

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.)	PCB No. 2023-060
)	(Enforcement)
LEXINGTON TRACE BY)	
LEXINGTON HOMES,)	
)	
Respondent.)	

NOTICE OF FILING

To: *SEE ATTACHED SERVICE LIST*

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **Respondent's Motion to Dismiss with Prejudice**, a copy of which is herewith served upon you.

Date: September 29, 2023

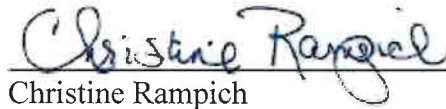
By: /s/ Jason M. Metnick
One of the attorneys for the Respondent,
LEXINGTON TRACE LLC

Jason M. Metnick
MELTZER, PURTILL & STELLE LLC
125 S. Wacker Drive, Suite 2900
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AFFIDAVIT OF SERVICE by Non-Attorney
(BY EMAIL & US MAIL)

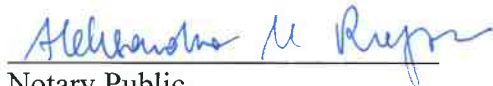
I, the undersigned, on affirmation state that I have served on the date of September 29, 2023, the attached **Respondent's Motion to Dismiss with Prejudice**, upon the following persons **[X] by email**, to the address listed below, from my email address (crampich@mpslaw.com) and computer located at 125 S. Wacker Drive, Suite 2900, Chicago, IL 60606; and/or **[X] by US Mail** by depositing the document(s) in a U.S. Postal Service mailbox located at 125 S. Wacker Drive, Chicago, IL 60606, by or before 5:00 p.m., with proper postage or delivery charges prepaid.

Paul Christian Pratapas
1330 E. Chicago, #110
Naperville, IL 60540
paulpratapas@gmail.com


Christine Rampich

SUBSCRIBED AND SWORN TO BEFORE ME

this 29th day of September, 2023.


Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,)	
)	
Complainant,)	
)	
v.)	PCB 2023-060
)	
Lexington Trace LLC,)	
)	
Respondent,)	

RESPONDENT’S MOTION TO DISMISS WITH PREJUDICE

Lexington Trace LLC (“Respondent”), by and through its attorneys, Meltzer, Purtill & Stelle LLC, hereby moves the Board to dismiss this proceeding with prejudice. In support hereof, Respondent states as follows:

Legal Background

1. On November 18, 2022, Paul Christian Pratapas (“Complainant”) filed his initial Complaint (the “Complaint”) alleging that Respondent violated 415 ILCS 5.12(a), 415 ILCS 5.12(d) and 35 Ill. Admin. Code § 304.141(b).

2. On June 6, 2023, the Board granted Respondent’s motion not to accept the Complaint for failure to serve, and reserved ruling on Respondent’s bases raised to dismiss the Complaint for frivolousness.

3. On June 27, 2023 and July 7, 2023, Complainant filed a proof of service of the Complaint.

4. On August 3, 2023, the Board struck certain requests for relief in the Complaint and directed Complainant to amend the Complaint for specificity in several respects, by no later than September 5, 2023 or face dismissal of the Complaint. *See* Order dated Aug. 3, 2023, attached as Ex. A.

5. On August 29, 2023, Complainant filed two motions to amend his Complaint: Complainant's Motion to Amend Formal Complaint, and Complainant's 2nd Motion to Amend Formal Complaint (collectively, the "Motions to Amend"). The Motions to Amend are attached as Group Ex. B.

6. Complainant has failed to amend the Complaint as ordered by the Board. Therefore, the operative pleading in this proceeding is a defective frivolous complaint.

7. Consequently, the Board should dismiss this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Admin. Code 101.800(a) & (b)(4).

Argument

8. Complainant has failed to file an amended complaint by the deadline ordered by the Board. Even if the Complainant's Motions to Amend were treated as if they were amended complaints (which they are not), the proposed partial amendments fail to correct any of the defects cited by the Board in dismissing the original Complaint.

9. The Board's procedural rules require complaints to include, among other things, "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). Complainant has repeatedly failed to provide these facts, and as a result, this matter should be dismissed with prejudice.

I. Complainant Failed to File a Timely Amended Complaint.

10. The Board can dismiss the Complaint due to Complainant's failure to file an amended complaint by September 5, 2023.

11. On August 3, 2023, the Board found that the Complaint failed to meet the pleading requirements and accordingly did not accept the Complaint for hearing. Complainant had until

September 5, 2023, “to amend his complaint as to the specificity of the violations, or face dismissal of the complaint.” *See* Order dated August 3, 2023.

12. Complainant did not file an amended complaint. Instead, on August 28, 2023, Complainant filed two Motions to Amend Formal Complaint. *See* Ex. B. Both of the Motions to Amend contain the same photographs and diagram that were attached to the initial Complaint. The only difference between the two Motions to Amend is that the second Motion to Amend corrected the labeling of photographs. *See id.*

13. The materials attached to the Motions to Amend are substantively the same.

14. Complainant’s filing of the Motions to Amend make no difference with respect to the Complaint. The only complaint on file is the complaint filed on November 18, 2022. Respondent is not required to guess which allegations remain, which are amended, and how the full complaint should be pieced together, as Respondent has failed to file a consolidated, coherent amended Complaint.

15. There was no need for Complainant to seek leave to file an amended complaint, as the Board already granted such relief in its order dated August 3, 2023. To the extent any additional request to amend is pending before the Board, it should be denied as moot.

16. Because Complainant failed to file an amended complaint by September 5, 2023, this matter should be dismissed with prejudice.

II. The Proposed Amendments Fail to State A Claim Upon Which Relief Can Be Granted.

17. Even if Respondent could somehow parse together an amended complaint with the proposed exhibits to the Motions to Amend, the proposed amendments are factually deficient, requiring dismissal with prejudice.

18. When the Board declined to accept the Complaint, it found that “[t]he complaint

does not provide the location of the violation(s).” In addition, the Board found that “the complaint lacks any details describing the location, extent, duration or strength of the alleged violations and only cites general violations, such as toxic concrete washout and sediment laden water in the street and inlets.” Further, “[t]he complaint does not specify what applicable federal or state water quality standard for a pollutant was violated.” *See* Order dated August 3, 2023, attached as Ex. A.

19. The proposed amendment materials attached the Motions to Amend fail to correct any of the deficiencies previously identified by the Boards, which render the Complaint fatally defective. The text next to the photos in the amendment materials attached to the Motions to Amend still lack any details describing the location, extent, duration or strength of the alleged violations. Nor do the proposed amendment materials state what applicable federal or state water quality standard for a pollutant was violated. These uncorrected defects require this matter to be dismissed with prejudice.

20. There are even more uncorrected defects. The Board previously found that:

The complaint does not include specific facts that allege the release of a contaminant into the environment so as to cause or tend to cause the pollution of a water of the State of Illinois. Rather, the complaint makes conclusory statements and guesses that wetlands are affected by construction activity. The complaint also fails to provide any location of the violations alleged in these conclusory statements. Finally, because it does not give the location of the alleged pollution or describe how respondent is or was affiliated with the activity described, the complaint fails to state a cause of action against respondent on which the Board can grant relief.

Ex. A, Order dated Aug. 3, 2023, at p. 5.

21. The proposed amendment materials lack specific facts that allege the release of a contaminant into the environment that would tend to cause the pollution of a water of the State of Illinois. As with the original complaint, the proposed amendment materials make conclusory statements and guesses that “a wetland area” is affected but fails to provide any support that a

water of the State of Illinois is affected.

22. Lastly, the proposed amendments again fail to identify the location of the alleged pollution and fails to describe how Respondent was affiliated with the alleged polluting activity. Instead, the proposed amendment materials variably rely upon “assumed pollutants,” unidentified “sites,” unspecified “structures,” none of which are connected to Respondent. Complainant has not, and apparently cannot, state sufficient facts to state an actionable cause of action against Respondent.

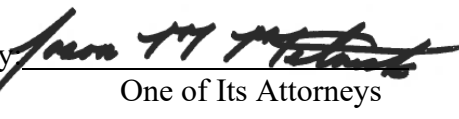
23. The Board has already dismissed the Complaint as frivolous and given Complainant ample opportunity to file an amended Complaint. The Complainant has not set forth sufficient facts to state a viable complaint against Respondent. As a result, this matter should be dismissed with prejudice.

Conclusion

24. Complainant failed to timely file an amended complaint, and therefore, the Board should dismiss this case and close the docket. Even if the Board were to consider the proposed amendments attached to the Motions to Amend, such material fail to correct the prior deficiencies identified by the Board. The Board should accordingly declare the Complaint frivolous, decline to accept the Complaint for Hearing, and enter an order dismissing this matter in its entirety with prejudice. 35 Ill. Adm. Code 103.212(b).

