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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MAR - 2 2004

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

Complainant,

V.

PINNACLE CORPORATION d/b/a TOWN &  
COUNTRY HOMES,

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

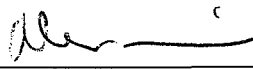
PCB No. 04-138  
(Enforcement - Water)

**NOTICE OF FILING**

TO	Michael C. Partee	Bradley P. Halloran
:	Assistant Attorney General	Hearing Officer
	Office of the Illinois Attorney General	Illinois Pollution Control Board
	Environmental Bureau	James R. Thompson Center
	188 W. Randolph St., 20 <sup>th</sup> Floor	100 W. Randolph St., Suite 11-500
	Chicago, Illinois 60604	Chicago, IL 60601

PLEASE TAKE NOTICE that on this 2nd day of March, 2004, we filed with the Clerk of the Illinois Pollution Control Board at 100 W. Randolph St., Suite 11-500, Chicago, Illinois, Defendant's **Appearance** and **Motion to Dismiss Complaint**, copies of which are hereby served upon you.

PINNACLE CORPORATION d/b/a  
TOWN & COUNTRY HOMES,

By:   
One of Its Attorneys

Thomas R. Burney  
Glenn C. Sechen  
Daniel C. Shapiro  
SCHAIN, BURNEY, ROSS & CITRON, LTD.  
222 North LaSalle Street, Suite 1910  
Chicago, IL 60601-1102  
(312) 332-0200

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STATE OF ILLINOIS  
Pollution Control Board

Respondent.

(Enforcement – Water)

## dcs/Pinnacle-TownCountry/ Appearance

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STATE OF ILLINOIS  
Pollution Control Board

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

Complainant,

V.

PINNACLE CORPORATION d/b/a TOWN &  
COUNTRY HOMES, an Illinois Corporation,

Respondent.

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) PCB No. 04-138  
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**MOTION TO DISMISS COMPLAINT**

NOW COMES the Respondent, Pinnacle Corporation d/b/a Town & Country Homes ("Town & Country"), through its attorneys Schain, Burney, Ross & Citron, Ltd., and pursuant to Section 103.204, of Title 35, Subtitle A, Chapter 1 of the Illinois Administrative Code (the "Code") and the Illinois Environmental Protection Act, 415 ILCS 5/31(c)(1) (the "Act"), hereby submits its motion to dismiss the People's complaint and in support thereof states as follows.

**BACKGROUND**

On or about February 2, 2004, the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois ("People") filed a multi-count complaint against Town & Country regarding its construction of a residential development in Wauconda, Illinois. The complaint sets forth five counts and seeks civil penalties from Town & Country for purported violations of the Act.

## DISCUSSION

In enforcement proceedings, a party is entitled to notice of the specific violations charged against it and the specific conduct constituting an alleged violation. Citizen's Utilities v. Illinois Pollution Control Board, 9 Ill. App. 3d 158, 289 N.E.2d 642 (2<sup>nd</sup> Dist. 1972). The Act specifically provides that any person who files a complaint must plead, with specificity, the manner and extent of a purported violation. See, 415 ILCS 5/31(c)(4). Moreover, this Board's procedural rules require that the complaint contain the dates, location, events, extent, duration and strength of discharges or emissions and consequences thereof which constitute a violation. See the Code, Chapter 35, Section 103.204(6). A complaint fails to meet the pleading requirements of the Act and this Board's procedural rules if it fails to plead dates, events, the nature and extent and duration of the threat to the environment. City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago, 60 Ill. App. 3d 995, 377 N.E.2d 114 (1978). Moreover, allegations which do not plead facts but rather conclusions are insufficient to state a cause of action for which the Board may grant relief. Id. See also, Winnetkans' Interested in Protecting the Environment (WIPE) v. The Illinois Pollution Control Board, 55 Ill. App. 3d 475, 370 N.E.2d 1176 (1977) (A complaint in administrative proceedings which is conclusory will be dismissed).

In the case at hand, the People's complaint fails to satisfy the requirements required under the Act and this Board's rules as well as the principles articulated in City of Des Plaines, supra. For instance, while the complaint references a

September 24, 2002 date and generally provides a location of the project, it nonetheless fails to articulate the nature, extent, duration and strength of discharges or omissions which Town & Country allegedly caused.

