

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant)
) PCB No. 2023-55
 v.)
)
 NAPER COMMONS BY PULTE HOMES,)
)
 Respondent.)

**RESPONDENT’S MOTION REQUESTING THE POLLUTION CONTROL BOARD NOT
ACCEPT COMPLAINT FOR HEARING AND/OR DISMISS.**

Respondent, PULTE HOME COMPANY, LLC, (“PULTE”) improperly sued as NAPER COMMONS BY PULTE HOMES, by and through its attorneys, SWANSON, MARTIN & BELL, LLP, pursuant to 35 Ill. Adm. Code §§ 103.212(b) and 101.506, respectfully moves the Illinois Pollution Control Board to not accept the Citizen’s Formal Complaint in this matter for hearing on the basis that Complainant never properly served Respondent and because the Complaint is frivolous, alleging wholly past violations for which private citizens lack authority to pursue. In support, Respondent states as follows:

FAILURE TO PROPERLY SERVE RESPONDENT

1. Respondent denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
2. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.
3. The Board should not accept this Formal Complaint because Complainant failed to serve Respondent as required by 35 Ill. Adm. Code § 101.304.

4. 35 Ill. Adm. Code § 101.304(d) specifically provides that a proceeding is subject to dismissal for failure to comply with service requirements.
5. Although 35 Ill. Adm. Code § 101.304(c)(1) allows for service in several ways, Complainant chose service via personal service, which is governed by 35 Ill. Adm. Code § 304(d). (See attached hereto at last page of Exhibit A, Complainant's "Proof of Service".)
6. Complainant's "Proof of Service" is improper and fails to supply information required to give this Honorable Board jurisdiction of this matter or of Complainant's complaint.
7. On the attached "Proof of Service", Complainant indicates he merely left a copy of the complaint at "Management Construction Office, Model Home, Basement Exterior Door, at 2308 W. Lucent, Naperville Illinois. (See Exhibit A, Complainant's Proof of Service.)
8. For personal service on a corporation, Illinois requires delivery of the complaint to a registered agent or other individual authorized to receive the complaint. *See* 35 Ill. Adm. Code § 101.100(b) (applying the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules when the Board's procedural rules are silent).
9. Complainant's "Proof of Service" is inadequate.
10. A simple internet search of the Illinois Secretary of State's website shows the registered agent for Pulte Homes located in Springfield, Illinois. (See attached hereto as Exhibit B, Pulte Homes Registered Agent Information from the Illinois Secretary of State website.)
11. Complainant's purported service violates Illinois law.
12. This Honorable Board cannot proceed in this matter until service is perfected.
13. Because there is no proper service on Respondent, the Board should not accept Complainant's Complaint.

WHOLLY PAST VIOLATION

14. Respondent denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
15. Paragraph 7 of the Complaint alleges a wholly past, one-time violation, limited to May 24, 2022.
16. Paragraph 5 of the Complaint alleges Respondent's actions on May 24, 2022, violated 415 ILCS 15.12(a) and 35 Ill. Adm. Code § 204.141(b).
17. 415 ILCS 15.12(a) addresses water pollution issues identical to the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et.seq.*
18. Paragraphs 6 and 7 of the Complaint contain a self-serving narrative of a single alleged violation, limited to one, wholly past violation of May 24, 2022.
19. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a Complaint for hearing if the Board finds that the complaint is "frivolous," meaning the Board lacks the authority to grant the requested relief.
20. Here, the Board cannot accept the Complaint, which is frivolous, because Complainant lacks standing to pursue claims involving a single, alleged, wholly past violation.
21. The U.S. Supreme Court directly and clearly ruled there is no standing for citizen suits in environmental cases where the relief addresses wholly past violations of the Clean Water Act. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found. Inc.*, 484 U.S. 49, 50 (1987).
22. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by status. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).

23. Specifically, 35 Ill. Adm. Code § 103.204(c)(1) requires the complainant to identify “[T]he provisions of the Act that Respondents *are alleged to be violating*.”(emphasis added).
24. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses current violations which are alleged to be ongoing—hence “*violating*”—at the time the complaint is filed.
25. The only plausible interpretation for conjugating the verb “to violate” into “*violating*” is by application of the present tense. (*emphasis added*.)
26. 35 Ill. Adm. Code § 103.204(c)(1) is clear the complaint must identify actions Respondent is alleged “[T]o be *violating*” when the complaint is filed (*emphasis added*).
27. Therefore, consistent with the U.S. Supreme Court’s holding in *Gwaltney* (supra), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as presented here.
28. Tellingly, there is no allegation of continuing violation or injury.
29. Complainant’s suit is not brought by the State of Illinois, for which suits alleging past violations are authorized. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d Dist. 1990) (fines for wholly past violations allowed where action was brought by Illinois EPA and Illinois Attorney General).
30. This Board implicitly recognized that private citizens cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2010-061 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board

denied a motion to dismiss, finding continued operation of equipment giving rise to the alleged violation. Both of these cases acknowledge that citizens may pursue complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.

31. The allegations here are clear: a single, alleged violation dated May 24, 2022.

32. There are no allegations of continuing violation or injury.

33. Complainant's Formal Complaint should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC, respectfully moves the Illinois Pollution Control Board not to accept the Formal Complaint in this matter for hearing on the basis the Complaint is frivolous and/or that the Complaint in this matter was improperly served.

Respectfully Submitted,

SWANSON, MARTIN & BELL, LLP

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Corporation/LLC Search/Certificate of Good Standing

LLC File Detail Report

File Number	05999588
Entity Name	PULTE HOME COMPANY, LLC
Status	ACTIVE

Entity Information
Principal Office 3350 PEACHTREE RD. NE, STE 1500 ATLANTA, GA 30326
Entity Type LLC
Type of LLC Foreign
Organization/Admission Date Thursday, 5 January 2017
Jurisdiction MI
Duration PERPETUAL

Agent Information

Name

ILLINOIS CORPORATION SERVICE COMPANY

Address

801 ADLAI STEVENSON DRIVE
SPRINGFIELD , IL 62703

Change Date

Thursday, 5 January 2017

Annual Report

For Year

2023

Filing Date

Monday, 5 December 2022

Managers

Name

Address

SHELDON, TODD N.
SUITE 1500 3350 PEACHTREE ROAD NE
ATLANTA, GA 30326

Series Name

NOT AUTHORIZED TO ESTABLISH SERIES

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Fri Dec 09 2022