Date: September 29, 2023

LEXINGTON TRACE LLC

By 
One of Its Attorneys

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ILLINOIS POLLUTION CONTROL BOARD

August 3, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-60
) (Citizens Enforcement - Water)
 LEXINGTON TRACE LLC,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Van Wie):

On November 18, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen's complaint (Comp.) against Lexington Trace by Lexington Homes, whose proper name is Lexington Trace LLC (Lexington). The complaint concerns Lexington's residential construction project located at 3S490 Barkley Avenue in Warrenville, DuPage County. Lexington has filed a motion to dismiss this complaint (Mot. to Dis.).

The Board first addresses the procedural background of this matter, including the issue of service on Lexington. The Board then addresses Lexington's pending motion to dismiss the complaint on the grounds of frivolousness. The Board grants Lexington's motion to dismiss for frivolousness, in part, but gives Mr. Pratapas time to amend his complaint or face dismissal of the complaint; and strikes three of Mr. Pratapas' requests for relief.

PROCEDURAL BACKGROUND

On January 6, 2023, Lexington filed a motion for rule to file out of time and extension of time to file motion to dismiss the complaint (Mot. for Ext.). On January 23, 2023, Lexington filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint on Lexington, and a motion to dismiss the complaint for frivolousness. Mr. Pratapas did not file a response to the motions.

On June 1, 2023, the Board granted Lexington's motion for rule to file out of time and extension but directed Mr. Pratapas to file the required proof of service of the complaint on Lexington no later than July 3, 2023, or face dismissal of the complaint for failure to properly serve. *See* 35 Ill. Adm. Code 101.304(c), (d); *see also* 35 Ill. Adm. Code 103.204(a). The Board reserved ruling on Lexington's motion to dismiss until and unless service of the complaint was perfected.

On June 27, 2023, Mr. Pratapas filed a certified mail receipt accompanied by the original Notice of Filing of this complaint and a Certificate of Service indicating that he sent the complaint to Lexington's registered agent via certified mail on June 26, 2023 (Cert. Serv.). On



July 7, 2023, Mr. Pratapas filed the signed certified mail return receipt indicating that Lexington's registered agent received the mailing on June 29, 2023 (Cert. Rec.).

The Board finds that Mr. Pratapas timely filed the required proof of service of the complaint on Lexington. *See* 35 Ill. Adm. Code 101.304(d). Because service has been corrected, the Board now turns to Lexington's pending motion to dismiss for frivolousness.

LEXINGTON'S MOTION TO DISMISS FOR FRIVOLOUSNESS

Lexington motions to dismiss the complaint on the grounds that the complaint is frivolous because it fails to state a cause of action upon which relief can be granted. Mot. to Dis. at 2. Lexington first argues that the complaint's allegations are conclusory and do not include specific facts relating to the location, events, nature, extent, duration, and strength of the alleged pollution are not adequately plead in the complaint. Mot. to Dis. at 5-6. Lexington further asserts that the photographs attached to the complaint actually show clear evidence of protected pretreatment basins and controlled concrete washout area in an enclosed contaminant area with no free-flowing sediment or sediment laden water. *Id.* at 6. Lexington continues that the consequences of the pollution alleged in the complaint are not well-plead because they are not supported by relevant factual statements and/or are outside the Board's jurisdiction. *Id.* at 6-7. Lexington also argues that requests for relief numbered 3, 4, 6 and 7 should be stricken as frivolous because they request relief that the Board does not have the authority to grant. *Id.* at 7.

Next, Lexington argues that the complaint fails to allege water pollution as defined under the Illinois Environmental Protection Act (Act) (415 ILCS 5 (2022)) because the complaint contains no allegation that any contaminant or pollutant was discharged into waters of the State or into a well. Mot. to Dis. at 8 (citing 35 Ill. Adm. Code 309.102(a)). Lexington argues the complaint is frivolous because it fails to identify a water of the State of Illinois that was or will be impacted or threatened by pollution by Lexington's acts or omissions. *Id.* at 9.

