

BEFORE THE ILLINOS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

ex rel. LISA MADIGAN, Attorney)

General of the State of Illinois,)

Complainant,)

v.)

MONTALBANO BUILDERS, INC.,)

an Illinois corporation,)

Respondent.)

No. PCB 09-030
(Enforcement - Water)

NOTICE OF FILING

TO: Clerk of the Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau North
69 W. Washington Street
Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on December 31, 2008, the attached documents, **Respondent's Appearance** and **Respondent's Answer to Complaint**, were filed with the Clerk of the Pollution Control Board.

CERTIFICATE OF SERVICE

I, **GLENN C. SECHEN**, an attorney, certify that I have served a copy of the attached documents by regular mail upon the person(s) referenced above at or before 5:00 p.m. on the 6th day of January, 2009.

/s/ Glenn C. Sechen

Glenn C. Sechen, Counsel for the Respondent

Glenn C. Sechen
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, IL 60601-4514
312/ 332-0200

BEFORE THE ILLINOS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
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 MONTALBANO BUILDERS, INC.,)
 an Illinois corporation,)
)
 Respondent.)

No. PCB 09-030
(Enforcement - Water)

APPEARANCE

Glenn C. Sechen, James R. Griffin and M. Hope Whitfield hereby enter their appearance on behalf of the Respondent, Montalbano Builders, Inc.

/s/ Glenn C. Sechen
Attorney for the Respondent

/s/ James Griffin
Attorney for the Respondent

/s/ M. Hope Whitfield
Attorney for the Respondent

Certificate of Service

The undersigned hereby certifies that on the 6th day of January, 2009, a copy of the above was served upon:

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

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau North
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

by placing the same in the U.S. Mail at 222 N. LaSalle, with proper postage affixed, before the hour of 5:00 p.m.

By: /s/ Glenn C. Sechen
Attorney for the Respondent

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,)	No. PCB 09-030
)	(Enforcement - Water)
Complainant,)	
)	
v.)	
)	
MONTALBANO BUILDERS, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

ANSWER TO COMPLAINT

Respondent, MONTALBANO BUILDERS, through their attorneys, SCHAIN, BURNEY, ROSS & CITRION, LTD., answers the complaint of the People of the State of Illinois, as follows:

COUNT I

CAUSES 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).

ANSWER: The Defendant, Montalbano Builders, Inc. admits the allegations of Paragraph 1.

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).

ANSWER: The allegations of Paragraph 2 are conclusions of law to which no answer is required. The citations speak for themselves.

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

ANSWER: The Defendant, Montalbano Builders, Inc. admits the allegations of Paragraph 3.

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").

ANSWER: The Defendant, Montalbano Builders, Inc. admits the allegations of Paragraph 4.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. admits only that it filed a notice for intent for coverage and the referenced document speaks for itself. The allegations of Paragraph 5 are improperly pled conclusions of fact and the Defendant moves to strike. Further, the Defendant lacks sufficient knowledge not contained in the referenced document regarding said conclusions and accordingly, if the motion to strike is denied, Defendant, Montalbano Builders, Inc. makes no answer to the remaining allegations, demanding strict proof thereof.

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

ANSWER: The Defendant, Montalbano Builders, Inc. admits the allegations of Paragraph 6.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 7 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 8 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 9 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 10 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 11 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 12 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 13 and therefore makes no answer and demands strict proof of the allegations therein.

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.

ANSWER: The allegations of Paragraph 14 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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.

ANSWER: The allegations of Paragraph 15 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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).

ANSWER: The allegations of Paragraph 16 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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.

ANSWER: The allegations of Paragraph 17 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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.

ANSWER: To the extent that this Paragraph 18 may be considered to contain factual allegations they are denied. The allegations of Paragraph 18 are conclusions of law to which no answer is required.

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.

ANSWER: The allegations of Paragraph 19 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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).

ANSWER: The Defendant, Montalbano Builders, Inc. denies the allegations of Paragraph 20.

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.

ANSWER: The allegations of Paragraph 21 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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.

ANSWER: The allegations of Paragraph 22 are conclusions of law to which no answer is required.

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.

ANSWER: The Defendant, Montalbano Builders, Inc. denies the allegations of Paragraph 23.

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).

ANSWER: The Defendant, Montalbano Builders, Inc. denies the allegations of Paragraph 24.

WHEREFORE, Montalbano Builders, Inc., prays that this Count be dismissed at plaintiff's cost.

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.

ANSWER: Defendant, Montalbano Builders, Inc. incorporates by reference its Answers to Paragraphs 1 through 13 as its answers to 1-13 of Count II as though fully set forth herein.

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.

ANSWER: The allegations of Paragraph 14 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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).

ANSWER: The Defendant, Montalbano Builders, Inc. denies the allegations of Paragraph 15.

WHEREFORE, Montalbano Builders, Inc., prays that this Count be dismissed at Plaintiff's cost.

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.

ANSWER: Defendant, Montalbano Builders, Inc. incorporates by reference its Answers to Paragraphs 1 through 13 as its answers to 1-13 of Count III as though fully set forth herein.

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.

ANSWER: The allegations of Paragraph 14 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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.

ANSWER: The allegations of Paragraph 15 are conclusions of law to which no answer is required. The cited section further speaks for itself.

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."

ANSWER: No answer to Paragraph 16 is necessary as the Permit speaks for itself. Further, the Defendant, Montalbano Builders, Inc., moves to strike and dismiss Count III as the NPDES Permit is not attached.

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).

ANSWER: The Defendant, Montalbano Builders, Inc. lacks sufficient knowledge to answer the allegations of Paragraph 17 and therefore makes no answer and demands strict proof of the allegations therein.

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).

ANSWER: To the extent that this Paragraph 18 may be considered to contain factual allegations they are denied. The allegations of Paragraph 18 are conclusions of law to which no answer is required.

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).

ANSWER: The Defendant, Montalbano Builders, Inc. denies the allegations of Paragraph 19.

WHEREFORE, Montalbano Builders, Inc. prays that this Count be dismissed at plaintiff's cost.

Respectfully Submitted,

MONTALBANO BUILDERS, INC.

By: /s/ Glenn C. Sechen
One of Its Attorneys

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