

ILLINOIS POLLUTION CONTROL BOARD

April 1, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 04-138
PINNACLE CORPORATION d/b/a)	(Enforcement - Water)
TOWN & COUNTRY HOMES,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On March 2, 2004, Pinnacle Corporation d/b/a Town & Country Homes (respondent) filed a motion to dismiss a complaint filed on February 2, 2004, by the Office of the Attorney General, on behalf of the People of the State of Illinois (People). On March 15, 2004, the People filed a response to the motion to dismiss. The five-count complaint concerns respondent's residential construction site at Gilmer Road in Wauconda, Lake County. The Board accepted the complaint for hearing on February 5, 2004. For the reasons discussed below, the Board denies the motion to dismiss.

MOTION TO DISMISS

The motion to dismiss notes that in enforcement proceedings a party is entitled to notice of the specific violations charged against the party. Mot. at 2, citing Citizen's Utility v. PCB, 9 Ill. App. 3d 158, 289 N.E.2d 642 (2nd Dist. 1972). Further, respondent argues that any person who files a complaint must plead with specificity the manner and extent of a purported violation and allegations which do not plead facts but state conclusions are insufficient. Mot. at 2. Respondent asserts the complaint fails to satisfy the requirements of the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and Board regulations. Mot. at 2.

Respondent maintains that the complaint does not apprise respondent of the alleged violations sufficiently to allow respondent to respond to the allegations. Mot. at 4. Respondent argues that counts I and V fail to specify the location of the alleged discharge, the nature of the discharge, the extent of the discharge and the consequences. Mot. at 4, 5. Respondent asserts that counts II and IV fail to specify or explain how the failure to secure a construction permit or submit plans violated the Act or caused harm to property. Mot. at 4-5. Respondent alleges that count III is "absent of any allegation detailing the extent of the discharge of a contaminant." Mot. at 5.

RESPONSE

The People respond to the motion by noting that the in ruling on a motion to dismiss all “well pled facts contained in the pleadings must be taken as true and all inferences from them must be drawn in favor of the nonmovant.” Resp. at 2-3, citing People v. Skokie Valley Asphalt, PCB 96-98 (June 5, 2003). The People maintain that the complaint meets the content requirements of the Act and Board regulations and clearly advises respondent of the extent and nature of the alleged violations. Resp. at 3. The People argue that respondent ignores the well-pled facts and inferences that can be drawn from the well-pled facts. *Id.* The People assert that respondent invents case elements and then argues that the People failed to plead facts in support of those elements.

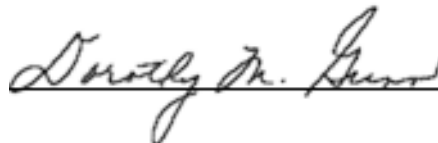
DISCUSSION

In an enforcement proceedings a party is entitled to notice of the specific violations charged against the party. Mot. at 2, citing Citizen’s Utility v. PCB, 9 Ill. App. 3d 158, 289 N.E.2d 642 (2nd Dist. 1972). A complaint must advise the respondent of the extent and nature of the alleged violations to reasonably allow preparation of a defense. Resp. at 2, citing 35 Ill. Adm. Code 103.204(c) and People v. Bentronics Corporation, PCB 97-20 (Oct. 17, 1996). Moreover, the Board’s standard for determining motions to dismiss has been well established in case law. *See* People v. Peabody Coal Company, PCB 99-134 (June 20, 2002), People v. Stein Steel Mills Services, Inc., PCB 02-1 (Nov. 15, 2001); Shelton v. Crown, PCB 96-53 (May 2, 1996); Krautsack v. Patel, PCB 95-143 (June 15, 1995); Miehle v. Chicago Bridge and Iron Co., PCB 93-150 (Nov. 4, 1993). The Board takes all well-pleaded allegations as true. Peabody Coal PCB 99-134, Stein Steel, PCB 02-1; Shelton, PCB 96-53; Krautsack, PCB 95-143; Miehle, PCB 93-150. In addition, dismissal of the complaint is proper only if it is clear that no set of facts could be proven that that would entitle complainant to relief. *Id.*

The Board determined in the February 5, 2004 order that the “complaint meets the content requirements of the Board’s procedural rules.” People v. Pinnacle Corporation, PCB 04-138 (Feb. 5, 2004). The Board finds nothing in the motion to dismiss which would alter that determination. The complaint sets forth a set of facts, which if proven would entitle the complaint to relief. Furthermore, the Board finds the complaint sufficiently sets forth the allegations to allow respondent to reasonably prepare a defense. Therefore, the Board denies the motion to dismiss.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 1, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board