

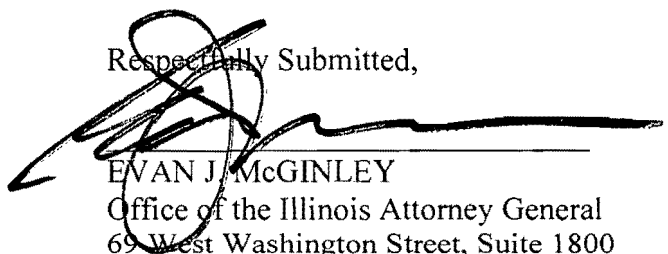
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 LISA MADIGAN, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 MONTALBANO BUILDERS, INC.,)
 an Illinois corporation, CORTLAND-I-88, LLC,)
 an Illinois limited liability company,)
 MBC XIV, LLC, a revoked Delaware limited)
 liability company, and RB RESOLUTION)
 PROPERTIES, LLC, an Illinois limited liability)
 company,)
)
 Respondents.)

PCB No. 2010-20
(Enforcement - Water)

NOTICE OF FILING

PLEASE TAKE NOTICE that today, July 11, 2016, I filed with the Office of the Clerk of the Illinois Pollution Control Board, Complainant's, People of the State of Illinois, Complainant's Motion to Voluntarily Dismiss Montalbano Builder's Inc. and MBC XIV, LLC Without Prejudice, a copy of which is attached hereto and hereby served on you.

Respectfully Submitted,


EVAN J. MCGINLEY
 Office of the Illinois Attorney General
 69 West Washington Street, Suite 1800
 Chicago, Illinois 60602
 312.814.3153
emcginley@atg.state.il.us
mccaccio@atg.state.il.us

THIS FILING SUBMITTED ON RECYCLED PAPER

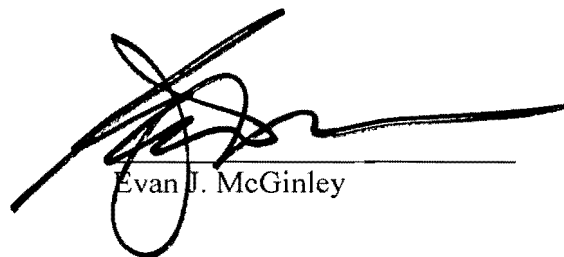
CERTIFICATE OF SERVICE

I, EVAN J. MCGINLEY, do hereby certify that, on July 11, 2016, I caused to be served on the individuals listed below, by first class mail, a true and correct copy of the attached motion and notice of filing.

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

John Therriault
Clerk of the Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
john.therriault@illinois.gov

Gina Krol
105 W. Madison Street
Suite 1100
Chicago, Illinois 60602
GKrol@cohenandkrol.com



Evan J. McGinley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)

Complainant,)

vs.)

PCB No. 2010-20
(Enforcement - Water)

MONTALBANO BUILDERS, INC.,)
an Illinois corporation, CORTLAND-I-88, LLC,)
an Illinois limited liability company,)
MBC XIV, LLC, a revoked Delaware limited)
liability company, and RB RESOLUTION)
PROPERTIES, LLC, an Illinois limited liability)
company,)

Respondents.)

**COMPLAINANT'S MOTION TO VOLUNTARILY DISMISS RESPONDENTS
MONTALBANO BUILDERS, INC. AND MBX XIV, LLC WITHOUT PREJUDICE**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to 735 ILCS 5/2-1009 and 735 ILCS 5/5-117, moves this Board to dismiss Respondents MONTALBANO BUILDERS, INC. and MBC XIV, LLC from this this action, without prejudice and without costs. In support thereof, Complainant states as follows:

1. On September 8, 2009, Complainant filed its initial complaint in this action against Respondent, Montalbano Builders, Inc. The initial complaint filed in this matter alleged various violations of the Environmental Protection Act, related to the Respondent's construction of a new housing development in Cortland, DeKalb County, Illinois ("Site").

2. On August 30, 2011, Complainant filed its first amended complaint in this action.

3. On January 26, 2012, Complainant's counsel was advised by the bankruptcy trustee for Montalbano Builder's Inc.'s Chapter 7 bankruptcy that Respondent Montalbano Builders, Inc. had filed for bankruptcy and that the bankruptcy case was then pending before the Bankruptcy Court for the Northern District of Illinois. That case is still pending before the Bankruptcy Court.

4. In June 2013, Complainant's Second Amended Complaint was accepted for filing by the Board. The Second Amended Complaint named four new additional Respondents, MBC XIV, LLC, Cortland-I-88, LLC, RB Resolution Properties, LLC and Douglas Johnson, who, through various means, had each acquired partial interests in portions of the overall Site.

5. On December 20, 2013, Complainant's counsel was advised that Anthony Montalbano, the principal of Montalbano Builders, Inc. had filed for personal bankruptcy in the Bankruptcy Court for the Northern District of Illinois. Respondent, MBC XIV, LLC, was listed as one of Mr. Montalbano's assets in his personal bankruptcy estate.

6. On September 23, 2013, Complainant filed its motion to voluntarily dismiss Douglas Johnson, after being presented with evidence from Mr. Johnson's counsel that his acquisition of a portion of the Site through a tax sale had been nullified in a court action in DeKalb County Circuit Court.

7. On August 19, 2015, Complainant filed a Stipulation and Settlement Agreement with Cortland-I-88 ("Cortland Stipulation") with the Board, along with a Motion for Waiver of Hearing Requirement. On October 15, 2015, the Board issued an opinion and order accepting the Cortland Stipulation.

8. On December 16, 2015, Complainant filed a Stipulation and Settlement Agreement with RB Resolution Properties, LLC ("RB Resolution Stipulation") with the Board, along with a Motion for Waiver of Hearing Requirement. On March 3, 2015, the Board issued an opinion and order accepting the RB Resolutions Stipulation.

9. The only remaining parties in this action are the original Respondent, Montalbano Builders, Inc. and MBC XIV, LLC, neither of which have any significant assets.

10. On or about June 10, 2011, Montalbano Builders, Inc. filed for Chapter 7 bankruptcy in the Bankruptcy Court for the Northern District of Illinois (*In re Montalbano Builders*, BK 11-09465), which is currently pending.

11. On or about August 19, 2009, Anthony P. Montalbano, the principal behind Montalbano Builders, Inc., filed for Chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Illinois (*In re Anthony P. Montalbano*, BK 09-30477). One of the listed assets held by Anthony P. Montalbano was the MBC XIV, LLC entity. Mr. Montalbano's bankruptcy was subsequently converted to a Chapter 7 bankruptcy and on March 18, 2015, the Bankruptcy Court terminated his case.

12. Based on this information, Complainant has determined that a civil penalty, as provided for in Section 33 of the Act, 415 ILCS 5/33 (2014), is not necessary to accomplish the purpose of the Act.

13. If the Board dismisses Montalbano Builders, Inc. and MBC XIV, LLC, the only remaining Respondents in this case, this case can be closed by the Board.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order:

- 1) Dismissing Respondents Montalbano Builders, Inc. and MBC XIV from this case, without prejudice and without costs;
- 2) Closing this case; and
- 3) Granting such other relief as the Board finds appropriate in this case.

Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

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

ELIZABETH WALLACE, Chief
Environmental Bureau North

BY 

EVAN J. MCGINLEY
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, IL 60602
(312) 814-3153
emcginley@atg.state.il.us