

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                          |   |                  |
|--------------------------|---|------------------|
| PAUL CHRISTIAN PRATAPAS, | ) |                  |
|                          | ) |                  |
| Complainant,             | ) |                  |
| v.                       | ) |                  |
|                          | ) | PCB No. 2023-054 |
| WAGNER FARMS BY PULTE    | ) | (Enforcement)    |
| HOMES                    | ) |                  |
|                          | ) |                  |
| Respondent.              | ) |                  |

**APPEARANCE**

The undersigned, as attorney, enters the appearance of the Respondent, PULTE HOME COMPANY, LLC, improperly sued as “WAGNER FARMS BY PULTE HOMES.”

By: /s/ Gregory M. Emry  
One of the Attorneys for Respondent,  
PULTE HOME COMPANY, LLC

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))  
J. A. Koehler. ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))  
Gregory M. Emry ([gemry@smbtrials.com](mailto:gemry@smbtrials.com))  
Swanson, Martin & Bell, LLP  
330 North Wabash Avenue, Suite 3300  
Chicago, Illinois 60611  
312-321-9100/312-321-0990 (fax)  
Firm ID No. 29558

I certify that a copy of the within instrument was served on all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

/s/ Gregory M. Emry  
One of the Attorneys for Defendant,  
PULTE HOME COMPANY, LLC

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| Complainant                  | ) | PCB No. 2023-054 |
| v.                           | ) |                  |
|                              | ) |                  |
| WAGNER FARMS by PULTE HOMES, | ) |                  |
| Respondent.                  | ) |                  |

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

Respondent, PULTE HOME COMPANY, LLC (“Pulte Home”), improperly sued as “Wagner Farms by Pulte Homes”, by and through its attorneys, SWANSON, MARTIN & BELL, LLP, pursuant to 35 Ill. Adm. Code §§ 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. 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. The Board should not accept this Complaint because Complainant failed to serve Respondent as required by 35 Ill. Adm. Code § 101.304.
3. 35 Ill. Adm. Code § 101.304(d) specifically provides that a proceeding is subject to dismissal for failure to comply with service requirements.
4. On December 15, 2022, this Board entered an order directing the complainant to file the required proof of service of the complaint on the respondent no later than January 16, 2023, which is the first business day following the 30<sup>th</sup> day after the date of this order, or face dismissal of the complaint. (*See* attached Exhibit A, December 15, 2022 Order of the Board.)

5. Despite the December 15, 2022 Order from the Board, Complainant filed another improper “Documentation of Service” on December 23, 2022 which again failed to supply the required information necessary to give this Honorable Board jurisdiction over this matter or Complainant’s Complaint. (*See* attached Exhibit B, Complainant’s Proof of Service.)
6. With regards to Respondent Pulte Homes, the attached “Documentation of Service”, fails provide any affidavit of proof of service.
7. Complainant’s “Documentation of Service” is inadequate.
8. Complainant’s lack of service violates Illinois law.
9. This Honorable Board cannot proceed in this matter until service is perfected.
10. Because there is no proper service on Respondent, the Board should not accept Complainant’s Complaint.

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

**SWANSON, MARTIN & BELL, LLP**

/s/ Michael J. Maher/Jay Koeler  
Attorneys for Respondent,  
**PULTE HOME COMPANY, INC.**

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))  
J. A. Koehler. ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))  
Gregory Emry ([gemry@smbtrials.com](mailto:gemry@smbtrials.com))  
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ILLINOIS POLLUTION CONTROL BOARD

December 15, 2022

PAUL CHRISTIAN PRATAPAS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 23-54  
 ) (Citizen's Enforcement - Water)  
 WAGNER FARMS BY PULTE HOMES, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Van Wie):

On November 9, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against Wagner Farms by Pulte Homes (Pulte). The complaint concerns Pulte's residential construction at 3723 Quick Fire Drive in Naperville, Will County. Comp. at 2.

Under the Board's rules, an enforcement proceeding commences by serving a notice and complaint on a respondent. 35 Ill. Adm. Code 103.204(a), (b). Service must be "by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service." *Id.* Enforcement complaints may not be served by e-mail. *See* 35 Ill. Adm. Code 101.1000(e). "A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed." 35 Ill. Adm. Code 101.304(b)(4).

Mr. Pratapas relies on a sample complaint form available from the Board. It includes a form affidavit of service listing methods for service. On it, Mr. Pratapas indicated that the complaint would be served on the respondent by "[p]ersonal service and another person made or will make the personal delivery. However, the affidavit of service signed by the other person (or the declaration of service signed by the process server) who made or will make the personal delivery is not available to me at this time." *Id.* at 9. Although the form affidavit requested the name of the person making personal delivery and the date, time, and address at which the complaint was provided to them, it did not include any of those items of information.

On November 13, 2022, Mr. Pratapas filed a form proof of service from an unspecified District Court. The form lists options for the method of service. Mr. Pratapas checked the option indicating that, "[a]fter all due diligence, I was unable to locate and serve the targeted person(s)."

The Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Tuesday, January 16, 2023, which is the first business day following the 30th day after the date of this order (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 15, 2022, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown".

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Don A. Brown, Clerk  
Illinois Pollution Control Board

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| <input type="checkbox"/> Return Receipt (electronic)         | \$0.00         |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$0.00         |
| <input type="checkbox"/> Adult Signature Required            | \$0.00         |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00         |
| Postage  | \$9.90         |
| <b>Total Postage and Fees</b>                                | <b>\$17.15</b> |

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| Respondent.                  | ) |                  |

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**CERTIFICATE OF SERVICE**

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**TO:** Paul Pratapas at [paulpratapas@gmail.com](mailto:paulpratapas@gmail.com)

The undersigned attorney, on oath, state that I served the following discovery documents on behalf of *Respondent, Pulte Home Company, LLC* on counsel of record listed above via email on or before 5:00 p.m. on January 17, 2023.

1. Appearance of Gregory M. Emry, Michael J. Maher and J.A. Koehler;
2. Motion Requesting the Pollution Control Board Not Accept Complaint for Hearing and/or Dismiss;
3. Exhibit A to Motion – December 15, 2022 Order of the Board; *and*
4. Exhibit B to Motion – Complaints Proof of Service.

**SWANSON, MARTIN & BELL, LLP**

By: \_\_\_\_\_ /s/ Gregory M. Emry

<sup>[x]</sup> Under penalties as provided by law pursuant to 735 ILCS 5/1-109,  
I certify that the statements set forth herein are true and correct.

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))

J. A. Koehler ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))

Gregory M. Emry ([gemry@smbtrials.com](mailto:gemry@smbtrials.com))

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