

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 MONTALBANO BUILDERS, INC., an Illinois )  
 corporation, CORTLAND-I-88, L.L.C., )  
 an Illinois limited liability company, and )  
 MBC XIV, LLC, a revoked Delaware limited )  
 liability company, RB RESOLUTION )  
 PROPERTIES, LLC, an Illinois limited liability )  
 company, and DOUGLAS J. JOHNSON, )  
 an individual, )  
 )  
 Respondents. )

RECEIVED  
CLERK'S OFFICE

JUN 28 2013

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 10-20  
(Enforcement-Water)



ORIGINAL

**NOTICE AND REQUEST FOR WAIVER OF SERVICE**

**TO:** Jamie Robinson  
Ungaretti and Harris  
70 West Madison Street  
Suite 3500  
Chicago, IL 60602

PLEASE TAKE NOTICE that the Complainant, the People of the State of Illinois, have filed suit against the Respondents in the above-referenced matter, which is currently pending in before the Illinois Pollution Control Board (“Board”) and entitled “*People of the State of Illinois v. Montalbano Builders, Inc., et al.*”, PCB 10-20 (Enforcement-Water).

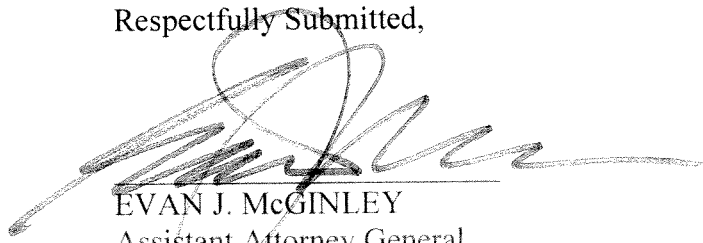
1. Pursuant to Section 5/2-213 of the Code of Civil Procedure, 735 ILCS 5/2-213, Plaintiff has requested, and you have agreed, to waive service of the Complaint in this cause. A copy of the Complaint in this cause is attached hereto for your reference.

2. By agreeing to waive service, you are agreeing to waive the need for formal service on you. Additionally, by signing this waiver of service, you are submitting yourself to

the jurisdiction of the Board in the above-referenced case.

3. As provided for by law, you are entitled to a reasonable amount of time in which to return this waiver of service, which, pursuant to Section 5/2-213, shall be at least thirty (30) days from the date on which this request has been sent.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Evan J. McGinley', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

EVAN J. MCGINLEY  
Assistant Attorney General  
Environmental Bureau North  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
312.814.3153

**CERTIFICATE OF SERVICE**

I, EVAN J. MCGINLEY, do hereby certify that, on June 27, 2013, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached Notice and Request for Waiver of Service:

John Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 6060

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

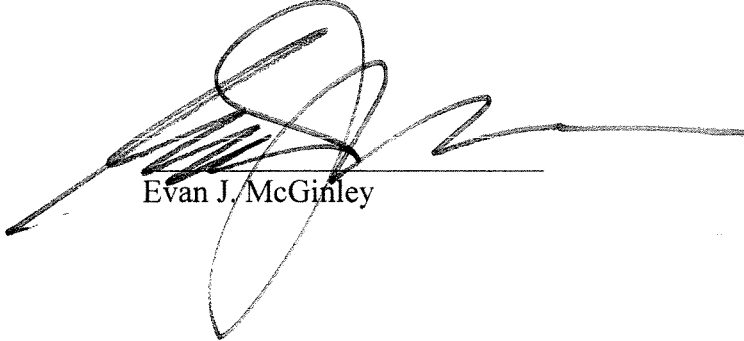
Jamie A. Robinson  
Ungaretti & Harris LLP  
70 W. Madison Street  
Suite 3500  
Chicago, IL, 60602

