

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS	)	
	)	
Complainant,	)	
	)	PCB No. 2023-014
v.	)	(Enforcement)
	)	
HORIZON CONSTRUCTION	)	
GROUP, INC.	)	
	)	
Respondent.	)	

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**RESPONDENT'S BRIEF IN OPPOSITION TO COMPLAINANT'S  
MOTION TO AMEND THE COMPLAINT**

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Respondent, Horizon Construction Group, Inc., by and through counsel, provides the following Brief in Opposition to the Complainant's Motion to Amend the Complaint.

**FACTS AND BACKGROUND**

This dispute involves stormwater compliance allegations at the Springs at Lily Cache Creek, a former residential construction site located at NWC Lily Cache Lane and Veterans Parkways in the Village of Bolingbrook, Will County, Illinois ("Project"). The Project started in June 2021 and construction was completed and stabilization occurred on June 16, 2023. *See*, Exhibit A, Affidavit of David Beane, ¶ 2. Mr. Beane is the Field Superintendent of the Springs at Lily Cache. *Id.*, ¶ 1, and the Affidavit and associated photographic Exhibits A-H are attached hereto and incorporated herein by reference. All areas of the Project site have been stabilized with sod and landscaping. *Id.*, ¶ 5. The Project submitted the Notice of Termination ("NOT") for the General Permit to Discharge Storm Water Associated with Construction Site Activities ILR10ZAKV on June 20, 2023. The NOT is attached hereto and incorporated herein by reference

as Exhibit B. Mr. Beane's Affidavit contains numerous photos showing the Project's current status. These photos show a fully complete, landscaped, and stabilized Project now occupied by apartment complex residents. Exhibit A, ¶ 4.

During the construction phase, the Project received substantial government inspections and oversight. For example, on June 23, 2022, during the time of construction and at the time the Complaint was filed, the Will/South Cook Soil and Water Conservation District inspected the site through a cooperative enforcement agreement with the Illinois Environmental Protection Agency ("IEPA"). Following that inspection, the Will/South Cook SWCD found that the site and related documentation are in compliance with applicable requirements. The letter dated June 24, 2022, by the Will/South Cook Soil and Water Conservation District confirming site compliance is attached hereto and incorporated herein by reference as Exhibit C.

Despite the indisputable fact that the Project is complete and has been found in compliance with applicable requirements by the relevant governmental agency, the Complainant persists in asserting that there are ongoing violations of stormwater pollution prevention requirements at the site. He has no basis to make those claims, and no evidence to back them up.

As explained below, Respondent filed Interrogatories and Requests for Admission seeking to discover the exact basis for Petitioner's contentions. The Complainant defaulted on his obligation to respond to these discovery requests and is now bound by the various admission statements. He has refused to share any specific proof he may have of his contentions and instead falls back on vague, conclusory assertions without any evidentiary backup. He has ignored the subsequent actions by responsible governmental bodies to deem the Project complete and compliant, which totally refutes his claims.

The Complainant repeatedly failed to comply with his discovery disclosure obligations within the deadlines in the Hearing Order issued February 24, 2023, and did not attempt to request new deadlines. His defaults include failure to disclose lay and expert witnesses and submit expert reports. As indicated above, as required in the Hearing Order, he also never responded to Interrogatories and Requests for Admissions within 28 days of service (*i.e.*, by May 26, 2023). Under Illinois Supreme Court Rule 216(c), failure to respond means the Requests for Admission are deemed to be admitted in the absence of denial. Thus, each of the matters of fact contained in the Requests for Admission is admitted for all purposes in this case.

He failed to appear at three separate status conferences scheduled by the Hearing Officer without explanation or even an apology. Now, the Complainant attempts to rescue his case by seeking to amend his Complaint yet again. As explained herein, the case is now moot, because the Project is complete and certified as in compliance by the relevant governmental authorities. Even if the requested amendment were still viable – and it is not – his proposed amended Complaint remains vague, factually wrong and offers nothing new or useful for the resolution of this dispute. The amendment should be rejected, and the Respondent’s Motion for Dismissal with Prejudice should be granted with sanctions.

It should also be noted that the Complainant filed absolutely no discovery requests of any kind to the Respondent, meaning that he waived his rights to discovery. By failing to make his mandatory disclosures, he has no witnesses, no exhibits, no way to prove his assertions, and ultimately no way to prosecute his claims or meet his burden of proof.

