

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 mooting 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.

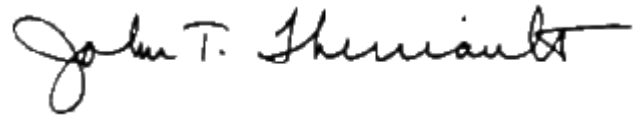
DISCUSSION

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.



John Therriault, Assistant Clerk
Illinois Pollution Control Board