Gina Krol  
105 W. Madison Street  
Suite 1100  
Chicago, Illinois 60602

Anthony P. Montalbano  
1916 Midwest Club Drive  
Oakbrook, Illinois 60523-2525

Douglas Johnson  
1811 West Forestview Drive  
Sycamore, Illinois 60548-2204

Stephen J. Colompos  
RB Resolution Properties, LLC  
2221 Camden Court, 1<sup>st</sup> Floor  
Oak Brook, Illinois 60523



Evan J. McGinley

**WAIVER OF SERVICE**

*People of the State of Illinois v. Montalbano Builders, Inc., et al., PCB 10-20*

(Enforcement-Water)

I, JAMIE ROBINSON, on behalf of my client, , CORTLAND-I-88, L.L.C , hereby acknowledges that, pursuant to Section 5/2-213 of the Code of Civil Procedure, 735 ILCS 5/2-213, I have received the attached Notice and Request for Waiver of Service, as well as a copy of the Complaint filed by the People, and hereby waive service of process in the above-referenced cause.

\_\_\_\_\_  
JAMIE ROBINSON

\_\_\_\_\_  
DATE

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 10-20
	)	Enforcement-Water
MONTALBANO BUILDERS, INC., an Illinois	)	
corporation, CORTLAND-I-88, L.L.C.,	)	
an Illinois limited liability company, and	)	
MBC XIV, LLC, a revoked Delaware limited	)	
liability company, RB RESOLUTION	)	
PROPERTIES, LLC, an Illinois limited liability	)	
company, and DOUGLAS J. JOHNSON,	)	
an individual,	)	
	)	
	)	
Respondents.	)	

**NOTICE OF ACCEPTANCE FOR FILING**

TO: *Via Certified Mail*

Steven J. Colompos  
Registered Agent  
RB Resolution Properties, LLC  
2221 Camden Court, 1<sup>st</sup> Floor  
Oak Brook, Illinois 60523

Lawrence M. Freedman  
Registered Agent  
Cortland-I-88, LLC  
77 West Washington Street, Suite 1211  
Chicago, Illinois 60602

National Registered Agents, Inc.  
MBC XIV, LLC  
200 West Adams Street, Suite 2007  
Chicago, Illinois 60606

Douglas and Susan Johnson  
1811 West Forestview Drive  
Sycamore, Illinois 60548-2204

*Via Regular Mail*

Gina Krol  
Cohen & Krol  
105 West Monroe Street  
Suite 11100  
Chicago, Illinois 60602

*Via E-Mail*

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
Brad.Halloran@illinois.gov

PLEASE TAKE NOTICE that on June 6, 2013, the Illinois Pollution Control Board accepted the Complainant's Second Amended Complaint for filing. A true and correct copy of the Second Amended Complaint is attached hereto and served upon you.

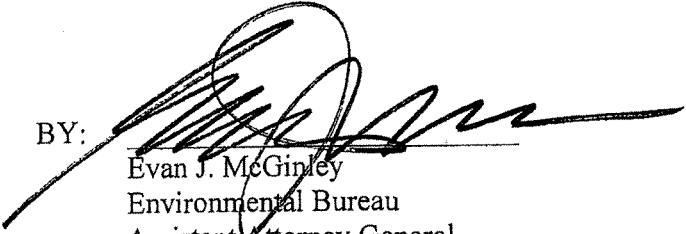
FINANCING MAY BE AVAILABLE, THROUGH THE ILLINOIS ENVIRONMENTAL FACILITIES FINANCING ACT, TO CORRECT THE VIOLATIONS ALLEGED IN THE SECOND AMENDED COMPLAINT.

Failure to file an answer to the Second Amended Complaint in accordance with the Illinois Pollution Control Board's Order dated June 6, 2013, may have severe consequences. Failure to answer will mean that all allegations in the Second Amended 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.