**LEGAL STANDARD**

Title 35 Part 101.500 of the Illinois Administrative Code: Environmental Protection (“IAC”) provides that the Illinois Pollution Control Board (“Board”) may entertain any motion the

parties wish to file that is permissible under the Act or other applicable law. 35 IAC Section 101.100 provides that the Board may look to the Code of Civil Procedure and the Illinois Supreme Court Rules for guidance when the Board's procedural rules are silent.

Under 7 Illinois Compiled Statutes ("ILCS") 5/2-616, before final judgment, a party may move to amend to add a new cause of action which may enable the complainant to sustain the claim for which it was intended to be brought. Illinois courts consider four factors when deciding to allow an amendment to the pleadings: (1) whether the proposed amendment cures the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend could be identified. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. App. 2d 263, 273 (1992). "The party seeking leave to amend bears the burden of demonstrating that all four factors favor the relief requested." *United Conveyor Corp. v. Allstate Insurance Co.*, 2017 IL App (1st) 162314, ¶ 36. The Complainant's Motion does not meet any of the grounds needed to justify granting the Motion, and the Complainant does not meet his burden of demonstrating that any of the four factors favor the relief requested, let alone all four. Instead, the Motion simply reflects the Respondent's oft-stated conclusory arguments highlighted in Respondent's Motion to Dismiss with Prejudice filed on June 21, 2023. Therefore, the Respondent urges the Board to grant the Respondent's Motion to Dismiss with Prejudice.

### **ARGUMENT**

**I. The Complainant's claims are moot. Construction has concluded at the Project and the authorized State and County agencies did not pursue enforcement.**

As expressed in the Facts and Background section above, the construction has concluded at the Project site, and residents now occupy the apartments. During construction, Will/South Cook

Soil and Water Conservation District and the IEPA deemed the Project site and related documentation in compliance and took no enforcement action against the Project.

The Project submitted the NOT for the General Permit to Discharge Storm Water Associated with Construction Site Activities. Therefore, the alleged water pollution claims, and SWPPP plan access issues are now moot. Additionally, by submitting the NOT and stabilizing the site, the developer's SWPPP responsibilities are finished and the SWPPP is no longer an active document. As a result, there is no ongoing work or Respondent obligation that the Complaint can allege is being violated. There is no current or ongoing violation. Construction has finished at the Project, the stormwater construction permit termination request has been accepted, and the site is now a fully stabilized apartment complex occupied by residents. Therefore, no additional amendment to the Complaint is necessary or proper, meaning the Complainant's Motion fails factor one from *Loyola Academy*.

**II. The Motion to Amend Formal Complaint should be rejected because it does not offer substantive changes to previous factual assertions or assert new legal arguments.**

Addressing the third and fourth factors in *Loyola Academy*, this is the Complainant's third attempt to modify the Complaint. His requested amendment offers no substantive changes to his factual assertions and offers no new legal arguments. In granting the Complainant's first motion to amend on October 20, 2022, to reflect state law claims – which he had not pleaded in his original Complaint – the Board provided adequate recourse to the Complainant. Granting an additional amendment is neither necessary to reflect his claims nor warranted.

Complainant does not raise any new claims or add any relevant facts to what he has plead previously. Additionally, a year and nearly three months have passed since the initial Complaint was filed on July 15, 2022, which the Board ruled in part as frivolous before allowing the Complainant the opportunity to amend.

The matter is now well beyond the early pleading stage. The Complainant's motion for yet another amendment does not allege any new or additional facts to support his assertions and does not add any new counts to address arguments made in the Respondent's Motion to Dismiss or Respondent's Reply Memorandum in Support of Motion for Dismissal for Want of Prosecution, filed on July 21, 2023.

In the Complainant's Motion to Amend Formal Complaint, the requested amendment merely copied and pasted language from the National Pollution Discharge Elimination System ("NPDES") Permit ILR10 Illinois Construction General Permit under the heading "Violations of NPDES Permit ILR10 Illinois Construction General Permit." This section of the Complainant's Motion does not contain any additional or original statements or violations.

