

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	PCB No. 2010-
Complainant,	)	
	)	(Enforcement - Water)
vs.	)	
	)	
MONTALBANO BUILDERS, INC.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Glenn C. Sechen  
Attorney at Law  
13909 Laque Drive  
Cedar Lake, IN 46303

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., 18<sup>th</sup> Flr.  
Chicago, IL 60602  
(312) 814-3816

DATE: September 8, 2009

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**



3. At all times relevant to the Complaint, Respondent was engaged in the development of a 378 lot residential subdivision with single family homes and duplex homes known as the Mission Oaks subdivision located on the south side of Route 38 East near the intersection of Route 38 and Hahn Drive in Cortland, DeKalb County, Illinois ("DeKalb Site").

4. On June 19, 2006, Montalbano submitted to the Illinois EPA a notice of intent ("NOI") for coverage under the NPDES stormwater permit for the DeKalb Site. The DeKalb Site is 187 acres in size and the receiving stream for stormwater runoff from the DeKalb Site as listed in Montalbano's NOI is Union Ditch. The stormwater discharges directly to a storm sewer and eventually to Union Ditch.

5. On July 19, 2006, the Illinois EPA granted Montalbano coverage under the NPDES stormwater permit under site Permit No. ILR10F880 for stormwater discharges associated with construction activities for the DeKalb Site.

6. On May 9, 2008, the DeKalb County Soil and Water Conservation District ("DCSWCD") inspected the Site to determine the effectiveness of soil erosion and sediment control measures in preventing water pollution and review compliance with conditions of NPDES Permit No. ILR10F880. During the inspection DCSWCD observed:

- sediment leaving the Site at the outlet of the detention pond into Union Ditch;
- lack of stabilization and erosion control measures impacting the entire Site;
- severe bank erosion occurring in the detention basin, primarily on the north bank;
- sediment traps were not maintained; and
- stormwater channels were not stabilized.

7. On May 14, 2008, the Illinois EPA conducted a site inspection to review the erosion control measures employed at the DeKalb Site. The Illinois EPA's inspection was prompted by reports received from the DeKalb DCSWCD.
8. During the May 14, 2008, Illinois EPA inspection, the inspector observed that:
  - a. the DeKalb Site was in very poor condition with areas affected by mass grading left unstabilized although new home construction was limited to a relatively small area;
  - b. the detention basin was carrying a heavy sediment load as evidenced by the sandy color and sediment building up and fanning out at the inlet;
  - c. the bank of the detention basin in the area of the western inlet exhibited severe erosion;
  - d. effluent was leaving the detention and entering Union Ditch as the sediment plume was visible in Union Ditch.
9. On October 9, 2008, the Illinois EPA sent to Montalbano a Violation Notice ("VN") pursuant to Section 31(a) of the Act, 415 ILCS 5/31(a)(1) (2008).
10. On November 11, 2008, Montalbano responded to the VN and proposed its Compliance Commitment Agreement ("CCA").
11. On November 19, 2008, the Illinois EPA conducted a follow-up inspection and observed very little progress to remedy the violation noted on previous inspections.
12. On December 12, 2008, Montalbano wrote a letter to the Illinois EPA stating that it had waived its right to a meeting pursuant to the violation notice letter.
13. On December 12, 2008, the Illinois EPA rejected Montalbano's CCA.
14. On February 4, 2009, the Illinois EPA sent to Montalbano a Notice of Intent to Pursue Legal Action.

15. On February 19, 2009, Montalbano's legal counsel wrote a letter to the Illinois EPA waiving its rights under Section 31 of the Act, 415 ILCS 5/31 (2008).

16. On July 13, 2009, the Illinois EPA conducted a follow up inspection and observed continuing noncompliance at the stormwater detention pond. A black corrugated stand pipe installed to prevent discharge from the pond had been punctured in several places to allow the sediment laden water out to Union Ditch. The Illinois EPA observed sediment plume in the receiving stream.

17. Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), 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.

18. Section 302.203 of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 302.203, titled, Offensive Conditions, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

19. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), 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.

20. Montalbano, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2008).

21. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides as follows:

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

22. Sediment leaving the Site at the outlet of the detention pond and entering into

Union Ditch is a “contaminant,” as that term is defined by Section 3.165 of the Act.

23. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), 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.

24. Sediment leaving the Site that flowed into Union Ditch constitutes “water

pollution,” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2006).

25. 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.

26. The detention pond and Union Ditch into which the sediment discharges are

“waters,” as that term is defined in Section 3.550 of the Act.

27. By allowing disturbed soils to remain unstabilized and without adequate erosion

control protections, Respondent caused, threatened or allowed the discharge of a contaminant, sediment, into Union Ditch, waters of the State.

28. By causing, threatening or allowing the discharge of sediment from the Site, a

“contaminant,” to discharge eventually into Union Ditch, 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)(2008).

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)(2008);
3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2008);
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) (2008), 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**

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and 19 through 26 of Count I as paragraphs 1 through 24 of this Count II.



25. Section 12(d) of the Act, 415 ILCS 5/12(d) (2008), 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.

26. By failing to provide adequate erosion controls for the mass graded Site, and by allowing unstabilized soils to remain in areas of the Site prone to runoff to waters of the State, and thus creating a water pollution hazard, Montalbano violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

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) (2008);
3. Ordering Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008);
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) (2008), 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**

1-24. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and 19 through 26 of Count I as paragraphs 1 through 24 of this Count III.

25. Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), 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.

26. Montalbano's General NPDES Permit for StormWater Discharges from Construction Site Activities No. ILR10F880, 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."

27. 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. ILR10F880, Part IV.D.2(a).

28. 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) (2008).

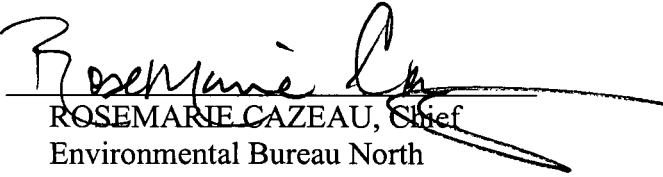
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent with respect to this Count III:

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) (2008).
3. Ordering Respondent to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).
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) (2008).
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

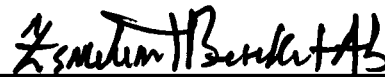
By:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau North  
Assistant Attorney General

Of Counsel:

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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 8<sup>th</sup> day of September 2009, 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.



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ZEMEHERET BEREKET-AB