Lastly, Lexington argues that the complaint alleges wholly past violations of the federal Clean Water Act (CWA) (33 U.S.C. 1251, et seq.). Mot. to Dis. at 10. Because Section 12(a) of the Act addresses water pollution identical to provisions of the federal CWA, Lexington argues that Mr. Pratapas has no standing to bring a complaint for relief that address wholly past violations of the CWA per U.S. Supreme Court ruling and the Board's regulations. *Id.* (citing Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc., 484 U.S. 49 (1987); *see also*, 35 Ill. Adm. Code 103.204(c)(1)). Lexington argues that it is consistent with the Board regulations and Board precedent to not allow a citizen to maintain an action for wholly past violations. Mot. to Dis. at 11 (citing, e.g., Modine Mfg. Co v. Pollution Control Bd., 193 Ill. App. 643, 648 (2d. Dist. 1990); Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC, PCB 2011-002 (July 15, 2010); Shelton v. Crown, PCB 96-53 (Oct. 2, 1997); *see also*, 35 Ill. Adm. Code 103.204(c)(1)).

DISCUSSION

Under 415 ILCS 5/31(d)(1) (2022), the Board will dismiss complaints that are frivolous. "Frivolous" is defined in the Board's rules as, "any request for relief that the Board does not

have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202(b). The Board’s procedural rules require complaints to include “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations.” 35 Ill. Adm. Code 103.204(c)(2).

In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 438, 546 N.E.2d 580, 584 (1989). “To determine whether a cause of action has been stated, the entire pleading must be considered.” *LaSalle National Trust N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557, 616 N.E.2d 1297, 1303 (2nd Dist. 1993), citing *A, C & S*, 131 Ill. 2d at 438 (“the whole complaint must be considered, rather than taking a myopic view of a disconnected part[.]” *A, C & S*, quoting *People ex rel. William J. Scott v. College Hills Corp.*, 91 Ill. 2d 138, 145, 435 N.E.2d 463, 466-67 (1982)).

“[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.” *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 584-85, 802 N.E.2d 250, 254 (2003); *see also Chicago Flood*, 176 Ill. 2d at 189, 680 N.E.2d at 270 (“[T]he trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party.”); *People v. Peabody Coal Co.*, PCB 99-134, slip op. at 1-2 (June 20, 2002); *People v. Stein Steel Mills Services, Inc.*, PCB 02-1, slip op. at 1 (Nov. 15, 2001).

Lexington seeks to dismiss the complaint for frivolousness. The complaint alleges that Lexington “is building a new neighborhood of multi-family housing without adequate and required BMPs”. Comp. at 1. Mr. Pratapas states that he photographed the alleged violations on or around April 21 and 24, 2022, and attached photographs of what appear to be construction site(s) to the complaint. Comp. at 3, 11-24. The complaint does not provide the location of the violation(s).

The complaint alleges that Section 12(a) and (d) of the Act (415 ILCS 5/12 (a), (d) (2022)) and Section 304.141(b) of the Board’s regulations were violated (35 Ill. Adm. Code 304.141(b)). *Id.* at 3. Section 12(a) provides in its entirety that no person shall “[c]ause 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.” 415 ILCS 5/12(a) (2022). Section 12(d) provides in its entirety that no person shall “[d]eposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.” 415 ILCS 5/12(d) (2022). Section 304.141(b) of the Board’s regulations provides in its entirety that:

No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the CWA or the Act,

unless limitation for such a pollutant has been set forth in an applicable NPDES Permit. However, the Agency may, by permit condition, provide that the permittee may discharge pollutants present in its water supply intake sources in concentrations not greater than the concentrations in the intake sources, or which are added in trace amounts by normal domestic water usage.

35 Ill. Adm. Code 304.141(b).

However, as described above, the complaint lacks any details describing the location, extent, duration or strength of the alleged violations and only cites general violations, such as toxic concrete washout and sediment laden water in the street and inlets. *Id.* The complaint states that the site of the pollution has a “special management area [complainant] believe[s] to be a wetland”. *Id.* Regarding the negative effects of the alleged pollution, the complaint states that these are “widely documented and part of the reason for the NPDES permit program”, that there is likely fraud involving inspection reports and contractor certifications, and that this poses a risk to Canadian Geese using the area during migration. *Id.* The complaint does not specify what applicable federal or state water quality standard for a pollutant was violated.