RESPECTUFLLY SUBMITTED,

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the State of Illinois

BY:



Evan J. McGinley  
Environmental Bureau  
Assistant Attorney General  
69 W. Washington Street, #1800  
Chicago, Illinois 60602  
312.814.3153

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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an Illinois limited liability company, and	)	
MBC XIV, LLC, a revoked Delaware limited	)	
liability company, RB RESOLUTION	)	
PROPERTIES, LLC, an Illinois limited liability	)	
company, and DOUGLAS J. JOHNSON,	)	
an individual,	)	
	)	
Respondents.	)	

**SECOND AMENDED COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, files this Second Amended Complaint against Respondents, MONTALBANO BUILDERS, INC., an Illinois corporation, CORTLAND-I-88, L.L.C., an Illinois limited liability company, MBC XIV, LLC, a revoked Delaware limited liability company, RB RESOLUTION PROPERTIES, LLC, an Illinois limited liability company, and DOUGLAS J. JOHNSON, an individual, as follows:

**COUNT I**

**CAUSE, THREATEN OR ALLOW WATER POLLUTION**

1. The Complaint against Montalbano Builders, Inc. is brought 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 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 (2012).

2. The Complaint against MBC XIV, LLC, CORTLAND-I-88, LLC, RB RESOLUTION PROPERTIES, LLC, and DOUGLAS J. JOHNSON, is brought on behalf of the People of the State of Illinois by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion.

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012), 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).

4. At all times relevant to the Second Amended Complaint, Montalbano Builders, Inc. ("Montalbano"), was an Illinois corporation. On information and belief, Montalbano was involuntarily dissolved by the Illinois Secretary of State on September 9, 2011.

5. At all times relevant to the Second Amended Complaint, Respondent Cortland-I-88, L.L.C. ("Cortland"), has been an Illinois limited liability corporation.

6. At all times relevant to the Second Amended Complaint, Respondent MBC XIV, LLC ("MBC XIV"), has been a Delaware limited liability corporation, whose right to do business within the State of Illinois was revoked by the Illinois Secretary of State.

7. At all times relevant to the Second Amended Complaint, Respondent RB Resolution Properties, LLC ("RB Resolution Properties"), has been an Illinois limited liability corporation.



8. At all times relevant to the Second Amended Complaint, Respondent Douglas J. Johnson ("Johnson"), has been a resident of the State of Illinois who resides at 1811 West Forestview Drive, Sycamore, DeKalb County, Illinois.

9. At all times relevant to the Second Amended Complaint, Respondent Montalbano was engaged in the development of a 378-lot residential subdivision known as Mission Oaks, composed of both single family and duplex homes, on 187 acres of land, which is located on the south side of Route 38 East, near the intersection of Route 38 and Hahn Drive, in Cortland, DeKalb County, Illinois ("Site"). In 2006, on a date better known to Respondent Montalbano, Montalbano commenced grading work and other activities at the Site.

10. The Union Ditch, a drainage ditch, which is located off site, receives runoff from a large detention pond which is located at the southeast corner of the Site ("Detention Pond"). Stormwater which is generated onsite flows into the storm sewer inlets located at the Site, where the storm water then enters the Site's storm sewer system, which then conveys the collected stormwater into the Detention Pond. The stormwater which is collected in the Detention Pond is ultimately discharged into the Union Ditch.

11. As of the date of the filing of this Second Amended Complaint, while grading and excavating work has been completed for most, if not all, of the Site, only 18 homes have been constructed and the balance of the Site has neither been developed nor have the graded portions of the Site achieved final stabilization. Also as of the date of the filing of this Second Amended Complaint, no development or construction activities are currently being conducted at the Site.

12. On information and belief, Respondent Montalbano was initially the owner of the entire Site. On further information and belief, on dates better known to the Respondents,

Respondent Montalbano either conveyed portions of the Site to Respondents MBC XIV, Cortland, RB Resolution, and Johnson; or, Respondents MBC XIV, Cortland, RB Resolution, and Johnson otherwise obtained their portions of the Site through means better known to the Respondents.

