

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,))	
)	
Complainant,))	No. PCB 10-20
)	(Enforcement - Water)
)	
v.))	
)	
MONTALBANO BUILDERS, INC.,))	
an Illinois corporation,))	
)	
Respondent.))	

ANSWER TO COMPLAINT

Respondent, MONTALBANO BUILDERS ("Montalbano"), through their attorneys, SCHAIN, BURNEY, ROSS & CITRION, LTD., answers the complaint of the People of the State of Illinois, as follows:

COUNT I

CAUSES THREATEN OR ALLOW WATER POLLUTION

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

ANSWER: The Respondent, Montalbano admits the allegations of

Paragraph 1.

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 (2006), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") Permit Program under the Federal Clean Water Act ("CWA"), 33 U.S.C. §1342(b)(7).

ANSWER: The allegations of Paragraph 2 are conclusions of law to which no answer is required. The citations speak for themselves.

3. At all times relevant to the Complaint, Respondent, Respondent was engaged in the development of a 378 lot residential subdivision with single family homes and duplex homes known as Mission Oaks subdivision located on the South Side of Route 38 East near the intersection of Route 38 and Hahn Drive in Courtland, DeKalb County, Illinois ("DeKalb site")

ANSWER: The Respondent, Montalbano admits the allegations of Paragraph 3.

4. On June 19, 2006, Montalbano submitted to the Illinois EPA a notice of intent ("NOI") for coverage under the NPDES stormwater permit for the DeKalb Site. The DeKalb Site is 187 acres in size and the receiving stream for stormwater runoff from the Site is listed in Montalbano's NOI as Union Ditch. The stormwater discharges directly to a storm sewer and eventually to Union Ditch.

ANSWER: The Respondent, Montalbano, admits only that it filed a notice for intent for coverage and the referenced document speaks for itself and should be attached to the Complaint. Accordingly, Montalbano moves to strike. The allegations of Paragraph 4 are improperly pled conclusions of fact and the Respondent moves to strike for this reason as well. Further, the Respondent lacks sufficient knowledge of facts not contained in the referenced document regarding said conclusions and accordingly, if the motion to strike is denied, Respondent, Montalbano Builders, Inc. makes no answer to the remaining allegations, demanding strict proof thereof.

5. On July 19, 2006, the Illinois EPA granted Montalbano coverage under the NPDES stormwater permit under site Permit No. ILR10F880 for stormwater discharges associated with construction activities for the DeKalb Site.

ANSWER: The Respondent, Montalbano Builders, Inc. admits the allegations of Paragraph 5.

6. On May 9, 2008, the DeKalb County Soil and Water Conservation District ("DCSWCD") inspected the Site to determine the effectiveness of erosion and sediment control measures in preventing water pollution and review compliance with conditions of NPDES Permit No. ILR10F880. During the inspection DCSWCD observed:

- sediment leaving the Site at the outlet of the detention pond into Union Ditch;
- lack of stabilization and erosion control measures impacting the entire Site;
- severe bank erosion occurring in the detention basin, primarily on the north bank;
- sediment traps were not maintained; and
- stormwater channels were not stabilized.

ANSWER: The Respondent, Montalbano, lacks sufficient knowledge to answer the allegations of Paragraph 6 and therefore makes no answer and demands strict proof of the allegations therein.

7. On May 14, 2008, the Illinois EPA conducted a site inspection to review the erosion control measures employed at the DeKalb Site. The Illinois EPA's inspection was prompted by reports received from the DeKalb DCSWCD.

ANSWER: The Respondent, Montalbano, lacks sufficient knowledge to answer the allegations of Paragraph 7 and therefore makes no answer and demands strict proof of the allegations therein.

8. During the May 14, 2008, Illinois EPA inspection, the inspector observed that:
- a. the DeKalb Site was in very poor condition with areas affected by mass grading left unstabilized although new home construction was limited to a relatively small area;
 - b. the detention basin was carrying a heavy sediment load as evidenced by the sandy color and sediment building up and fanning out at the inlet;
 - c. the bank of the detention basin in the area of the western inlet exhibited severe erosion;
 - d. effluent was leaving the detention and entering Union Ditch as the sediment plume was visible in Union Ditch.