The only allegations in the Complainant's Motion to Amend Formal Complaint are vague and unsubstantiated references to the First Amendment to the U.S. Constitution.<sup>1</sup> These references completely ignore the undisputed fact that the Respondent is not a government entity to which the First Amendment even applies. Therefore, the assertion of a First Amendment claim lacks any semblance of support or relevancy to this matter. In the conclusion of the Motion to Amend Formal Complaint, the Complainant alleges "Additional Facts," none of which are new to his previous claims, and none are raised for the first time. These "Additional Facts" are completely irrelevant. By denying the Complainant's Motion, the Board does not risk prejudice against the Complainant, meaning the second *Loyola Academy* factor is not satisfied by the Complainant either.

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<sup>1</sup> The First Amendment to the U.S. Constitution reads in its entirety, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." It is utterly silent on the procedures that the State of Illinois may adopt to govern the issuance and administration of the stormwater construction program, and Petitioner utterly fails to make any connection between the State's regulatory scheme and a First Amendment violation.

**III. None of the “Additional Facts” asserted in the Complainant’s Motion to Amend Formal Compliant are new and none offer any grounds for continuing the dispute.**

The “Additional Facts” in the Complainant’s Motion include the following assertions, with our commentary below:

- (a) “The Complainant established residency in Tennessee as required to work in the Shelby County Air Pollution Control and must maintain residency in Tennessee while interviewing with the Shelby County Department of Juvenile Correction;”

Response: The Complainant already filed Notices of Change of Address on June 30, 2023. This fact is not in dispute and does not warrant yet another amendment of the Complaint.

- (b) “The permitted site was missing the required signage based on Section 1.5 of the Permit ILR10;”

Response: The Complainant already raised this claim in Allegation 8 of the original Complaint and did not provide any evidence to support this claim. When specifically asked to provide his evidence supporting this claim in the Interrogatories served on April 27, 2023, attached hereto and incorporated herein by reference as Exhibit D, the Complainant never responded. Additionally, in the Requests for Admission, attached hereto and incorporated herein by reference as Exhibit E, the Complainant failed to answer question 20 related to the SWPPP information posted on site.<sup>2</sup> Again, the Complainant defaulted on his obligation to respond; consequently, the Complainant is deemed to have admitted the

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<sup>2</sup> Request for Admission 20 states, “The Complainant does not have photographs or other evidence to support Allegation 8 of the Complaints that alleges ‘there is currently no SWPPP info posted, just a blank board on the trailer which is hidden and dangerous to approach for the elderly, people with disabilities or anyone who doesn’t want to walk through very rough exposed soil.’”

statement. Therefore, the Complainant does not have photographs or other evidence to support that claim.

(c) “The Respondent refused access to the SWPPP book and its contents in presence of a Village of Bolingbrook engineer;”

Response: The Complainant already raised this issue in his previous amended Complaint. Complainant can make no serious argument that he did not have access to the SWPPP document. The SWPPP plan and associated permit have always been available online as a public record. The SWPPP plan and permit exist as a living public record available through searching “Lily Cache” at this link.<sup>3</sup> Moreover, there is no legal or permit requirement for the Respondent to provide the SWPPP inspection book directly to a citizen. The Complainant has always had the ability to access the SWPPP plan and permit, just not at the time and manner he demanded. As noted, access in any event is not mandated by law or permit condition. The SWPPP access issue is also addressed by items 18 and 19 in the Requests for Admission, to which the Complainant did not provide a response.<sup>4</sup> *See*, Exhibit E, hereto. Additionally, the Complainant never answered Question 17 in the

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<sup>3</sup> <https://permitsearch.epa.gov/epermit-search/ui/search>

<sup>4</sup> Request for Admission 18 states: “Complainant was provided instructions about how to access the SWPPP plan at the site and through the online U.S. Environmental Protection Agency maintained database.”

Request for Admission 19 states: “Complainant never attempted to access and as of the date of this request has not attempted to access the SWPPP plan at the site and through the online U.S. Environmental Protection Agency maintained database referenced in the prior Request for Admission.”



Requests for Admission to Compliant.<sup>5</sup> The Complainant did not and cannot cite to legal requirement that the Respondent must show the SWPPP inspection book to the Complainant. By defaulting on his discovery obligations, he has no facts, documents, or witnesses to offer to support his allegations. He fails in his burden of proof. By ignoring his obligations to respond to proper discovery requests, he waived his right to pursue this issue even if there were any genuine disputed issues remaining to be tried.

