

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS)	
Complainant)	PCB No. 2023-055
v.)	
)	
PULTE HOME COMPANY, LLC, a Michigan)	
Corporation)	
)	
Respondent.)	

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

Respondent, PULTE HOME COMPANY, LLC (“Pulte Home”), 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 and dismiss the Complaint on the basis that Complainant never properly served Respondent and failed to comply with this Board’s order of February 16, 2023. 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. In response to Respondent’s December 12, 2022 motion, on February 16, 2023, this Board ordered complainant to file required proof of correct service no later than March

20, 2023 or face dismissal of the complaint. (*See* attached Exhibit A, February 16, 2023 Order of the Board.)

5. Despite the Board's February 16, 2023 Order Complainant failed submit any proof of correct service or other documents.
6. Complainant's lack of service violates Illinois law.
7. This Honorable Board cannot proceed in this matter until service is perfected.
8. Because there is no 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
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PULTE HOME COMPANY, INC.

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ILLINOIS POLLUTION CONTROL BOARD

February 16, 2023

PAUL CHRISTIAN PRATAPAS, an)	
individual,)	
)	
Complainant,)	
)	
v.)	PCB 23-55
)	(Citizens Enforcement - Water)
PULTE HOME COMPANY, LLC, a Michigan)	
corporation)	
)	
Respondent.)	
)	

ORDER OF THE BOARD (by B. F. Currie):

On November 9, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Naper Commons by Pulte Homes, known as Pulte Home Company, LLC (Pulte). The complaint concerns Pulte’s residential construction project located at 2308 West Lucent Lane in Naperville, DuPage County. On December 12, 2022, Pulte filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint on Pulte, as well as a motion to dismiss the action on the grounds that Mr. Pratapas alleges a wholly past violation (Mot.).

The Board first addresses the proper name of the respondent, then addresses the issue of service, and finally discusses the motion to dismiss. The Board directs the Clerk to correct the respondent’s name, grants Pulte’s motion regarding service, allows Mr. Pratapas to attempt to perfect service, and denies Pulte’s motion to dismiss the complaint on the grounds of frivolousness.

NAMED RESPONDENT

As filed, Mr. Pratapas named “Naper Commons by Pulte Homes” as the respondent in this complaint. In a December 12, 2022, special and limited appearance filing, the attorney for the respondent indicated that the proper name for the respondent is “Pulte Home Company, LLC”. The Board corrects the caption in this order and directs the Clerk to correct the respondent’s name in the docket of this case.

SERVICE OF COMPLAINT

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. See 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103. Under the Board’s rules, an enforcement proceeding begins by serving a notice and the complaint on a respondent. See 35 Ill. Adm. Code

103.204(a), (b). Specifically, 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.* Notably, enforcement complaints may not be served by e-mail. *See* 35 Ill. Adm. Code 101.1000(e).

If service is not timely initiated or completed, then the “proceeding is subject to dismissal, and the filing party is subject to sanctions.” 35 Ill. Adm. Code 101.304(b)(4). In this case, Mr. Pratapas used a sample complaint form available from the Board’s website that is directed at citizen complaints. The Board’s form includes a sample affidavit of service that lists appropriate methods of service. Mr. Pratapas reported to the Board 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.” Comp. at 10. For personal service, the form required the complainant to list the name of the person making the personal delivery and the date, time, and address at which the complaint was provided. *Id.* These items were left blank by Mr. Pratapas in his filing. *Id.*

On November 14, 2022, Mr. Pratapas filed a form from an unspecified District Court that purported to be a proof of service. The form lists options for the method of service, and Mr. Pratapas marked “personal service.” Mr. Pratapas names the person served as, “Management Construction Office, Model Home, Basement Exterior Door.” Illinois law requires that a private corporation be served by “leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State.” 735 ILCS 5/2-204 (2020). Therefore, leaving a copy of the complaint at the door of a construction site office is not proper service. The Board reviewed Mr. Pratapas’s response filed on December 15, 2022, on this issue. The Board finds that Mr. Pratapas’ statements and photographs provided in that filing do not constitute proper service.

The Board grants Pulte’s motion to not accept the complaint for failure to serve; however, the Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Monday, March 20, 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 for failure to properly serve the complaint.

MOTION TO DISMISS

Ordinarily, the Board would delay its ruling on the motion to dismiss until a complaint has been properly served. However, as Pulte has filed the motion to dismiss on the grounds of frivolousness and Mr. Pratapas has responded to the motion, the Board will address the issue at this time.

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. “Frivolous” is defined in the Board’s rules as, “any request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202(b). Pulte argues that the complaint alleges a

wholly past, one-time violation that occurred on May 24, 2022, and is therefore frivolous. Mot. at 3. Pulte cites to a single federal case involving defenses under the Clean Water Act, Gwaltney of Smithfield v. Chesapeake Bay Found., 484 U.S. 49 (1987). In this case, Mr. Pratapas has alleged violations of the State Environmental Protection Act, not the Clean Water Act. Therefore, Gwaltney is not applicable to the case at hand.

Past violations of the Act are still violations which may be enforced under the Act. Section 42(h) of the Act holds that “[i]n determining the appropriate civil penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to . . . the duration and gravity of the violation.” Therefore, the Board is required to give weight to the duration of the alleged violations when determining the appropriate penalty, but Pulte is not able to use its assertion of “wholly past violations” as an affirmative defense to the complaint. The Board denies Pulte’s motion to dismiss on the grounds of frivolousness. Should notice of proper proof of service be filed with the Board by March 20, 2023, the Board will then determine whether the complaint meets the content requirements of the Board’s procedural rules. *See* 35. Ill. Adm. Code 103.204(c).

ORDER

1. The Board directs the Clerk to correct the name of the respondent in the docket.
2. The Board grants Pulte’s motion to not accept the complaint for failure to serve.
3. The Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Monday, March 20, 2023.
4. The Board denies Pulte’s motion to dismiss the complaint for frivolousness.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 16, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board