ANSWER: The Respondent, Montalbano, lacks sufficient knowledge to answer the allegations of Paragraphs 8a through 8d and therefore makes no answer and demands strict proof of the allegations therein.

9. On October 9, 2008, the Illinois EPA sent to Montalbano a Violation Notice ("VN") pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a)(I) (2008).

ANSWER: The Respondent, Montalbano, lacks sufficient knowledge to answer the allegations of Paragraph 9 and therefore makes no answer and demands strict proof of the allegations therein.

10. On November 11, 2008, Montalbano responded to the VN and proposed Its Compliance Commitment Agreement ("CCA").

ANSWER: The Respondent, Montalbano, admits the allegations of Paragraph 10.

11. On November 19, 2008, the Illinois EPA conducted a follow-up inspection and observed very little progress to remedy the violation noted on previous inspections.

ANSWER: The Respondent, Montalbano, lacks sufficient knowledge to answer the allegations of Paragraph 9 and therefore makes no answer and demands strict proof of the allegations therein.

12. On December 12, 2008, Montalbano wrote a letter to the Illinois EPA stating that it had waived its right to a meeting pursuant to the violation notice letter.

ANSWER: The Respondent, Montalbano, admits the allegations of Paragraph 12.

13. On December 12, 2008, the Illinois EPA rejected Montalbano's CCA.

ANSWER: The Respondent, Montalbano, admits only that Illinois EPA rejected the CCA. The Respondent, Montalbano, lacks sufficient knowledge to as to the remaining allegations of Paragraph 13 and therefore makes no answer thereto and demands strict proof thereof.

14. On February 4, 2009, the Illinois EPA sent to Montalbano a Notice of Intent to Pursue Legal Action.

ANSWER: The Respondent, Montalbano, admits only that Illinois EPA sent a letter. The Respondent, Montalbano, lacks sufficient knowledge to as to the remaining allegations of Paragraph 14 and therefore makes no answer thereto and demands strict proof of the allegations therein.

15. On February 19, 2009, Montalbano's legal counsel wrote a letter to the Illinois EPA waiving its rights under Section 31 of the Act, 415 ILCS 5/31 (2008).

ANSWER: The Respondent, Montalbano, admits the allegations of Paragraph 15.

16. On July 13, 2009, the Illinois EPA conducted a follow up inspection and observed continuing noncompliance at the stormwater detention pond. A black corrugated stand pipe installed to prevent discharge from the pond had been punctured in several places to allow the sediment laden water out to Union Ditch. The Illinois EPA observed sediment plume in the receiving stream.

ANSWER: Paragraph 16 is, in part, a conclusion of law which requires no answer. As to the remaining portions of Paragraph 16, the Respondent, Montalbano, lacks sufficient knowledge to answer the allegations and therefore makes no answer and demands strict proof of the allegations therein.

17. Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), provides as follows: No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations

or standards adopted by the Pollution Control Board under this Act.

ANSWER: The allegations of Paragraph 17 are conclusions of law to which no answer is required. The cited section further speaks for itself.

18. Section 302.203 of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 302.203, titled, Offensive Conditions, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

ANSWER: The allegations of Paragraph 18 are conclusions of law to which no answer is required. The cited section further speaks for itself.

19. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision state agency or any other legal entity, or their legal representative, agent or assigns.

ANSWER: The allegations of Paragraph 19 are conclusions of law to which no answer is required. The cited section further speaks for itself.

20. Montalbano, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

ANSWER: The allegations of Paragraph 16 are conclusions of law to which no answer is required. The cited section further speaks for itself.

21. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides as follows:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER: The allegations of Paragraph 21 are conclusions of law to which no answer is required. The cited section further speaks for itself.

22. Sediment leaving the site at the outlet of the detention pond and entering into Union Ditch is a "contaminant," as that term is defined by Section 3.165 of the Act.

ANSWER: To the extent that this Paragraph 22 may be considered to contain factual allegations they are denied. The allegations of Paragraph 22 are conclusions of law to which no answer is required.

23. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), provides as follows:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

ANSWER: The allegations of Paragraph 23 are conclusions of law to which no answer is required. The cited section further speaks for itself.

24. The sediment leaving the Site that flowed into Union Ditch constitutes "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2006).

ANSWER: The Respondent, Montalbano, denies the allegations of Paragraph 24.

25. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), provides as follows:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

ANSWER: The allegations of Paragraph 25 are conclusions of law to which no answer is required. The cited section further speaks for itself.

26. The detention pond and Union Ditch into which the sediment discharges are "waters," as that term is defined in Section 3.550 of the Act.

ANSWER: The allegations of Paragraph 26 are conclusions of law to which no answer is required.

27. By allowing disturbed soils to remain unstabilized and without adequate

erosion control protections, Respondent caused, threatened or allowed the discharge of a contaminant, sediment, into Union Ditch, waters of the State.

ANSWER: The Respondent, Montalbano, denies the allegations of Paragraph 27.

28. By causing, threatening or allowing the discharge of sediment from the Site, a "contaminant," to discharge eventually into Union Ditch, a "water" of the State, Respondent caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2008).

ANSWER: The Respondent, Montalbano Builders, Inc. denies the allegations of Paragraph 28.

WHEREFORE, Montalbano Builders, Inc., prays that this Count be dismissed at plaintiff's cost.

COUNT II
CREATING A WATER POLLUTION HAZARD

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and 19 through 26 of Count I as paragraphs I through 24' of this Count II.

ANSWER: Respondent, Montalbano, incorporates by reference its Answers to Paragraphs 1 through 16 and 19 through 26 as its answers to 1-24 of Count II as though fully set forth herein.

25. Section 12(d) of the Act, 415 ILCS 5/12(d) (2008), provides as follows:

No person shall:

* * * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

ANSWER: The allegations of Paragraph 25 are conclusions of law to which no answer is required. The cited section further speaks for itself.

26. By failing to provide adequate erosion controls for the mass graded site, and by allowing unstabilized soils to remain in areas of the Site prone to runoff to

waters of the State, and thus creating a water pollution hazard, Montalbano violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

ANSWER: The Respondent, Montalbano, denies the allegations of Paragraph 26.

WHEREFORE, Montalbano Builders, Inc., prays that this Count be dismissed at Plaintiff's cost.

COUNT III

FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THE NPDES PERMIT

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and 19 through 26 of Count I as paragraphs 1 through 24 of this Count III.

ANSWER: Respondent, Montalbano, incorporates by reference its Answers to Paragraphs 1 through 16 and 19 through 26 of Count I as its answers to Paragraphs 1 through 24 of Count III as though fully set forth herein.

25. Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), provides as follows: No person shall:

* * * *

- (f) Cause, threaten, or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, any waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

ANSWER: The allegations of Paragraph 25 are conclusions of law

to which no answer is required. The cited section further speaks for itself.

26. Montalbano's General NPDES Permit for Storm Water Discharges from Construction Site Activities No. ILRIOF880, Part IV. D.2(a) provides in pertinent part as follows:

"... stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased."

ANSWER: The allegations of Paragraph 26 require no answer as the cited document speaks for itself. Montalbano moves to strike Paragraph 26 and the entire Complaint as Plaintiff has failed to attach this and other referenced documents.

27. The Illinois EPA inspector observed that a large part of the site remained dormant for more than 21 days and had not been stabilized within 14 days as required by NPDES Permit No. ILR1OF880, Part IV.D.2(a).

ANSWER: The Respondent, Montalbano, lacks sufficient knowledge to answer the allegations of Paragraph 27 and therefore makes no answer and demands strict proof of the allegations therein.

28. By failing to maintain adequate stormwater pollution prevention measures as called for by its coverage under the general NPDES stormwater permit at its construction Site, Respondent also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

ANSWER: The Respondent, Montalbano, denies the allegations of Paragraph 28.

WHEREFORE, Montalbano Builders, Inc. prays that this Count be dismissed at plaintiff's cost.

Respectfully Submitted,

MONTALBANO BUILDERS, INC.

By: /s/Glenn C. Sechen
One of Its Attorneys

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