In his complaint, Mr. Pratapas requests that the Board grant the following relief:

1. Find that Lexington violated its permit;
2. Assess a civil penalty of \$50,000 against Lexington for each violation of the Act and Regulations and an additional civil penalty of \$10,000 per day for each day of each violation;
3. Investigate into fraudulent inspection reports and contractor certifications;
4. Void permits for the site until such time as the builder ceases to pollute the surrounding groundwater and surface water and any SWPPP deficiencies related to signage, certifications, inspections, and designated concrete washout area design/implementation are fixed;
5. Issue an order stating SWPPP plan(s) for sediment BMPs and concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual;
6. Prohibit the permitting of additional sites for Lexington until all deficiencies identified above and in pictures are addressed and corrected and a new contractor hired for inspections; and
7. Make recommendations for criminal charges.

Comp. at 4.

The Board has broad statutory authority to grant relief. Of the relief requested here, the Act gives the Board authority to find a violation of the Act. 35 Ill. Adm. Code 101.106(b); *see* 415 ILCS 5/33 (2022). Section 42(a) of the Act gives the Board authority to impose civil penalties for violations of the Act and Board regulations. 415 ILCS 5/42(a) (2022). The Board after finding a violation can order a respondent to develop and implement an abatement plan. *See, e.g., Gill v. CHS, Inc. – Carrollton Farmers Elevator*, PCB 16-68, slip op. at 3 (Jan. 21, 2016), citing *McDonagh and Fishbaum v. Michelin*, PCB 08-76, slip op. at 4 (July 10, 2008);

Pawlowski v. Johansen and Quinley, individually and d/b/a Benchwarmers Pub, Inc., PCB 99-82 (Apr. 4, 2000 and Sept. 21, 2000). If the complainant proves a violation, the Board can consider these requests for mitigation as an element of abatement under Section 33. *See* 415 ILCS 5/33 (2022). In the event of finding a violation of the Act or Board regulations, the Board has the authority to grant items 1, 2 and 5 of the requested relief.

The Board does not have the authority to investigate fraudulent SWPPP inspection reports and contractor certifications. *See* 35 Ill. Adm. Code 101.106(b). The Board also does not have the authority to issue injunctions or to void permits. *See generally*, 415 ILCS 5/33(b) (2022). The Board is also not authorized to make recommendations for criminal charges. *See* 35 Ill. Adm. Code 101.206(b). The Board therefore lacks the authority to grant the relief requested in items 3, 4, 6, and 7. The Board strikes these requests for relief as frivolous. 35 Ill. Adm. Code 101.202.

The Board finds that the complaint fails to meet the pleading requirements and does not accept the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c). The complaint does not include specific facts that allege the release of a contaminant into the environment so as to cause or tend to cause the pollution of a water of the State of Illinois. Rather, the complaint makes conclusory statements and guesses that wetlands are affected by construction activity. The complaint also fails to provide any location of the violations alleged in these conclusory statements. Finally, because it does not give the location of the alleged pollution or describe how respondent is or was affiliated with the activity described, the complaint fails to state a cause of action against respondent on which the Board can grant relief. 35 Ill. Adm. Code 101.202(b); 35 Ill. Adm. Code 103.204(c)(2). The Board gives Mr. Pratapas until September 5, 2023, the first business day after 30 days from the date of this order, to amend his complaint as to the specificity of the violations, or face dismissal of the complaint.

ORDER

1. The Board grants Lexington's motion to dismiss for frivolousness as it relates to requests for relief numbered 3, 4, 6 and 7, and strikes these requests for relief.
2. The Board directs Mr. Pratapas to amend his complaint for specificity no later than September 5, 2023, or face dismissal of the complaint.

IT IS SO ORDERED.

Board Member M.D. Mankowski abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 3, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

Paul Christian Pratapas

Complainant

v

Lexington Trace, LLC

Respondent

COMPLAINANTS MOTION TO AMEND FORMAL COMPLAINT

Whereas on 08/03/2023 The Board ordered Complainant to amend the Formal Complaint to include specifics about alleged violations by Respondent, Lexington Trace, LLC at their development known commercially as "Lexington Trace". The development site was without required signage listing permit information.

Complainant requests The Board to amend Formal Complaint and consider the following specifics as seen in the photographic evidence initially filed 11/18/2020:

 08-28-2023

Paul Christian Pratapas
1779 Kirby Parkway, Ste 1, #92
Memphis, TN 38138
630.210.1637



Exhibit A



Pollutants are not controlled. The downslope curb is cut out and without protection. Trash and sediment are free to enter the street.

Exhibit B



Sediment laden water carried from street and site indicating pollutants are not controlled, the SWPPP required updating and curbside protection is likely needed

Exhibit C



Sediment laden water discharged into a wetland area which did not have the protections listed in SWPPP which were part of permit approval. Pollutants are not controlled and the failures of active BMPs were not being recorded in SWPPP corrective action reports.