13. Based on property records maintained by the DeKalb County Assessor, Respondent Montalbano is and has been, beginning on a date better known to Montalbano, the owner of certain parcels of real property located at the Site, including but not limited to, the following parcels of property, which are identified in the DeKalb County Assessor's records as Parcel Numbers 0928351014, 0928351015, 0928351016, 0928352001, and 0933128030. Also on information and belief, Respondent Montalbano owns approximately 119 vacant, graded lots on which single family homes were to be built. These lots are located within two separate portions of the Site. The first group of vacant, graded lots is bounded by East Stratford Avenue to the north, South Preston Street to the west, East Lexington Avenue to the south, and South Hampstead Street to the east. The second group of vacant, graded lots is bounded by East Lexington Avenue to the north, South Greenbrier Street to the west, East Fairview Drive to the south, and South Braxton Drive to the east.

14. Based on property records maintained by the DeKalb County Assessor, Respondent Cortland is and has been, beginning on a date better known to Cortland, the owner of certain parcels of real property located at the Site, which are identified in the DeKalb County Assessor's records as Parcel Numbers 0928351006, 0928351011, 0928351013, and 093310007.

15. Based on property records maintained by the DeKalb County Assessor, Respondent MBC XIV is and has been, beginning on a date better known to MBC XIV, the

owner of approximately 96 parcels of real property located at the Site, which are located in the area bounded on the south, by the south side of Ashford Drive, on the north by the south side of East Fairview Drive, on the west, by west side of South Greenbrier Street, and on the east by the east side of South Braxton Street.

16. Based on property records maintained by the DeKalb County Assessor, Respondent RB Property Solutions is and has been, beginning on a date better known to RB Property Solutions, the owner of that certain parcel of real property which is identified in the DeKalb County Assessor's records as Parcel Number 0933100009.

17. Based on property records maintained by the DeKalb County Assessor, Respondent Johnson is and has been, beginning on a date better known to Johnson, the owner of that certain parcel of real property located at the Site, which is identified in the DeKalb County Assessor's records as Parcel Numbers 0933181015.

18. On June 19, 2006, Montalbano submitted to the Illinois EPA a notice of intent ("NOI") for coverage under the NPDES stormwater permit for the Site. The receiving stream for stormwater runoff from the Site, as listed on Montalbano's NOI, is Union Ditch. Stormwater discharges at the Site discharge directly to a storm sewer and eventually flow into Union Ditch.

19. On July 19, 2006, the Illinois EPA granted Montalbano coverage under NPDES Permit No. ILR10F880 for stormwater discharges associated with construction activities at the Site ("Permit").

20. On May 9, 2008, an inspector with the DeKalb County Soil and Water Conservation District ("District") inspected the Site ("May 9<sup>th</sup> Inspection"). The purpose of the May 9<sup>th</sup> Inspection was to determine the effectiveness of the soil erosion and sediment control

measures which Respondent Montalbano was employing at the Site to prevent water pollution and to review Montalbano's compliance with the terms and conditions of the Permit.

21. At the time of the May 9<sup>th</sup> Inspection, the following conditions were present at the Site:

- a. Sediment was flowing out of the Detention Pond and into Union Ditch;
- b. The entire Site evidenced a lack of stabilization and erosion control measures;
- c. Severe bank erosion was occurring in the Detention Pond, primarily on the north bank of the pond;
- d. Sediment traps were not being maintained; and
- e. Stormwater channels at the Site had not been stabilized.

22. On May 14, 2008, an inspector from Illinois EPA conducted an inspection of the Site ("May 14<sup>th</sup> Inspection"). The purpose of the May 14<sup>th</sup> Inspection was to observe the erosion control measures being employed by Respondent Montalbano at the Site.

