

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,) PCB No. 2010-20
) (Enforcement - Water)
vs.)
)
MONTALBANO BUILDERS, INC.,)
an Illinois corporation, FIRST AMERICAN
PROPERTIES, L.L.C., an Illinois limited)
liability company, & MBC XIV, LLC, a
revoked Delaware limited liability company,)
)
Respondents.)

NOTICE OF FILING

TO: Montalbano Builders, Inc.
Anthony P. Montalbano
Registered Agent
1801 S.Meyers Rd. # 500
Oakbrook Terrace, Illinois 60181

First American Properties, L.L.C.
SCN&R Registered Agent, Inc.
233 S.Wacker Drive # 7800
Chicago, Illinois 60606

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

MBC XIV, LLC
Anthony Montalbano, Manager
1801 S. Meyers Road #500
Oakbrook Terrace, Illinois 60181

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

Chicago, Illinois 60601


PLEASE TAKE NOTICE that on August 30, 2011, I filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
ZEMEHERET BERKET-AB
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, IL 60602
(312) 814-3816

DATE: August 30, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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company,)
)
Respondents.)

FIRST 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 First Amended Complaint against Respondents, MONTALBANO BUILDERS, INC., an Illinois corporation, FIRST AMERICAN PROPERTIES, L.L.C., an Illinois limited liability company, and MBC XIV, LLC, a revoked Delaware limited liability company, 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 (2010).

2. The Complaint against First American Properties, L.L.C. and MBC XIV, LLC 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 (2010), 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 First Amended Complaint, Montalbano Builders, Inc. ("Montalbano") operating under the name of Montalbano Homes was engaged in the development of a 378-lot residential subdivision known as Mission Oaks, composed of both single family and duplex homes, and located on the south side of Route 38 East near the intersection of Route 38 and Hahn Drive in Cortland, DeKalb County, Illinois ("Site"). Anthony P. Montalbano is president and registered agent of Montalbano.

5. At all times relevant to the First Amended Complaint, First American Properties, L.L.C. ("First American"), is an Illinois limited liability company which owns a number of parcels at the Site. First American purchased some portions of the property from Montalbano. First American does not hold coverage under the NPDES permit for the portion of the property it owns at the Site. First American has the duty to stabilize its portion of the property in order to prevent silt runoff.

6. At all times relevant to the First Amended Complaint, MBC XIV, LLC ("MBC") is a Delaware limited liability company. MBC purchased some portions of the property at the

Site from Montalbano. MBC does not hold coverage under the NPDES permit for the portion of the property it owns at the Site. MBC has the obligation to stabilize the portion of the Site it purchased in order to prevent silt runoff.

7. A review of the Illinois Secretary of State's record indicates that MBC's status was revoked as of February 11, 2010. The members of MBC are Anthony and Susan Montalbano. Mr. Anthony Montalbano is also President of Montalbano Builders, Inc.

8. On June 19, 2006, Montalbano Homes 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 DeKalb Site, as listed in Montalbano's NOI, is Union Ditch. The stormwater discharges directly to a storm sewer and eventually makes its way into Union Ditch.

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

10. First American Properties and MBC XIV both purchased property at the Site sometime after the original complaint was filed in September 2009. To date, Montalbano's NPDES permit has not been terminated or modified.

11. On May 9, 2008, the DeKalb County Soil and Water Conservation District ("DCSWCD") inspected the DeKalb Site to determine the effectiveness of soil erosion and sediment control measures in preventing water pollution and to review compliance with the 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;

- a 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.

12. 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 from DCSWCD's May 9, 2008 inspection.

13. 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 of the water and sediment that was 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 basin and entering into Union Ditch as evidenced by the visible sediment plume in Union Ditch.

14. On October 9, 2008, the Illinois EPA sent Montalbano a Violation Notice ("VN") pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a)(1) (2010).

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

16. On November 19, 2008, the Illinois EPA conducted a follow-up inspection and observed very little progress towards remedying the violations noted in the previous inspections.

17. 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 VN letter.

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

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

20. 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 (2010).

21. 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.

22. On June 28, 2010, the Illinois EPA conducted an inspection of the Site to determine compliance. The Illinois EPA observed that portions of the Site owned by each of the three entities holding property at the Site had inadequate and improper stabilization. Large portions of the Site remain unstabilized.

23. Montalbano continues to hold the NPDES permit for the entire Site and it is its obligation to ensure compliance with the NPDES permit.

24. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), 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.

25. 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.

26. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

27. Montalbano, First American Properties, and MBC XIV, are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

28. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides as follows:

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

29. Sediment leaving the DeKalb 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.

30. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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.

31. Sediment leaving the DeKalb 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 (2010).

32. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), 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.

33. 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, 415 ILCS 5/3.550 (2010).

34. By allowing disturbed soils to remain unstabilized and failing to implement adequate erosion control measures, Respondents caused, threatened or allowed the discharge of a contaminant into the waters of the State.

35. By causing, threatening or allowing sediment from the Site, a "contaminant," to eventually discharge into Union Ditch, a "water" of the State, Respondents caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against 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) (2010);

3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);

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) (2010), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for each day during which said Respondent continues to be in violation of Section 12(a) of the Act;

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

CREATING A WATER POLLUTION HAZARD

1-31. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 and 26 through 34 of Count I as paragraphs 1 through 31 of this Count II.

32. Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), 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.

33. By failing to implement adequate erosion control for the measures for the graded Site, and by allowing unstabilized soils to remain in areas of the Site prone to runoff to waters of the State, Respondent hereby created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

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

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(d) of the Act, 415 ILCS 5/12(d) (2010);
3. Ordering Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against each Respondent for each violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for each day during which said Respondent continues to be in violation of Section 12(d) of the Act;
5. Ordering Respondents 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 III

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

1-31. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 and 26 through 34 of Count I as paragraphs 1 through 31 of this Count III.

32. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), 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.

33. Part IV.D.2(a) of Montalbano's NPDES General Permit for Storm Water Discharges from Construction Activities (Permit No. ILR10F880) 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."

34. 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. ILR10F880, Part IV.D.2(a).

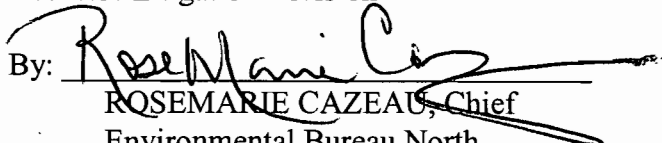
35. By failing to maintain adequate stormwater pollution prevention measures as called for by its coverage under NPDES Permit No. ILR10F880, Montalbano one of the Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

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

1. Authorizing a hearing in this matter at which time Montalbano will be required to answer the allegations herein;
2. Finding that Montalbano has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).
3. Ordering Montalbano to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Montalbano for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).
5. Ordering 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: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

Of Counsel:
ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
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(312) 814-2347 – fax

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 30th day of August 2011, the foregoing Notice of Filing, Complaint, and a Certificate of Service, 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