To illustrate the complaint's inadequacies, reference is made to paragraphs 6 through 9 of Count I. The allegations are absent of any facts specifying the extent, duration, nature or strength of any purported discharges or emissions by Town & Country. For example, paragraph 6 of Count I alleges:

On September 24, 2002, there was approximately 400 acres of land disturbed by Respondent's construction activities, including a disturbed wetland area on the west side of the site.

These allegations are conclusory and merely suggest that Town & Country "disturbed a portion of a wetland and/or some portion of the 400 acres of land at issue." Without describing the location, events, extent or duration of any purported emissions, it is impossible for Town & Country to respond to these allegations.

Paragraph 7 of Count I of the complaint alleges:

On September 24, 2002, there was inadequate erosion and silt control measures of a large portion of the site from which storm water discharged to the on-site and adjacent wetland areas and the nearby tributary of Mutton Creek.

This paragraph of the complaint vaguely references "inadequate erosion and silt control measures" and a discharge of storm water into an unknown location of wetlands again it does not appraise Town & Country of the required facts

constituting an alleged violation. In short, the allegations fail to reference the extent or duration of any discharges as are required.

Paragraph 9 of the complaint states that Town & Country allegedly pumped storm water from site basins to adjacent wetlands. Casually omitted, however, is the location of the alleged discharge, the nature of same, the extent of discharge and the consequences, if any, which occurred. Town & Country simply is not reasonably apprised of the violations posed against it given the complaint's tenuous and unspecified claims.

In addition, paragraph 9 incorrectly assumes that the mere pumping of storm water collected in a catch basin is a violation of the water quality standard established by the State. This conclusory and unsupported allegation is further reason as to why the complaint should be stricken.

As additional examples of the complaint's defective nature, reference is made to paragraphs 19 - 24. First, these paragraphs are replete with legal conclusions. Second, they fail to explain that there was only a minimal level of rainfall which occurred on September 24, 2002. As such, no harm, if any, from alleged discharge could have occurred. Importantly, the State's complaint fails to explain in the above paragraphs whether any claimed harm/damage was permanent or even the nature of alleged damages.

Count II fares no better. Although the People reference Section 12(c) of the Act for the proposition that the party may not increase the quality or strength of contaminants into the waters, the People again fail to specifically explain how

or why the failure to secure a construction permit violated said section or caused any harm to the property in the development.

The same problem evident in Count II exists in Count III. Specifically, Count III is absent of any allegation detailing the extent of the discharge of a contaminant, the location of any purported discharge and the purported failure to obtain a permit. Moreover, Count III of the complaint fails to explain how the alleged failure to obtain a permit caused any damage or harm.

Count IV fails to identify, with specificity, the manner in which the failure to submit plans caused or contributed to the violation of the Act.

Lastly, Count V, like the prior counts, fails to articulate the location, events, extent, duration or strength of any purported discharges or emissions and the consequences of the alleged violation as required.

The unequivocal nature of the insufficiencies of the People's Complaint are obvious. Based upon the deficiencies in the complaint identified above, the complaint's allegations of conclusions, the failure to provide the requisite locations, nature, dates, extent, duration or strength of any discharges constituting a purported violation of the Act violate this Board's rules.

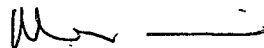
For the reasons set forth herein, Town & Country submits that the People's Complaint fails to satisfy the statutory and administrative regulations of this State and should be dismissed.

WHEREFORE, Respondent, Pinnacle Corporation d/b/a Town & Country Homes, requests that this Board strike and dismiss Complainant's complaint and grant it further relief as this Board deems just and equitable.

Dated: March 2, 2004

Respectfully submitted,

PINNACLE CORPORATION d/b/a  
TOWN & COUNTRY HOMES,

By:   
One of Its Attorneys

Thomas R. Burney  
Glenn C. Sechen  
Daniel C. Shapiro  
SCHAIN, BURNEY, ROSS & CITRON, LTD.  
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dcs/Pinnacle-TownCountry/MotiontoDismiss



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**CERTIFICATE OF SERVICE**

STATE OF ILLINOIS  
Pollution Control Board

I, Daniel C. Shapiro, an attorney, certify that on March 2, 2004, I caused to be served via messenger delivery a true copy of the **Notice of Filing** and Defendant's **Appearance** and **Motion to Dismiss Complaint**, in properly addressed, postage prepaid, sealed envelopes upon:

Michael C. Partee  
Assistant Attorney General  
Office of the Illinois Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60604

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

  
\_\_\_\_\_  
Daniel C. Shapiro