

ILLINOIS POLLUTION CONTROL BOARD

March 21, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 10-20
)	(Enforcement –Water)
MONTALBANO BUILDERS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

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

On September 8, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), initiated this action by filing a three-count complaint against Montalbano Builders, Inc. (Montalbano). The complaint concerns a residential subdivision 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.

The complaint alleged that poor management of the site during development beginning in 2006 resulted in water pollution, creation of a water pollution hazard, and various violations of Montalbano’s National Pollutant Discharge Elimination System (NPDES) permit, all in violation of the Environmental Protection Act (Act), 415 ILCS 5/1 et seq. (2010) and Board regulations. The Board accepted the complaint for hearing on September 17, 2009.

On August 30, 2011, the People filed a first amended complaint (Am. Comp.) adding two additional respondents: MBC XIV, LLC (MBC) and First American Properties, LLC (First American). The amended complaint alleges that MBC and First American are each the owner of a number of parcels at the site that it purchased from Montalbano, that neither has an NPDES permit for its portion of the site, and that each has the duty to stabilize the portion of the site it purchased to prevent silt runoff. Am. Com. at 2-3. The amended complaint indicated service on each of the newly-added respondents, but no proof of service on them was filed with the Board.

Montalbano’s attorney withdrew his appearance on September 15, 2011. Subsequent to the attorney’s withdrawal, on November 15, 2011, January 26, 2012, and April 16, 2012, the hearing officer conducted status calls, notice of which was addressed only to the People and Anthony Montalbano, and at which only the People’s attorney appeared. Hearing officer reports of these status calls indicate that respondent had filed a bankruptcy petition, and that the People were in contact with the bankruptcy trustee, from which the People had requested additional information. The hearing officer report of a May 26, 2012 status conference stated that the complainant had learned that the site had been sold, and had stated an intent to file an amended complaint once the new owners had been located. No second amended complaint has been filed.

The hearing officer convened status conferences on September 11 and October 24, 2012, at which not even complainant's representative appeared. Notices of these status conferences were served on an additional attorney, who has not formally appeared on behalf of any respondent, but who was identified as a trustee for respondent in the December 6, 2012 hearing order following the November 29, 2012 status conference.

On December 13, 2012, First American filed a motion for extension of time in which to file a motion to dismiss the first amended complaint, stating that it became aware of this action only following its November 29, 2012 receipt of discovery requests. On January 11, 2013, First American filed a motion to dismiss Counts I and II of the amended complaint, pursuant to leave granted by hearing officer order of January 10, 2013. The motion asserts that First American was never served with the amended complaint. In lieu of a response to the motion, on March 1, 2013, the People filed a motion to voluntarily dismiss First American from the amended complaint without prejudice. No reason for dismissal was stated in the motion.

The Board notes that, as the August 30, 2011 amended complaint was not accompanied by a motion for leave to file, the Board has never formally accepted the amended complaint for hearing. The People's motion to voluntarily dismiss First American from the amended complaint is granted, mooting First American's motion.

But, the Board will not accept the August 30, 2011 amended complaint for hearing without proof of its service on MBC XIV, LLC. The People are free to move to withdraw the 2011 complaint if they so choose. Additionally, should the People wish to file another amended complaint, the Board advises them to file a motion for leave to file, and proof of service of the complaint on any respondents in addition to Montalbano.

Finally, the caption on this order lists the only current parties to this action: the People and Montalbano Builders, Inc.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 21, 2013 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board