23. At the time of the May 14<sup>th</sup> Inspection the following conditions were present at the Site:

- a. the Site was in very poor condition with areas which had been subjected to mass grading having been left unstabilized;
- b. The Detention Pond was carrying a heavy sediment load as evidenced by the sandy color of the water and sediment that was building up and fanning out at the inlet;
- c. There was severe erosion to the bank of the Detention Pond in the area of the western inlet; and
- d. Effluent was flowing from the Detention Pond and discharging into Union Ditch as evidenced by the visible sediment plume in the ditch.

24. On November 3, 2008, an Illinois EPA inspector conducted another inspection of the Site ("November 3<sup>rd</sup> Inspection"). The purpose of the November 3<sup>rd</sup> Inspection was to observe the erosion control measures being employed by Respondent Montalbano at the Site.

25. At the time of the November 3<sup>rd</sup> Inspection, the following conditions were present at the Site:

- a. No stabilization measures had been employed at the Site;
- b. Erosion of graded areas was occurring;
- c. Sediment and dirt was visible on streets throughout the Site;
- d. Sediment controls at the stormwater inlets throughout the Site were not being maintained, so that stormwater runoff and sediment from unstabilized areas could breach stormwater inlets on the Site; and
- e. Sediment and erosion control measures for the Detention Pond either had not been installed or were not being properly maintained, such that sediment from areas adjacent to the Detention Pond were being allowed to flow into the pond.

26. On July 13, 2009, the Illinois EPA conducted another inspection of the Site, in order to determine the overall compliance status of the Site ("July 13<sup>th</sup> Inspection").

27. At the time of the July 13<sup>th</sup> Inspection, the following conditions were present at the Site:

- a. A black corrugated stand pipe installed to prevent discharge from the Detention Pond had been punctured in several places and was allowing sediment-laden water to discharge into the Union Ditch;
- b. Sediment was being discharged from the Detention Pond into Union Ditch; and
- c. The water level in the Detention Pond was several feet lower than had been the case during prior Illinois EPA inspections of the Site.

28. On June 28, 2010, the Illinois EPA conducted another inspection of the Site to determine the overall compliance status of the Site ("June 28<sup>th</sup> Inspection").

29. At the time of the June 28<sup>th</sup> Inspection, , the following conditions were present at the Site:

- a. Inlet controls at the Site were in need of maintenance;
- b. Large portions of the Site had not been stabilized; and
- c. No information about the Permit was posted at the Site.

30. On May 24, 2012, Illinois EPA conducted another inspection of the Site ("May 24<sup>th</sup> Inspection"), in order to determine the overall compliance status of the Site.

31. At the time of the May 24<sup>th</sup> Inspection, , the following conditions were present at the Site:

- a. No construction activities were taking place at the Site, nor was any construction equipment present thereon;
- b. Soil on large portions of the site continued to be unstabilized; and,
- c. Inlet controls in the vicinity of Lexington and Hampstead Streets, which are located within the Site, were in disrepair and were failing.

32. On March 29, 2013, Illinois EPA and the District conducted an inspection of the Site ("March 29<sup>th</sup> Inspection"). The March 29<sup>th</sup> Inspection was undertaken for the purpose of determining the Site's current compliance status.

33. At the time of the March 29<sup>th</sup> Inspection:

- a. Large portions of the Site continued to be unstabilized, including the portions of the Site respectively owned by each of the Respondents;

- b. Additionally, at the time of March 29<sup>th</sup> Inspection, the Detention Pond showed signs of erosion and was in need of maintenance; and
- c. Gravel and dirt from unfinished and unpaved portions of the Site were visible on paved streets within the Site.

34. As of the date of the filing of this Second Amended Complaint, Respondent Montalbano continues to hold the Permit for the entire Site and therefore has the obligation to ensure compliance with the Permit.

35. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), 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.

36. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), 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.

37. Respondents Montalbano, MBC XIV, Cortland, RB Resolution Properties, and Johnson are each a "person," as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

38. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides as follows:

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

39. The sediment which is generated by stormwater coming into contact with the graded and unstabilized portions of the Site is a "contaminant," as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

40. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), 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.