(d) “Respondent lack[ed] respect for their permit obligations and ‘feels at ease’ wasting the time of the Board while engaging in egregious violations of their requirements;”

Response: The Motion to Dismiss with Prejudice, the Goeller Affidavit and the Reply Memorandum in Support of Motion for Dismissal for Want of Prosecution all filed on July 21, 2023, explains that the Complainant has failed to prosecute his case or make any attempt to meet his burden of proof. Instead, the Complainant has ignored and failed to meet numerous filing deadlines established by the Board in the Discovery Schedule and failed to appear at multiple status conferences, including the following instances:

- a. On February 9, 2023, Complainant failed to appear at a duly noticed telephonic status conference;
- b. The Complainant failed to meet his March 27, 2023, deadline to disclose fact witnesses, expert witnesses and provide expert reports, as established in the Discovery Order. He still has made no such disclosures to date and remains in violation of the Discovery Order;

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<sup>5</sup> Request for Admission 17 states: “Allegation 8 of the Complaint that alleges “[Respondent] still refus[es] to show [Complainant] the SWPPP Book;” Complainant cannot cite to a legal requirement that Respondent must show the SWPPP Book to the Complainant.” (sic)

- c. On April 20, 2023, Complainant failed to appear at another duly noticed telephonic status conference. Complainant never requested that the status conference be rescheduled or explained why he failed to appear; and
- d. The Complainant failed to serve any Discovery Requests of his own by the May 15, 2023, deadline, as established in the Discovery Order. He never objected to the deadline, and never sought to change the deadline.

There can be no dispute that the Complainant is in complete default of his discovery obligations. He failed to respond to the Respondent's Requests for Admission, Interrogatories, and Requests for Production of Documents, within 28 days of service (May 26, 2023), as established by 35 Ill. Admin. Code 101.620. Each of the Requests for Admission are deemed admitted by him because of his default.

The Complainant is a serial filer. The Board's docket shows he has filed 27 other complaints against construction and developer companies, schools, and other public entities across northeast Illinois in the past year and half. In each of these matters, the Complainant has failed to follow procedure, provide evidence, or prosecute these claims appropriately. As a result of the Complainant's failures, the Board has expended precious time and resources to dismiss the following matters that alleged many of the same violations as this case:

- PCB 2023-054 – *Paul Christian Pratapas v. Pulte Home Company, LLC*;
- PCB 2023-055– *Paul Christian Pratapas v. Pulte Home Company, LLC*;
- PCB 2023-057 – *Paul Christian Pratapas v. Chelsea Manor M/I Homes*;
- PCB 2023-059 – *Paul Christian Pratapas v. Carillon at Cambridge Lake, DR Horton and Earthworks Environmental Carillon at Cambridge Lake, DR Horton*;

- PCB 2023-062 - *Paul Christian Pratapas v. Charleston Building and Development and Ozinga Ready Mix Concrete, Inc.*;
- PCB 2023-063 - *Paul Christian Pratapas v. Pulte Home Company, LLC*;
- PCB 2023-064 – *Paul Christian Pratapas v. Cantera Development Holdings, LLC*;
- PCB 2023-069 – *Paul Christian Pratapas v. Everclean Car Wash and Village of Woodridge*;
- PCB 2023-072 – *Paul Christian Pratapas v. First Class Outdoor Services*;
- PCB 2023-073 – *Paul Christian Pratapas v. Cadillac of Naperville, and Joseph Nicolas Construction*;
- PCB 2023-074 – *Paul Christian Pratapas v. Pulte Home Company, LLC*;
- PCB 2023-075 – *Paul Christian Pratapas v. Willow Run by M/I Homes*;
- PCB 2023-077 – *Paul Christian Pratapas v. DeJames Builders, and City of Naperville: Mayor Steve Chirico*; and
- PCB 2023-079 - *Paul Christian Pratapas v. Pulte Home Company, LLC and City of Batavia*;

(e) “Respondent made a materially false statement in the 09/25/2023 conference call regarding Part IV (B) (6) of their permit obligations under the IL Construction General Permit in an attempt to continue refusing access to public records required to petitioning the government for relief.”

Response: At the September 25, 2023, telephonic status conference – one of the few such conferences as at which the Complainant did appear -- the Respondent responded to the Complainant’s claim that the SWPPP book was not provided. As repeatedly stated above, the Complainant has always had access to the SWPPP plan through the online EPA permit

database. The Complainant has not provided and cannot cite a legal or permit requirement that the SWPPP inspection logbook must be presented by a construction contractor to a private citizen. The Respondent has fulfilled his obligation to the Complainant, and any contention to the contrary is baseless. And here again, the Complainant filed no discovery requests of his own, meaning that he has not even asked for these documents through established discovery mechanisms.

**IV. The Board should award sanctions against the Complainant for repeated failures to comply with Board Orders and Board Procedural Rules**

35 Ill. Adm. Code 101.800(a) provides that if any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the Hearing Officer, including any subpoena issued by the Board, the Board may order sanctions. 35 Ill. Adm. Code 101.800(a) indicates that the Board may order sanctions on its own motion, or in response to a motion by a party.

We respectfully ask the Board to impose the following sanctions:

- 101.800(b)(2) barring the Complainant from filing any other pleadings or other document related to this matter;
- 101.800(b)(3) barring the Complainant from maintaining claims related to this matter; and
- 101.800(b)(4) dismissing the Complainant pleadings and removing the matter from the Board's docket.

As recognized in the Board's decision in *Modine Manufacturing Company v. IEPA*, PCB 87-124, slip op. at 3 (November 17, 1988) aff'd, 192 Ill. App. 3d 511, the Board recognized the need to resolve cases quickly and tighten its procedures. In *Modine Manufacturing Company*, the

Board explained the need to control its docket. *Id.* at 516. The Board also stated it would not tolerate the significant delay caused by a petitioner who failed to adequately move the Board for extensions of time or even contact the Board. *Id.*

The Complainant has repeatedly failed to comply with provisions of 35 Ill. Adm. Code 101 through 130, including missing three status hearings, failing to respond to discovery requests, failing to identify and disclose witnesses, or identify documents supporting his claims. These failures mean he cannot meet his burden of proof or prosecute his case. For those reasons, the Respondent respectfully requests that the Board impose sanctions against the Complainant this dismiss the matter on the merits, with prejudice, and in its entirety.

#### **CONCLUSION**

By choosing to file a citizen complaint against the Respondent, the Petitioner voluntarily took on the obligations of proving his allegations and following the procedural rules that apply to all litigants. This included the obligations to comply with the long-established administrative and civil procedure rules that apply to all cases of this type. He cannot ignore his deadlines, ignore his obligation to appear at three separate status conferences over the course of about six months, fail to respond in any fashion to the Respondent's discovery requests and file no discovery requests of his own, and expect to remedy his failures by filing repetitive and conclusory new "amendments" to his previously amended complaint.

The Complainant has caused the Respondent to incur thousands of dollars in legal fees in defense of allegations that do not pass the slightest level of scrutiny. To continue this matter risks continuing to waste both the Board's time and the Respondent's time and resources. For all these reasons, we urge the Board to grant the Respondent's Motion to Dismiss with Prejudice.

Dated this 24th day of October 2023.

Respectfully submitted,

HUSCH BLACKWELL LLP



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Wis. Bar. No. 1018459  
Admitted *pro hac vice*, IRDC Reg. No. 6343394

Attorneys for Respondent Horizon Construction Group, Inc

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of October 2023, I electronically filed  
RESPONDENT'S BRIEF IN OPPOSITION TO COMPLAINANT'S MOTION TO AMEND  
THE COMPLAINT with the Clerk of the Court using the ECF system.

The ECF system will send notification of such filing to:

Notice has been delivered by Jon Micah Goeller to the following:



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Jon Micah Goeller

**APPENDIX A**



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS	)	
	)	
Complainant,	)	PCB No. 2023-014
	)	(Enforcement)
v.	)	
	)	
HORIZON CONSTRUCTION	)	
GROUP, INC.	)	
	)	
Respondent.	)	

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**AFFIDAVIT OF DAVID BEANE**

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David Beane being first duly sworn according to law, hereby deposes and states:

1. I am an adult resident of the State of Illinois, and served as the Field Superintendent for the Horizon Construction Group, Inc. apartment construction project at the Springs at Lily Cache Creek in the Village of Bolingbrook, Will County, Illinois (“Project”).
2. I am personally familiar with the Project and oversaw all construction from June 1, 2022 to its completion in June 2023. The apartments are now largely occupied by renters.
3. The pictures included as Exhibits A through H, attached hereto and incorporated herein by reference, were taken by myself on October 9, 2023, and based on my personal knowledge and familiarity with the Project, they accurately reflect the various views of the Project.
4. Exhibits A through H, below accurately reflect the current state of the Project as of the the date taken (October 9, 2023), namely, a completely stabilized and occupied apartment complex.
5. Each area of construction disturbance has been paved with roads, sidewalks, or buildings, or stabilized with grass, soil, and landscaping.

6. There is no ongoing construction planned at the Project and none is planned.

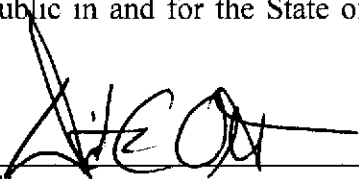
7. The Project was stabilized on August 16, 2023, and the Notice of Termination for General Permit to Discharge Storm Water Associated with Construction Site Activities Permit NPDES ID ILR10ZAKV ("NOT") was certified on June 20, 2023.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
David Beane

STATE OF ILLINOIS )  
 )  
COUNTY OF KANE ) ss.  
 )

Subscribed and affirmed before me, a Notary Public in and for the State of Illinois, by David Beane, this 16 day of October 2023.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 3/21/27



[SEAL]



**Exhibit A**



**Exhibit B**



**Exhibit C**



**Exhibit D**



**Exhibit E**



**Exhibit F**





**Exhibit G**



**Exhibit H**

**APPENDIX B**



# Illinois Environmental Protection Agency

Bureau of Water • 1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276

## Division of Water Pollution Control Notice of Termination (NOT) for General Permit to Discharge Storm Water Associated with Construction Site Activities

### Permit Information

**NPDES ID:** ILR10ZAKV

**Completed and Stabilized On:** 06/16/2023

**Reason for Termination:** Project is complete and construction has ended. Green areas have been stabilized with sod and landscaping.

### Operator Information

**Operator Name:** Continental 561 Fund LLC

**Address Line 1:** W134 N875 Executive Parkway

**Address Line 2:**

**City:** Menomonee Falls

**ZIP/Postal Code:** 53051

**State:** WI

**County or Similar Division:**

**Phone:** 262-502-5500

**Ext.:**

**Email:** fhood@cproperties.com

### Operator Point of Contact

**First Name** **Middle Initial** **Last Name:** Frederick Hood

### Project/Site Information

**Project/Site Name:** Springs at Lily Cache Creek

### Project/Site Address

**Address Line 1:** NWC Lily Cache Ln and Veterans Parkway

**Address Line 2:**

**City:** Bolingbrook

**ZIP/Postal Code:** 60440

**State:** IL

**County or Similar Division:** Will

### Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Signing an electronic document on behalf of another person is subject to criminal, civil, administrative, or other lawful action.

**Certified By:** Eric E. Thom

**Certifier Title:** Senior Development Director

**Certifier Email:** ethom@cproperties.com

**Certified On:** 06/20/2023 10:33 AM ET

**APPENDIX C**



*Leadership in Resource Management Since 1946*

1201 S. Gougar Rd • New Lenox, IL 60451  
(815) 462-3106 • Fax (815) 462-3176  
[www.will-scookswcd.org](http://www.will-scookswcd.org)

Mr. Jay Patel, Manager  
Illinois Environmental Protection Agency DWPC  
9511 West Harrison Street  
Des Plaines, IL 60016

June 24, 2022

**RE: Springs at Lily Cache Creek**  
General Construction NPDES Permit Number ILR10ZAKV

A 2<sup>nd</sup> soil erosion and sediment control site observation was conducted on June 23, 2022, by the Will/South Cook Soil and Water Conservation District (SWCD) per the existing agreement with the Illinois Environmental Protection Agency (IEPA).

The site and relative documentation are in compliance.


If you have any questions, please contact Lyn Nitz-Mercaeant at (815) 462-3106, ext. 3.


Sincerely,  
Will / South Cook SWCD

Lyn Nitz-Mercaeant CESSWI in Training  
Resource Conservationist

Cc: Continental 561 Fund LLC

Electronic Filing: Received, Clerk's Office 10/24/2023  
SWPPP - INSPECTION PHOTOS

<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will-S.Cook	
<b>Comments:</b> Streets have been swept	
<b>Photo # 1</b>	


<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will-S.Cook	
<b>Comments:</b> Construction entrance in place near a stockpile	
<b>Photo # 2</b>	

Electronic Filing: Received, Clerk's Office 10/24/2023  
SWPPP - INSPECTION PHOTOS

<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will - S.Cook	
<b>Comments:</b> Typical stockpile protection	
<b>Photo # 3</b>	

<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will-S.Cook	
<b>Comments:</b> Streets near the curbs have also been cleaned	
<b>Photo # 4</b>	




<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will - S.Cook	
<b>Comments:</b> Inlet baskets in place on the entire site	
<b>Photo # 5</b>	

<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will-S.Cook	
<b>Comments:</b> Typical silt fence	
<b>Photo # 6</b>	

Electronic Filing: Received, Clerk's Office 10/24/2023  
SWPPP - INSPECTION PHOTOS

<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will-S.Cook	
<b>Comments:</b> Concrete washout in use	
<b>Photo # 7</b>	

<b>Date:</b> 6/23/2022	<b>Site Location:</b> Springs at Lily Cache Creek
<b>Photo By:</b> Ryan Gibbons	
<b>County:</b> Will-S.Cook	
<b>Comments:</b> Rip rap in place at site outlet near a pond	
<b>Photo # 8</b>	

**APPENDIX D**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

Paul Christian Pratapas	)	
	)	
Complainant,	)	PCB No. 2023-014
	)	(Enforcement)
v.	)	
	)	
Horizon Construction Group, Inc.	)	
	)	
Respondent.	)	

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**RESPONDENT’S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

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The Respondent Horizon Construction Group, by its undersigned counsel, requests that within twenty-eight days of service, the Complainant separately answer the following interrogatories under oath pursuant to 35 Ill. Adm. Code 101.620.

**INSTRUCTIONS**

Complainant is hereby requested to answer the following interrogatories in writing within twenty-eight (28) days after service hereof. If Complainant cannot answer the Interrogatories below in full, after exercising due diligence to secure the requested information, Complainant shall so state and answer to the extent possible, specifying (a) his inability to answer the remainder; (b) the reason for this inability and, (c) whatever information or knowledge he has concerning the unanswered portions.

**INTERROGATORIES**

In responding to the requests set forth below, please provide a complete and accurate answer.

1. For each Request For Admission for which your answer was anything other than an unqualified admission, explain all reasons and facts supporting your denial and identify and produce any and all documents which support or tend to support your position.
  
2. Describe how many times you visited the Springs at Lily Cache Creek construction site (“the Site”) and the dates and time of day of each visit. Identify and produce any photographs or notes or other documents made at each such visit. For purposes

of these discovery requests, "Photographs" includes still photographs, whether digital or on film, and includes video recordings.

3. Describe the nature of your communication with Site personnel both while onsite and in writing at any time, whether electronic or on paper, including the date and time of such communications. For each such document, identify and produce an accurate and complete copy.
4. Describe the nature of your communication with any third party regarding the Site, orally or in writing at any time, writing at any time, whether electronic or on paper, including the date and time of such communications. For each such document, identify and produce an accurate and complete copy.
5. Describe and list all complaints concerning stormwater construction practices at other construction that you have filed during 2021 or 2022 in front of the Illinois Pollution Control Board and identify the dates they were filed, the case number, the nature of the alleged violations, the names of the parties, the address of the site or property alleged to be in violation, and the current status or final disposition of each.
6. Identify and describe scientific, technical, or other specialized knowledge, skill, professional experience, training, or education credentials you have regarding your qualifications or ability to evaluate stormwater pollution prevention programs at residential construction sites, including specific examples of projects worked.

Dated this 27th day of April, 2023.

Respectfully submitted,

HUSCH BLACKWELL LLP



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**APPENDIX E**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

Paul Christian Pratapas	)	
	)	
Complainant,	)	PCB No. 2023-014
	)	(Enforcement)
v.	)	
	)	
Horizon Construction Group, Inc.	)	
	)	
Respondent.	)	

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**REQUESTS FOR ADMISSIONS**

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Respondent Horizon Construction Group, by its undersigned counsel, pursuant to the provisions of Illinois Supreme Court Rule 216, propounds the following Requests for Admissions to Complainant Paul Christian Pratapas, and requests the Complainant admit the truth of the matters of fact set forth herein in the manner set forth in said Rule.

**INSTRUCTIONS**

In responding to the requests set forth below, Complainant must admit or deny the truth of each such request. If Complainant admits a portion of a statement but denies another portion of the same, Complainant must indicate the portion admitted, and the portion denied. These Complainant is required to file its responses to these Requests within 28 days of service or the Requests will be deemed to be admitted.

**REQUESTS FOR ADMISSION**

1. The Complainant does not possess photographs or other evidence showing that “concrete washout water and slurry” made contact with soil at the Springs at Lily Cache Creek construction site (“the Site”) as alleged in the Complaint. For purposes of these discovery requests, “Photographs” includes still photographs, whether digital or on film, and includes video recordings.

Response:



2. The Complainant does not possess photographs or other evidence showing locations where “concrete washout water and slurry” migrated to surface waters as alleged in the Complaint.

Response:

3. The Complainant has not identified or specified the location of any surface waters located or draining water from the construction Site as alleged in the Complaint.

Response:

4. The Complainant does not possess photographs or other evidence that “concrete washout water and slurry” migrated into the ground water located in the construction area.

Response:

5. The Complainant does not possess photographs or other evidence that “concrete washout water and slurry” migrated into the parking lot at the Site.

Response:

6. The Complainant does not possess photographs or other evidence that the “concrete washout water and slurry” contacted the topsoil on the Site.

Response:

7. The Complainant does not possess documentary evidence, including but not limited to soil samples or laboratory data, or other evidence indicating that the “concrete washout water and slurry” contacted the topsoil on the Site.

Response:

8. The Complainant does not possess photographs or other evidence indicating that “significant amounts of sediment and sediment-laden water are freely allowed to enter the street and inlets.”

Response:

9. The Complainant does not possess photographs or other evidence that the vehicles parked on [the] street [were] covered in sediment [and] leaking oil.” (sic)

Response:

10. The Complainant did not acquire and does not possess any global positioning system “GPS” coordinates associated with any photograph he intends to offer into evidence.

Response:

11. Allegation 7 of the Complaint does not allege, and Complainant does not have any evidence describing or establishing the “duration and frequency” of the alleged pollution event(s).

Response:

12. Allegation 7 of the Complaint does not allege, and Complainant does not have any evidence describing or establishing that the alleged pollution continued following completion of construction undertaken in 2022.

Response:

13. Allegation 8 of the Complaint alleges the Respondent was “washing out concrete and mortar in the streets;” the Complainant does not possess any photographic or other evidence to support this Allegation.

Response:

14. The Complainant does not have photographic or other evidence to support Allegation 8 of the Complaint asserting that prior to the filing of the above captioned Complaint, Respondent was “photographed actively using the street inlet as the drain for the washout barrel and adjacent mortar mixer”.

Response:

15. The Complainant does not have photographic or other evidence to support Allegation 8 of the Complaint that “inlet drains to several adjacent neighborhood retention ponds before entering the Lily Cache Creek, a Water of the United States” demonstrates a connection to the construction Site drains.

Response:

16. The Complainant does not have photographic or other evidence to support the further Allegation 8 of the Complaint that “concrete washout [was] left on the public parking lot where residents walk their dogs”. Further, Complainant has no evidence that residents were walking pets in, or even had access to this fenced and restricted area of the construction Site.

Response:

17. Allegation 8 of the Complaint that alleges “[Respondent] still refus[es] to show [Complainant] the SWPPP Book;” Complainant cannot cite to a legal requirement that Respondent must show the SWPPP Book to the Complainant. (sic)

Response:

18. Complainant was provided instructions about how to access the SWPPP at the site and through the online U.S. Environmental Protection Agency maintained database.

Response:

19. Complainant never attempted to access and as of the date of this request has not attempted to access the SWPPP at the site and through the online U.S. Environmental Protection Agency maintained database referenced in the prior Request for Admission.

Response:

20. The Complainant does not have photographs or other evidence to support Allegation 8 of the Complaints that alleges “there is currently no SWPPP info posted, just a blank board on the trailer which is hidden and dangerous to approach for the elderly, people with disabilities or anyone who doesn’t want to walk through very rough exposed soil.”

Response:

Dated this 27th day of April 2023.

Respectfully submitted,

HUSCH BLACKWELL LLP



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