Exhibit D



This was the curb beside of a multifamily home being constructed. Per the engineering plans viewed by Complainant, this type of building would have a stabilized area where the parking area will be from which vehicles work from to avoid getting sediment in the street. This area would have three inch stone to remove sediment from vehicle tires. This minimizes pollutants from becoming uncontrolled and entering the street. Instead, respondent installed a ramp for concrete trucks to enter resulting in maximum soil disturbance, transfer and travel. These trucks would then pull forward and wash their shoots into the curbside inlet. Significant amounts of sediment have entered the street as a result

Exhibit E



Concrete washout in tire tracks where the concrete trucks were entering the site via the ramp.

Exhibit F



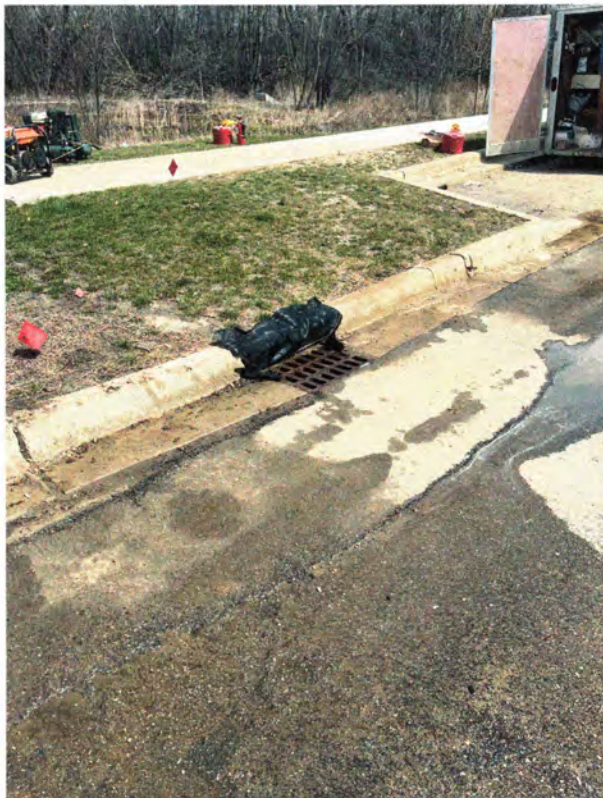
Ozynga Concrete washing their truck shoot directly into the curbside inlet. This is adjacent to what the SWPPP listed as a protected wetland

Exhibit F



After the truck in Exhibit E drove away.

Exhibit G



Closer look of curbside inlet in Exhibit F. The area listed in the SWPPP as a protected wetland can be seen in background.

Exhibit H



Pollutants continue to be uncontrolled even after initial informal complaint and corrective actions. The orange fence along the protected wetland is in the background indicating when the photo was taken. The waddles are not working and again a cut out curb was installed without any BMPs. There is a structure seen discharging water from around the site into the retention area which contains sediment laden water.

Exhibit F



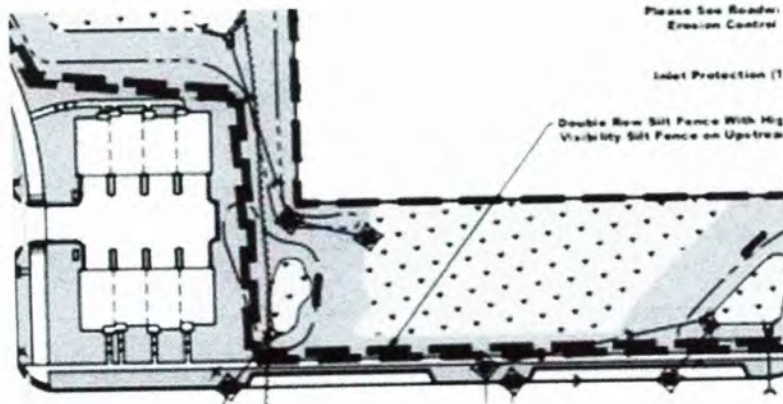
Another structure on site discharging sediment laden water from inlets around the site indicating pollutants are not controlled.

Exhibit G



Sediment accumulation around inlet. Blocking inlets with filter fabric is not an approved BMP, causes flooding and this development was partially occupied and indicates permit holder is unable to control pollutants

Exhibit H



Screen grab from SWPPP as approved showing where the BMPs were supposed to be which were never installed. Also shows the building next to the ramp with the central parking area.

Paul Christian Pratapas

Complainant

v

Lexington Trace, LLC

Respondent

COMPLAINANTS 2nd MOTION TO AMEND FORMAL COMPLAINT

Whereas on 08/03/2023 The Board ordered Complainant to amend the Formal Complaint to include specifics about alleged violations by Respondent, Lexington Trace, LLC at their development known commercially as "Lexington Trace". The development site was without required signage listing permit information.

Complainant requests The Board to amend Formal Complaint and consider the following specifics as seen in the photographic evidence initially filed 11/18/2020:



Paul Christian Pratapas
1779 Kirby Parkway, Ste 1, #92
Memphis, TN 38138
630.210.1637

Exhibit A



Pollutants are not controlled. The downslope curb is cut out and without protection. Trash and sediment are free to enter the street.

Exhibit B



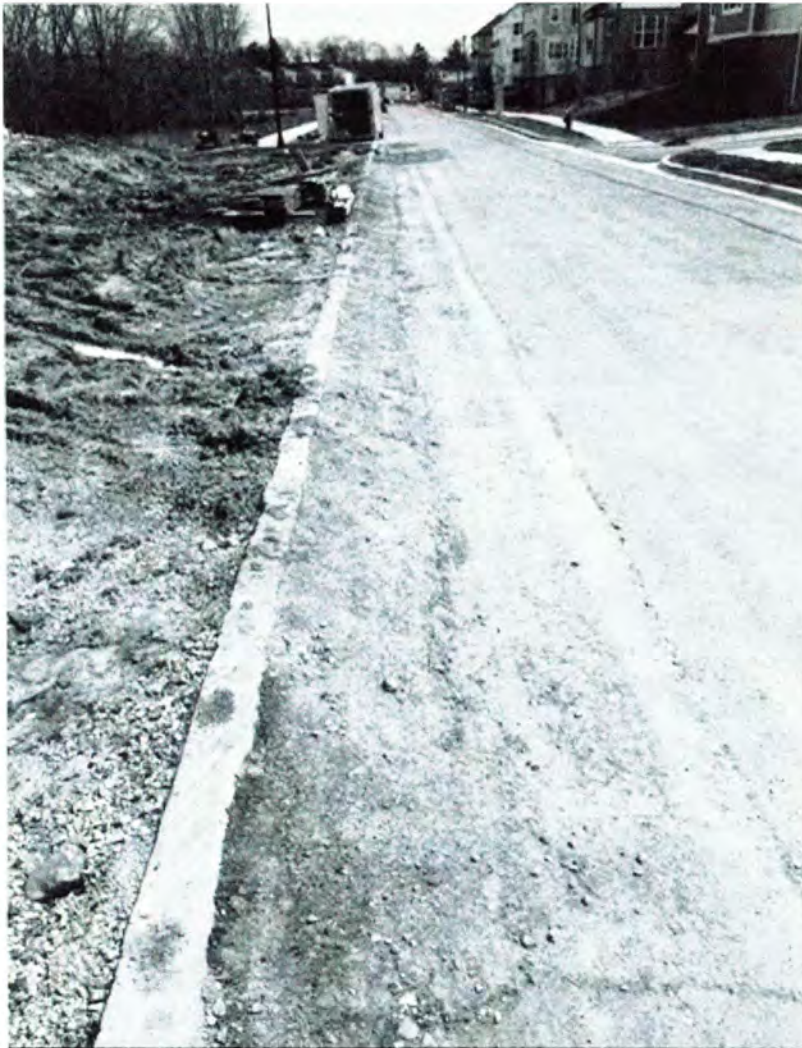
Sediment laden water carried from street and site indicating pollutants are not controlled, the SWPPP required updating and curbside protection is likely needed

Exhibit C



Sediment laden water discharged into a wetland area which did not have the protections listed in SWPPP which were part of permit approval. Pollutants are not controlled and the failures of active BMPs were not being recorded in SWPPP corrective action reports.

Exhibit D



This was the curb beside of a multifamily home being constructed. Per the engineering plans viewed by Complainant, this type of building would have a stabilized area where the parking area will be from which vehicles work from to avoid getting sediment in the street. This area would have three inch stone to remove sediment from vehicle tires. This minimizes pollutants from becoming uncontrolled and entering the street. Instead, respondent installed a ramp for concrete trucks to enter resulting in maximum soil disturbance, transfer and travel. These trucks would then pull forward and wash their shoots into the curbside inlet. Significant amounts of sediment have entered the street as a result

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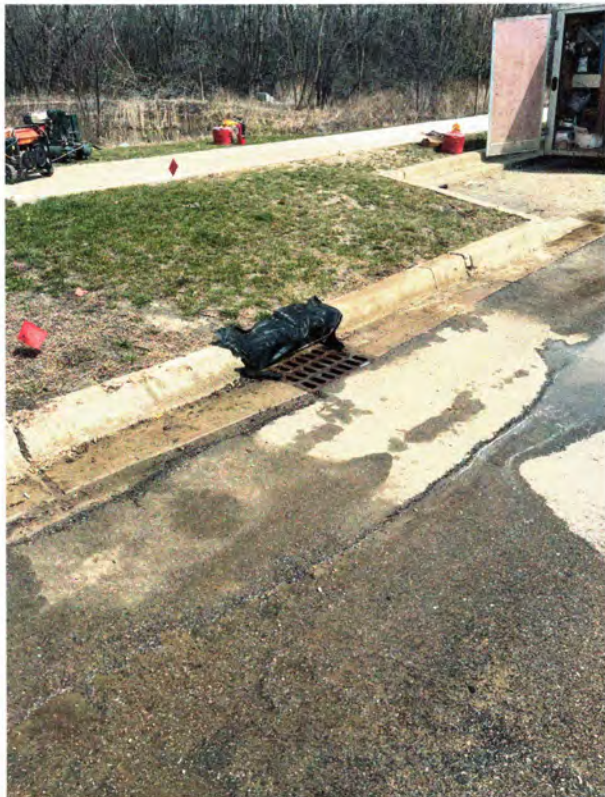
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After the truck in Exhibit F drove away.

Exhibit H



Closer look of curbside inlet in Exhibit G. The area listed in the SWPPP as a protected wetland can be seen in background.

Exhibit I



Pollutants continue to be uncontrolled even after initial informal complaint and corrective actions. The orange fence along the protected wetland is in the background indicating when the photo was taken. The waddles are not working and again a cut out curb was installed without any BMPs. There is a structure seen discharging water from around the site into the retention area which contains sediment laden water.

Exhibit J



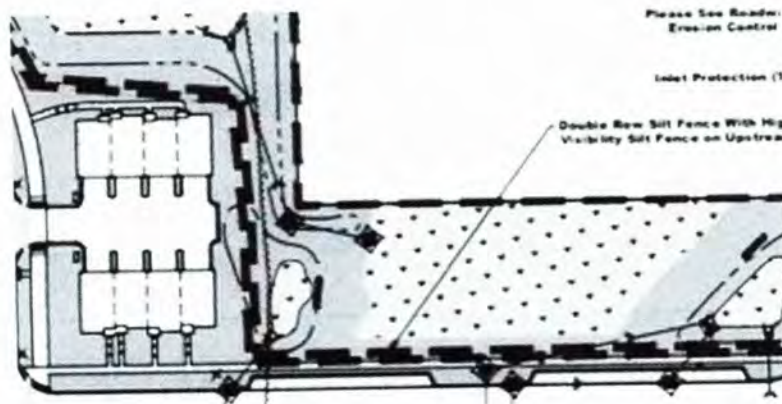
Another structure on site discharging sediment laden water from inlets around the site indicating pollutants are not controlled.

Exhibit K



Sediment accumulation around inlet. Blocking inlets with filter fabric is not an approved BMP, causes flooding and this development was partially occupied and indicates permit holder is unable to control pollutants

Exhibit L



Screen grab from SWPPP as approved showing where the BMPs were supposed to be which were never installed. Also shows the building next to the ramp with the central parking area.

It can be assumed pollutants at the site were uncontrolled from the beginning of construction through the date the last picture was taken. The conversations I had with the superintendent and compliance manager indicated they had little to no understanding of their SWPPP responsibilities. The day I viewed the SWPPP, the aforementioned individuals began following me around the site and making threats for if I didn't leave. So, a full understanding of the impacts, intensity, duration etc. of the pollution can only be done in conjunction with an evaluation of the SWPPP book. However, pollutants traveled freely and penetrated all of the water retention areas with each rainfall, including the wetland. BMPs Respondent indicated they would use in their permit application were missing throughout the site.