41. The Detention Pond and the Union Ditch into which the sediment discharges, each constitute "waters," as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

42. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), 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.

43. The sediment which is discharged into the Site's stormwater sewer system and which is discharged into the Detention Pond and, which ultimately discharges into the Union Ditch, creates "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

44. By allowing disturbed soils at the Site to remain unstabilized and, further, by failing to implement adequate erosion control measures for the portions of the Site that each Respondent owns, the Respondents have caused, threatened or allowed the discharge of a contaminant into the waters of the State.



45. By causing, threatening or allowing sediment from the Site, a "contaminant," to eventually discharge into the Detention Pond and the Union Ditch, which are each a "water" of the State, each of the Respondents caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against all Respondents with respect to this Count I:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against each Respondent for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for each day of violation;

5. Ordering Respondents to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

**OFFENSIVE CONDITIONS**  
**(Alleged Against Respondent Montalbano Only)**

1-41. Petitioner realleges and incorporates by reference herein Paragraphs 1 through 41 of Count I as Paragraphs 1 through 41 of this Count II.

42. 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.

43. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard . . .

44. At the time of the May 14<sup>th</sup> and July 13<sup>th</sup> Inspections, sediment-laden water was flowing out of the Detention Pond and into the Union Ditch and thereby created offensive conditions in the Ditch, a water of the State, in violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

45. By violating Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, Respondent Montalbano thereby also violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.

46. By violating Sections 302.203 and 304.105 of the Board Water Pollution, 35 Ill. Adm. Code 302.303 and 304.105, Respondent Montalbano thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent Montalbano with respect to this Count II:

1. Authorizing a hearing in this matter at which time Respondent Montalbano will be required to answer the allegations herein;

2. Finding that Respondent Montalbano has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

3. Ordering Respondent Montalbano to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent Montalbano for each violation of the Act and the pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent Montalbano to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

**COUNT III**

**CREATING A WATER POLLUTION HAZARD**  
**(Alleged Against Respondent Montalbano Only)**

1-42. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 and 36 through 43 of Count I as paragraphs 1 through 42 of this Count III.

43. Section 12(d) of the Act, 415 ILCS 5/12(d) (2012), 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.

44. By grading the Site and moving the soil thereon without implementing adequate erosion control for graded portions of the Site, and by allowing unstabilized soils to remain in areas of the Site prone to runoff to waters of the State, Respondent Montalbano thereby created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent Montalbano with respect to this Count III:

1. Authorizing a hearing in this matter at which time Respondent Montalbano will be required to answer the allegations herein;
2. Finding that Respondent Montalbano has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
3. Ordering Respondent Montalbano to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent Montalbano for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondent Montalbano to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT IV**

**FAILURE TO COMPLY WITH THE TERMS  
AND CONDITIONS OF THE NPDES PERMIT  
(Alleged Against Respondent Montalbano Only)**

1-42. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 and 36 through 43 of Count I as paragraphs 1 through 42 of this Count IV.

43. Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), 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.

44. Part IV.D.2(a) of Montalbano's Permit 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."

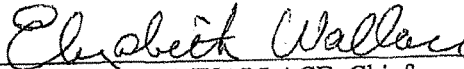
45. At the time of the May 9<sup>th</sup>, May 14<sup>th</sup>, November 3<sup>rd</sup>, July 13<sup>th</sup>, June 28<sup>th</sup>, May 24<sup>th</sup>, and March 29<sup>th</sup> Inspections, portions of the Site remained dormant for more than 21 days and had not been stabilized within 14 days as required by the Permit. By failing to maintain adequate stormwater pollution prevention measures as required by the Permit, Respondent Montalbano thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent Montalbano with respect to this Count IV:

1. Authorizing a hearing in this matter at which time Respondent Montalbano will be required to answer the allegations herein;
2. Finding that Respondent Montalbano has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).
3. Ordering Respondent Montalbano to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Respondent Montalbano for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).
5. Ordering Respondent Montalbano to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney  
General of the State of Illinois

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

By:   
ELIZABETH WALLACE, Chief  
Environmental Bureau North  
Assistant Attorney General

*Of Counsel:*

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CERTIFICATE OF SERVICE

I, EVAN J. MCGINLEY, do hereby certify that, on May 15, 2013, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the Complainant's Motion for Leave to File Second Amended Complaint *Instante*r and notice of motion.

John Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

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

Gina Krol  
105 W. Madison Street  
Suite 1100  
Chicago, Illinois 60602

Anthony P. Montalbano  
1010 Jorie Boulevard  
Oakbrook, Illinois 60523-4442

Anthony Montalbano  
1801 South Meyers Road  
Suite 500  
Oakbrook Terrace, Illinois 60181

  
Evan J. McGinley



ILLINOIS POLLUTION CONTROL BOARD

June 6, 2013

PEOPLE OF THE STATE OF ILLINOIS,	)	
by LISA MADIGAN, Attorney General of	)	
State of Illinois	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 10-20
	)	(Enforcement - Water)
	)	
MONTALBANO BUILDERS, INC., an	)	
Illinois corporation, CORTLAND-I-88, L.L.C.,	)	
an Illinois limited liability company, and MBC	)	
XIV, LLC, a revoked Delaware limited liability	)	
company, RB RESOLUTION PROPERTIES,	)	
LLC, an Illinois limited liability company, and	)	
DOUGLAS J. JOHNSON, an individual,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by C.K. Zalewski):

On May 15, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a second amended complaint with the Board. For the reasons discussed below, the Board accepts the second amended complaint and allows the withdrawal of the first amended complaint.

In this order, the Board sets out the procedural history of this case before discussing the merits of the second amended complaint.

**PROCEDURAL HISTORY**

On September 8, 2009, the People filed a three-count complaint against Montalbano Builders, Inc. (Montalbano). The complaint concerns a residential subdivision, owned by Montalbano, known as "Mission Oaks," located on the south side of Route 38 East near the intersection of Route 38 and Hahn Drive in Cortland, DeKalb County.

On September 17, 2009, the Board accepted the complaint for hearing. Montalbano timely filed an answer to the complaint on December 10, 2010. On August 30, 2011, the People filed its first amended complaint (Am. Comp.) to add both First American Properties, L.L.C. (First American), an Illinois limited liability company, and MBC XIV, LLC, a Delaware limited liability company in "revoked" status with the Illinois Secretary of State, as respondents. Am. Comp. at 1. The amended complaint alleges that MBC and First American: 1) each purchased a number of parcels in Mission Oaks from Montalbano; 2) that neither had an National Pollutant

Discharge Elimination System (NPDES) permit for its portion of Mission Oaks; and 3) each had the duty to stabilize the portion of the site it purchased to prevent silt runoff. *Id.* at 2-3.

On January 11, 2013, First American filed a combined motion to dismiss counts I and II. On March 1, 2013, the People also filed a motion to voluntarily dismiss First American as a respondent to its first amended complaint. On March 21, 2013, the Board issued an order granting the People's motion to dismiss First American as a respondent, therefore mooted First American's Motion to Dismiss.

On May 2, 2013, the People filed a Motion to Withdraw First Amended Complaint (in order to correct a service error that occurred with the first amended complaint) and communicated its intent to file a second amended complaint. On May 15, 2013, the People filed both a Motion for Leave to File Second Amended Complaint and a Second Amended Complaint (2nd Am. Comp.).

### **SECOND AMENDED COMPLAINT**

The People's second amended complaint adds four parties, in addition to Montalbano, as respondents. The additional parties are MBC XIV, LLC, Cortland I-88, LLC, RB Resolutions Properties, LLC, and Douglas J Johnson (collectively, New Respondents). The People allege that each of the newly added parties own one or more parcels of property located at Mission Oaks. The People allege that Montalbano initially owned all of the 378 lots that comprised Mission Oaks, but Montalbano has, at a time better known to the respondents, "either conveyed portions of Mission Oaks to MBC XIV, Cortland, RB Resolution, and Johnson; or Respondents MBC XIV, Cortland, RB Resolution, and Johnson otherwise obtained their portions of the [Mission Oaks] Site through means better known to the Respondents." 2nd Am. Comp. at 4.

In count I of the second amended complaint, the People allege that the respondents violated Section 12(a) of the Act by causing, threatening or allowing sediment from Mission Oaks to eventually discharge into the waters of the State. In count II, the People allege that Montalbano violated Section 12(a) of the Environmental Protection Act (Act) (415 ILCS 5/12(a) (2010)) and Sections 302.203 and 304.105 of the Board Water Regulations (35 Ill. Adm. Code 302.203, 304.105) by causing or allowing sediment-laden water to flow "out of the Detention Pond and into the Union Ditch and thereby created offensive conditions in the Ditch, a water of the State." 2nd Am. Comp. at 12.

Counts III and IV of the second amended complaint reallege the violations listed in counts II and III of the original complaint. Those counts allege Montalbano violated Sections 12(d) and (f) of the Act (415 ILCS 5/12(d) and (f) (2010)) by: 1) failing to provide adequate erosion controls and allowing unstabilized soils to remain in areas of the site prone to runoff to State waters, thereby creating a water pollution hazard; and 2) failing to maintain adequate stormwater pollution prevention measures required by the general NPDES stormwater permit.

**DISCUSSION**

The Board accepts the second amended complaint for hearing and directs the People to serve the second amended complaint on the New Respondents and to provide proof of service of the second amended complaint to the Board within thirty (30) days. *See* Ill. Adm. Code 101.304.

The respondents' failure to timely file an answer to the second amended complaint may have severe consequences. Generally, if a respondent fails to timely file an answer specifically denying, or asserting insufficient knowledge to form a belief of a material allegation in a complaint, the Board will consider the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). However, if the respondents timely file a motion to strike or dismiss the second amended complaint, the time period for filing an answer will be stayed until the Board disposes of the motion. *See* 35 Ill. Adm. Code 103.204(e). The Board directs the hearing officer to proceed expeditiously to hearing in the manner described in the Board's order of September 17, 2009.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 6, 2013, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board

**CERTIFICATE OF SERVICE**

I, Evan J. McGinley, an Assistant Attorney General, do certify that I caused to be served this 11<sup>th</sup> day of June 2013, the Notice of Acceptance for Filing, Second Amended Complaint and the Pollution Control Board's Order of June 6, 2013 on the persons listed below, by certified mail, and depositing the same with the United States Postal Service at 69 West Randolph Street, Suite 1800, Chicago, Illinois, at or before the hour of 5:00 p.m, (b) Gina Krol, Esq. *via regular mail* as set forth below by placing a true and correct copy in an envelope, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m and (c) Bradley Halloran *via e-mail*.

***Via Certified Mail***

Steven J. Colompos  
Registered Agent  
RB Resolution Properties, LLC  
2221 Camden Court, 1<sup>st</sup> Floor  
Oak Brook, Illinois 60523

Lawrence M. Freedman  
Registered Agent  
Cortland-I-88, LLC  
77 West Washington Street, Suite 1211  
Chicago, Illinois 60602

National Registered Agents, Inc.  
MBC XIV, LLC  
200 West Adams Street, Suite 2007  
Chicago, Illinois 60606

Douglas and Susan Johnson  
1811 West Forestview Drive  
Sycamore, Illinois 60548-2204

***Via Regular Mail***

Gina Krol  
Cohen & Krol  
105 West Monroe Street  
Suite 11100  
Chicago, Illinois 60602

***Via E-Mail***

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
Brad.Halloran@illinois.gov

  
EVAN J. MCGINLEY