

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

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 or respondent). The complaint concerns Pulte's residential construction at 3723 Quick Fire Drive in Naperville, Will County. Comp. at 2. On December 5, 2022, the Board directed Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Tuesday, January 16, 2023 (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint.

On December 29, 2022, Mr. Pratapas filed a certified mail return receipt indicating service on:

Swanson, Martin, & Bell
330 N. Wabash Ave
#3300
Chicago, IL 60611

On January 17, 2023, the respondent filed a motion asking the Board not to accept the complaint. The respondent argues that the complaint was not properly served, and should be dismissed. The respondent also notes that its name is Pulte Home Company, LLC.

The Board first addresses the proper name of the respondent, then addresses the issue of service. The Board directs the Clerk to correct the respondent's name, grants respondent's motion regarding service, and concludes to dismiss the complaint.

NAMED RESPONDENT

As filed, Mr. Pratapas named "Wagner Farms by Pulte Homes" as the respondent in this complaint. In its January 17, 2023, motion, the attorney for 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 improperly served the complaint, and the Board offered him the opportunity to correct the service. Mr. Pratapas instead filed proof that something was mailed to respondent's attorneys. The complaint was sent via certified mail to a person not authorized by law to accept service. Illinois law requires that a private corporation be served by "(1) leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law." 735 ILCS 5/2-204 (2020).

The Board's rules also provide that if a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. 35 Ill. Adm. Code 101.304(b)(1). Respondent's attorneys filed their appearance with the Board on January 17, 2023 (Resp. App.), but they were corresponding with Mr. Pratapas as representatives of respondent as of at least December 13, 2022. Paul Christian Pratapas v. Wagner Farms by Pulte Homes, PCB 23-54, Correspondence between Paul Christian Pratapas and A. Jay Koehler, Swanson, Martin & Bell, LLP (Dec. 13, 2022). While Mr. Pratapas' certified mail return receipt indicates that he mailed something to respondent's attorneys, Mr. Pratapas did not file documentation or an affidavit of proof of service indicating that this mailing was the complaint in this matter. *See* 35 Ill. Adm. Code 101.304(d). Accordingly, Mr. Pratapas did not perfect service on the respondent.

Because Mr. Pratapas has failed to timely perfect service of the complaint on the respondent, the Board grants the motion to not accept the complaint. Further, because Mr. Pratapas was given an opportunity to correct service errors, and failed to do so, the Board dismisses 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 June 1, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board