)
MONTALBANO BUILDERS, INC.,)	
An Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Glen C. Sechen
Attorney at Law
13909 Laque Drive
Cedar Lake, IN 46303

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

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

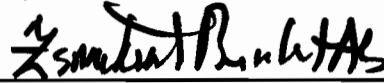
PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB

Environmental Bureau

Assistant Attorney General

69 W. Washington St., Suite 1800

Chicago, Illinois 60602

(312) 814-3816

DATE: October 5, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2008) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).


Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and MONTALBANO BUILDERS, INC., an Illinois corporation ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), and the Board Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On November 6, 2008, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and

upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2008).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation in good standing that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent was engaged in the development of a 393 lot residential subdivision with single family homes known as the Huntington Ridge subdivision located on the southwest corner of Harvard Hills and Crowley Road in Harvard, McHenry County, Illinois ("Site").

5. On June 5, 2006, Montalbano submitted to the Illinois EPA a notice of intent ("NOI") for coverage under the NPDES stormwater permit for the Site. The Site is 193 acres in size and the receiving stream for stormwater runoff from the Site as listed in Montalbano's NOI is Mokeler Creek. However, adjacent to the Site there is a wetland flood plain which discharges to Lawrence Creek.

6. On July 6, 2006, the Illinois EPA granted Montalbano coverage under the NPDES stormwater permit for stormwater discharges associated with construction activity.

7. On April 17, 2007, the McHenry County Soil and Water Conservation District ("MCSWCD") inspected the Site to determine the effectiveness of erosion and sediment control measures in preventing water pollution. During the inspection MCSWCD observed that unstabilized and inadequate erosion controls over portions of the Site had allowed silt-laden runoff to threaten wetland area just offsite the development.

8. The MCSWCD also noted a portable diesel fuel tank located at the Site which had no secondary spill containment, and evidence of spilled fuel was found on the ground near the tank.

9. On May 9, 2007, the Illinois EPA conducted a site inspection to review the erosion control measures employed at the Site. The Illinois EPA's inspection was prompted by reports received from the MCSWCD.

10. During the May 9, 2007, Illinois EPA inspection, the inspector observed that disturbed areas where no construction activity had been occurring for over three weeks did not have temporary stabilization in place.

11. The inspector also observed evidence of sediments leaving the Site and entering the adjacent wetland whose water eventually discharges into Lawrence Creek. Some silt fences were installed in low-lying areas of the Site and were partially under water accumulated in those areas.

12. The inspector also observed that the final stormwater detention basin was not stabilized and sediments were observed in the final manhole prior to the discharge point.

13. The Illinois EPA inspector also observed that the diesel fuel storage tank found by the MCSWCD during its April 17, 2007 inspection, was not properly protected with dykes, curbing or some other form of containment for spills. No spill kits were noted and storm sewer inlets were not designed to contain fuel spills.

14. On June 19, 2007, the Illinois EPA sent to Montalbano a Violation Notice ("VN") pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1) (2008).

15. On July 25, 2007, Montalbano responded to the VN and proposed its Compliance Commitment Agreement ("CCA").

16. On August 21, 2007 the Illinois EPA rejected Montalbano's CCA.

17. On October 18, 2007, the Illinois EPA sent to Montalbano a Notice of Intent to Pursue Legal Action pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b) (2008).

18. On November 9, 2007, the Illinois EPA met with Montalbano to discuss the violations.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Cause, Threaten or Allow Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

Count II: Creating a Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

Count III: Failure to Comply With the Terms and Conditions of the NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and 35 Ill. Adm. Code 309.102(a).

C. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any

enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

The Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. Stormwater run-off from the Site posed a potential threat of water pollution to waters of the State.
2. The social and economic benefit from the construction of the residential subdivision is not at issue.
3. Construction of the subdivision was suitable for the area.
4. Complying with the requirements of the Act, Board Regulations, and permit conditions was both technically practicable and economically reasonable.
5. Respondent is in the process of providing better site stabilization and erosion controls.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2008), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act

and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, Complainant states as follows:

1. The violations at the Site were first reported on April 17, 2007 and continued for several months until November 8, 2007. Evidence of silt-laden run-off was noted in the adjacent wetland area and the stormwater retention basin discharge manhole.
2. Respondent addressed most of the initial soil stabilization issues at the Site between the Illinois EPA's May 9 and November 8, 2007 inspections.
3. Economic benefits accrued by Respondent are believed to be minimal and are accounted for in the \$10,000.00 penalty agreed herein.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations of the Act and Board Regulations by Respondent and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Zemeheret Bereket-Ab
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

C. Stipulated Penalties, Interest and Default

If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

D. Future Compliance

1. This Stipulation in no way affect the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

2. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the Ten Thousand Dollars \$10,000.00 penalty, the Respondent's completion of compliance measures described in Section V.D. herein, and any specified costs and accrued interest, and upon the Board's approval of this Stipulation,

the Complainant release, waive and discharge the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on November 6, 2008. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

G. Execution of Stipulation

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

This Stipulation and Proposal for Settlement may be signed in counterparts.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

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PEOPLE OF THE STATE OF ILLINOIS

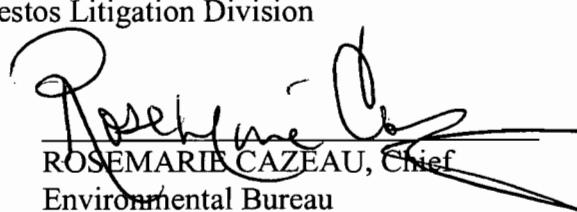
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

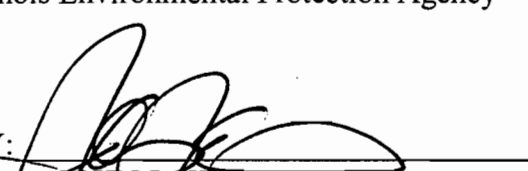
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:


JOHN J. KIM
Chief Legal Counsel

DATE:

9/15/09

DATE:

9/11/09

MONTALBANO BUILDERS, INC.

BY: _____

DATE: _____

Name: _____

Title: _____

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

MONTALBANO BUILDERS, INC.

BY: Anthony Montalban
Name: ANTHONY MONTALBANO
Title: PRESIDENT

DATE: _____

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 5th day of October, 2009, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB