

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 LISA MADIGAN, Attorney General of)
 the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 THOMAS P. MATHEWS, an individual,)
)
 Respondent.)

No. 07-133
(Enforcement-Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 15th day of November, 2007, I filed with the Clerk of the Illinois Pollution Control Board a Reply to Respondent's Affirmative Defenses to Complaint, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

By: *Vanessa M. Cordonnier*
 VANESSA M. CORDONNIER
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Fl.
 Chicago, IL 60602
 (312) 814-0608

DATE: November 15, 2007

SERVICE LIST

Jim Campion
Campion, Curran, Dunlop & Lamb, P.C.
8600 U.S. Highway 14, Suite 201
Crystal Lake, IL 60012

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General of)	
the State of Illinois,)	
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Complainant,)	
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v.)	No. 07-133
)	(Enforcement-Water)
THOMAS P. MATHEWS, an individual,)	
)	
Respondent.)	

REPLY TO RESPONDENT'S AFFIRMATIVE DEFENSES TO COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby replies to the Fifth Affirmative Defense to the Complaint set forth in the Answer to Complaint of Respondent, THOMAS P. MATHEWS, and pursuant to the Illinois Pollution Control Board order dated November 1, 2007, as follows:

RESPONDENT'S FIFTH AFFIRMATIVE DEFENSE – LACHES

1. Complainant alleges that it first new [sic] of the "soil and stone" on April 22, 2005.

REPLY: Complainant states that the Complaint speaks for itself.

2. The Illinois EPA or the McHenry County Soil and Water Conservation District, or both, allegedly reinspected the site on April 27, 2005, May 5, 2005, July 28, 2005 and August 5, 2005.

REPLY: Complainant admits that the Illinois EPA or McHenry County

inspected site on April 27, 2005, May 5, 2005, July 28, 2005 and August 5, 2005.

Complainant denies any and all remaining allegations in Paragraph 2 and demands strict proof thereof.

3. During that period of time, the Respondent did install silt fencing on property that he owns and controls and he graded portions of said property.

REPLY: Complainant denies the allegations in paragraph 3. Further answering, Complainant states that Illinois EPA inspectors found the erosion control devices Respondent alleged to have installed to be missing, inadequate, or ineffective due to improper installation and/or lack of maintenance pursuant to the Complaint.

4. The Illinois EPA did not return to the alleged site for more than a year, next inspecting the property on August 30, 2006.

REPLY: Complainant admits that the Illinois EPA inspected the site on August 30, 2006, and that its prior inspection was conducted on August 5, 2005. Further answering, Complainant states that on August 30, 2006, the Illinois EPA again found erosion control devices Respondent alleged to have installed to be inadequate and poorly maintained as stated in paragraph 17 of the Complaint. Complainant denies any remaining allegations in paragraph 4 and demands strict proof thereof.

5. The Illinois EPA did not return again until May 11, 2007.

REPLY: Complainant admits that the Illinois EPA inspected the site on May 11, 2007 and that its prior inspection was conducted on August 30, 2006. Complainant denies any remaining allegations in paragraph 5 and demands strict proof thereof.

6. The Complaint alleges that from April 22, 2005 through May 11, 2007, the soil and stone was deposited on the site in manner that allowed material and silt-laden

storm water to flow into the stream that leads to Wonder Lake, altering or threatening to alter the physical, chemical, thermal or biological properties of the stream. [sic]

REPLY: Complainant states that the Complaint speaks for itself.

7. Wonder Lake has a long history of being silt-laden, through the erosion of the shoreline over the past century.

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 7 and demands strict proof thereof.

8. More than 100 acres of the 830 acres within Wonder Lake are inaccessible because they are shallow from sediment running into the lake from Nippersink Creek.

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 8 and demands strict proof thereof.

9. An island, referred to by the locals as Goose Island, has sprung up the lake's west bay as a result of sedimentation.

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 9 and demands strict proof thereof.

10. None of these natural occurrences of sedimentation of Wonder Lake are attributable to the Respondent.

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 10 and demands strict proof thereof.

11. For many years preceding the alleged "soil and stone" piles on the site in question, the Master Property Owners Association for Wonder Lake has been attempting to secure \$13 million in funding to dredge the lake, which is referred to as "Wonder Puddle."

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 11 and demands strict proof thereof.

12. The Master Property Owners Association estimates that 2.5 million yards of mud needs to be removed from the lake bottom.

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 12 and demands strict proof thereof.

13. The lake has a long-standing sedimentation problem which cannot be causally related to the Respondent in this matter so the Complainant is unable to meet its burden of proof and the case should be dismissed.

REPLY: Complainant has insufficient knowledge on which to form a basis to admit or deny the allegations in paragraph 13 and demands strict proof thereof.

14. The Complaint in this matter was not brought until June 13, 2007.

REPLY: Complainant admits the Complaint was filed on June 8, 2007. Complainant denies any remaining allegations contained in paragraph 14 and demands strict proof thereof.

15. Because of the lengthy time between the first inspection of the site and the filing of this action, Respondent cannot prove that the "soil and stone" on Respondent's property has not and would not have caused water pollution or a water pollution hazard.

REPLY: Complainant denies the allegations contained in paragraph 15.

16. Because the site has been mitigated, silt fencing installed, and grading completed, the Respondent cannot prove that the "soil and stone" on Respondent's property has not and would not have caused water pollution or a water pollution hazard.

REPLY: Complainant denies the allegations contained in paragraph 16.

17. The Complainant never requested testing to be completed ascertaining that there was no impact by the site and the Respondent complied with all reasonable instructions to protect the site, such that the Respondent is now impaired in defending this action through the long delays by Complainant.

REPLY: Complainant denies the allegations in paragraph 17.

18. Complainant should be barred by the doctrine of laches from proceeding in this matter.

REPLY: Complainant denies the allegations of paragraph 18.

Respectfully submitted,

LISA MADIGAN, Attorney General
of the State of Illinois

By: 

VANESSA M. CORDONNIER
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Environmental Bureau
69 W. Washington, 18th Fl.
Chicago, IL 60602
(312) 814-0608

CERTIFICATE OF SERVICE

I, VANESSA M. CORDONNIER, an Assistant Attorney General in this case, do certify that I caused to be served this 15th day of November, 2007, the foregoing Reply to Respondent's Affirmative Defenses to Complaint and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 69 W. Washington St., Chicago, Illinois, at or before the hour of 5:00 p.m.


VANESSA M. CORDONNIER