

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
) PCB No. 09-
Complainant,)
) (Enforcement - Water)
vs.)
)
MONTALBANO BUILDERS, INC.,)
an Illinois corporation,)
)
Respondent.)

NOTICE OF FILING

TO: Glenn C. Sechen
Attorney at Law
Schain Burney Ross & Citron, Ltd.
222 North LaSalle Street, Suite 1910
Chicago, Illinois 60601-1102

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure,

you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, IL 60602
(312) 814-3816

DATE: November 6, 2008

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	No. PCB No. 09-
v.)	(Enforcement - Water)
)	
MONTALBANO BUILDERS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, MONTALBANO BUILDERS, INC., an Illinois corporation, as follows:

COUNT I

CAUSE, THREATEN OR ALLOW WATER POLLUTION

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the

National Pollutant Discharge Elimination System ("NPDES") Permit Program under the Federal Clean Water Act ("CWA"), 33 U.S.C. §1342(b)(7).

3. At all times relevant to the Complaint, Respondent, Montalbano Builders, Inc., ("Montalbano"), is an Illinois corporation in good standing.

4. Montalbano is engaged in the development of a 393 lot residential subdivision with single family homes known as the Huntington Ridge subdivision located on the southwest corner of Harvard Hills and Crowley Roads in Harvard, McHenry County, Illinois ("Site").

5. On June 5, 2006, Montalbano submitted to the Illinois EPA a notice of intent for coverage under the NPDES stormwater permit for the Site. The Site is 193 acres in size and the receiving stream for stormwater runoff from the Site is known as Mokeler Creek. Adjacent to the Site there is a wetland flood plain which discharges in Mokeler Creek.

6. On July 6, 2006, the Illinois EPA granted Montalbano coverage under the NPDES stormwater permit for stormwater associated with construction activity.

7. On April 17, 2007, the McHenry County Soil and Water Conservation District ("MCSWCD") inspected the Site to determine the effectiveness of erosion and sediment control measures in preventing water pollution. During the inspection MCSWCD observed that unstabilized and inadequate erosion controls over portions of the Site had allowed silt-laden runoff to threaten wetland area just offsite the development.

8. The MCSWCD also noted a portable diesel fuel tank located at the Site which had no secondary spill containment and evidence of spilled fuel was found on the ground near the tank.

9. On May 9, 2007, the Illinois EPA conducted a Stormwater Construction Site Inspection to review the erosion control measures employed at the Site. The Illinois EPA's inspection was prompted by reports received from the MCSWCD.

10. During the May 9, 2007, Illinois EPA inspection, the inspector observed that disturbed areas where no construction activity had been occurring for over three weeks did not have temporary stabilization in place.

11. The inspector also observed evidence of sediments leaving the Site and entering the adjacent wetland whose water eventually discharges into Mokeler Creek. Some silt fences were installed in low-lying areas of the Site and were partially under water accumulated in those areas.

12. The inspector also observed that the final stormwater detention basin was not stabilized and sediments were observed in the final manhole prior to the discharge point.

13. The Illinois EPA inspector also observed that the diesel fuel storage tank found by the MCSWCD during its April 17, 2007 inspection, was not properly protected with dykes, curbing or some other form of containment for spills. No spill kits were noted and storm sewer inlets were not designed to contain fuel spills.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), provides as follows:

No person shall:

- (a) Cause 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.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision state agency or any other legal entity, or their legal representative, agent or assigns.

16. Montalbano, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides as follows:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

18. Silt laden runoff which entered the adjacent wetland and eventually discharged into Mokeler Creek is a “contaminant,” as that term is defined by Section 3.165 of the Act.

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides as follows:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

20. The silt-laden runoff from the Site that flowed into Mokeler Creek constitutes “water pollution,” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2006).

21. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), provides as follows:

“WATERS” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

22. The adjacent wetland and Mokeler Creek into which the wetland discharges to are “waters,” as that term is defined in Section 3.550 of the Act.

23. By allowing disturbed soils to remain unstabilized and without adequate erosion control protection, Respondent caused, threatened or allowed the discharge of a contaminant, silt-laden runoff, into the environment.

24. By causing, threatening or allowing the discharge of silt-laden runoff from the Site, "contaminants," to discharge into the adjacent wetland and eventually into Mokeler Creek, a water of the State, Respondent caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);

3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day during which Respondent continues to be in violation of Section 12(a) of the Act;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

CREATING A WATER POLLUTION HAZARD

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.

14. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:

No person shall:

* * * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

15. By allowing disturbed soils and soil stockpiles with inadequate erosion controls to remain adjacent to wetland areas, thus creating a water pollution hazard, Montalbano violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

3. Ordering Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which Respondent continues to be in violation of Section 12(d) of the Act;
5. Ordering Respondent to pay all costs including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
- 6 Granting such other relief as the Board deems appropriate and just.

COUNT III

**FAILURE TO COMPLY WITH THE TERMS
AND CONDITIONS OF THE NPDES PERMIT**

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), provides as follows:

No person shall:

* * * *

- (f) Cause, threaten, or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, any waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

15. Section 309.102(a) of the Illinois Pollution Control Board Water Pollution regulations ("Board Water Pollution Regulations"), 35 Ill. Adm. Code 309.102(a), provides as follows:

- a. Except as in compliance with the provisions of the Act, Board regulations and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

16. Montalbano's General NPDES Permit for StormWater Discharges from Construction Site Activities No. ILR10, Part IV. D.2(a) provides in pertinent part as follows:

"... stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased."

17 The Illinois EPA inspector observed that a large part of the site remained dormant for more than 21 days and had not been stabilized within 14 days as required by NPDES Permit No. ILR10 Part IV.D.2(a).

18. The discharge of silt-laden runoff from the Site into the adjacent wetland and eventually into Mokeler Creek is a violation of Respondent's general NPDES stormwater permit and is therefore a violation of Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

19. By failing to maintain adequate stormwater pollution prevention measures as called for by its coverage under the general NPDES stormwater permit at its construction Site, Respondent also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent with respect to this Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and conditions of its NPDES permit;

3. Ordering Respondent to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and NPDES permit conditions;


4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Respondent for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12/(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

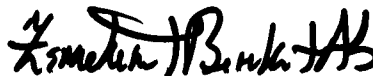
By: 
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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 6th day of November 2008, the foregoing Notice of Filing, Complaint, and a Certificate of Service, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB