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FEB 22 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE 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.)

PCB No. 04-138
(Enforcement - Water)

NOTICE OF FILING

TO: Mr. Glenn C. Sechen
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street, Suite 1910
Chicago, Illinois 60601-1102

Mr. Bradley Halloran
Hearing Officer
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today, February 22, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board the **Motion for Leave to Amend Complaint, First Amended Complaint, Motion for Relief from Hearing Requirement, and Stipulation and Proposal for Settlement**, true and correct copies of which are attached hereto and herewith served upon you.

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

BY:

Michael C. ParTEE

MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel.: (312) 814-2069

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PINNACLE CORPORATION d/b/a
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an Illinois Corporation,

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MOTION FOR LEAVE TO AMEND COMPLAINT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves for leave to amend its Complaint to add violations which occurred since this case was filed. This Motion is filed pursuant to Section 2-616 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616, and Section 101.500 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 101.500. In support of this Motion, the Complainant states as follows:

1. On February 2, 2004, Complainant filed its Complaint with the Board.

2. In May 2004, after the Complaint was filed, the Illinois EPA referred to the Attorney General's Office additional, alleged violations of the Illinois Environmental Protection Act ("Act") and associated regulations which occurred since this case was filed.

3. Complainant's proposed First Amended Complaint was filed simultaneous with this Motion.

4. The parties have reached a settlement of all of the allegations contained in the proposed First Amended Complaint and a

Stipulation and Proposal for Settlement of the proposed First Amended Complaint accompanied by a Motion for Relief from the Hearing Requirement were also filed with the Board simultaneous with this Motion.

5. Section 101.500 of the Board Procedural Rules provides, in relevant part, as follows:

Filing of Motions and Responses

- (a) The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.

6. Section 2-616 of the Illinois Code of Civil Procedure sets forth the standard for amendments to pleadings and provides, in relevant part, as follows:

Amendments

- (a) At any time before final judgment amendments may be allowed on just and reasonable terms, . . . adding new causes of action . . . , and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought

7. In general, amendments should be liberally allowed at any time before final judgment unless an opposing party would be prejudiced as result. See Bank of N. Illinois v. Nugent, 223 Ill.App.3d 1, 13, 584 N.E.2d 948, 956 (2d Dist. 1991).

8. Plaintiff seeks to add violations which occurred since the case was filed. Plaintiff does not seek to add a new party.

9. The additional violations are not subject to a statute of limitations. See Piolet Bros. Trading, Inc. v. PCB, 110 Ill.App.3d 752, 758, 442 N.E.2d 1374, 1379 (5th Dist. 1982).

10. No final judgment was entered in this case and no hearing is currently scheduled.

11. Finally, Respondent does not object to this Motion.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for leave to amend its Complaint to add violations which occurred since this case was filed.

Respectfully submitted,

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

BY:



MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel.: (312)814-2069

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PEOPLE OF THE STATE OF ILLINOIS,
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v.

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

Respondent.

PCB No. 04-138
(Enforcement - Water)

FIRST AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, an Illinois corporation, as follows:

COUNT I

CAUSING, THREATENING OR ALLOWING WATER POLLUTION

1. This Count is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. At all times relevant to this Count, Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, was and is an Illinois corporation authorized to transact business in the State of Illinois.

4. At all times relevant to this Count, Respondent was and is the owner and/or operator of Liberty Lakes, an expansive construction site located on Gilmer Road just west of Fairfield Road in Wauconda, Lake County, Illinois ("site"), on which approximately 644 single-family homes and 156 townhomes will be built.

5. Located on and adjacent to the site are wetland areas. Located near the site is a tributary of Mutton Creek, which is in the Fox River watershed.

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

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

8. Also on September 24, 2002, there were hundreds of feet of sewer and public water supply pipes installed in excavated trenches at the site.

9. Based on information from Respondent, Respondent had also pumped storm water from on-site catch basins into an adjacent wetland area.

10. As of September 24, 2002, Respondent had not submitted a notice of intent to be covered by the general National Pollutant Discharge Elimination System permit for storm water discharge associated with construction activity at the site ("general NPDES storm water permit") prior to beginning construction activity.

11. As of September 24, 2002, Respondent also had not obtained sewer and public water supply construction permits from the Illinois EPA prior to installing sewer and public water supply pipes in excavated trenches at the site.

12. On October 3, 2002, Respondent submitted to the Illinois EPA notices of intent to be covered by the general NPDES storm water permit. Respondent's notices of intent stated that the start of construction date was "10/02," but the start of construction date was, in fact, some date well before October 2002.

13. On October 4, 2002, the Illinois EPA notified Respondent of the site's coverage under the general NPDES storm water permit for storm water discharges associated with the construction activities.

14. On February 25 and 26, 2004, after receiving sewer construction permit applications from Respondent, the Illinois EPA issued sewer construction permit nos. 2003-IA-5513-1 and 2003-IA-2945-1, respectively, to Respondent. Permit no. 2003-IA-5513-1 allowed for a temporary lift station consisting of one pump to be used for an interim period prior to the installation of lift station utilizing a higher capacity pump. Permit no. 2003-IA-2945-1 allowed for the installation of two replacement pumps in

previously permitted lift stations.

15. On March 5, 2004, after a rain event, silt-laden and turbid storm water discharged from the site and entered the nearby tributary of Mutton Creek.

16. The silt-laden and turbid storm water discharges from the site on March 5, 2004, were caused by a lack of erosion and silt control measures at a large portion of the site.

17. Also in early March 2004, following a break in Respondent's sewer line, Respondent used septic trucks to pump out its sewer and sewage lift stations and to haul the untreated contents of the sewer and lift stations to the Wheaton Sanitary District for treatment.

18. Respondent is subject to the Act and the regulations for water pollution and public water supplies promulgated under the Act by the Board and the Illinois EPA at Title 35, Subtitles C and F, respectively, of the Illinois Administrative Code.

19. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides as follows:

Actions Prohibited.

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment of any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

20. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

21. Respondent, an Illinois corporation, is a "person" as that term is defined in Section 3.315 of the Act.

22. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

23. The silt that eroded from the site into the wetland areas and tributary of Mutton Creek is a "contaminant" as that term is defined by Section 3.165 of the Act.

24. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

25. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides the following definition:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial; public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

26. The on-site and adjacent wetland areas and tributary of Mutton Creek are "waters" as that term is defined in Section 3.550 of the Act.

27. By causing, threatening or allowing the discharge of silt-laden and turbid storm water into wetland areas and the tributary of Mutton Creek, Respondent caused, threatened or allowed the discharge of a contaminant into the environment.

28. By causing, threatening or allowing the discharge of a contaminant into the environment, Respondent caused or tended to cause water pollution in Illinois.

29. By causing or tending to cause water pollution in Illinois, Respondent violated Section 12(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued thereafter;
5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

COUNT II

CREATING OFFENSIVE WATER CONDITIONS

1-26. Complainant realleges and incorporates by reference paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count II.

27. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Offensive Conditions.

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

28. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides as follows:

Offensive Discharges.

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

29. By discharging silt-laden and turbid storm water from the site on March 5, 2004, to the tributary of Mutton Creek, Respondent caused offensive conditions.

30. By causing offensive conditions, Respondent violated Sections 302.203 and 304.106 of the Board's Water Pollution Regulations.

31. By violating Sections 302.203 and 304.106 of the Board's Water Pollution Regulations, Respondent also violated Section 12(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued thereafter;
5. Awarding to Complainant its costs and reasonable attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

COUNT III

CREATING A WATER POLLUTION HAZARD

1-18. Complainant realleges and incorporates by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of

this Count III.

19. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides as follows:

No person shall:

* * *

- (d) Deposit any contaminants upon the land in such place and manner as to create a water pollution hazard.

20-26. Complainant realleges and incorporates by reference paragraphs 20 through 26 of Count I as paragraphs 20 through 26 of this Count III.

27. By failing to have erosion and silt control measures at the site on September 24, 2002, and March 5, 2004, Respondent created a water pollution hazard.

28. By creating a water pollution hazard, Respondent violated Section 12(d) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations, and an additional penalty of ten thousand dollars

(\$10,000.00) for each day during which each violation continued thereafter;

5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

COUNT IV

CAUSING OR ALLOWING THE CONSTRUCTION OF A SEWER WITHOUT A PERMIT

1-18. Complainant realleges and incorporates by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count IV.

19. Section 12(c) of the Act, 415 ILCS 5/12(c) (2004), provides as follows:

Actions Prohibited.

No person shall:

* * *

- (c) Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency.

20-26. Complainant realleges and incorporates by reference paragraphs 20 through 26 of Count I as paragraphs 20 through 26 of this Count IV.

27. Section 309.202(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a), provides as follows:

Construction Permits.

Except for treatment works or wastewater sources which have or will have discharges for which NPDES permits are required, and for which NPDES permits have been issued by the Agency:

- (a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).

28. Beginning on a date before September 24, 2002, Respondent caused or allowed the construction of a sewer without a construction permit issued by the Illinois EPA.

29. By causing or allowing the construction of a sewer without a construction permit issued by the Illinois EPA, Respondent violated Section 12(c) of the Act and Section 309.202(a) of the Board's Water Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count IV:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued thereafter;

5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

COUNT V

VIOLATING SEWER CONSTRUCTION PERMITS

1-18. Complainant realleges and incorporates by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count V.

19. Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), provides as follows:

Actions prohibited. No person shall:

* * *

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

20-22. Complainant realleges and incorporates by reference paragraphs 20 through 22 of Count I as paragraphs 20 through 22 of this Count V.

23. Untreated sewage is a "contaminant" as that term is defined by Section 3.165 of the Act.

24. Complainant realleges and incorporates by reference paragraph 24 of Count I as paragraph 24 of this Count V.

25. The discharge of untreated sewage, a contaminant, to waters would constitute "water pollution" as that term is defined

in Section 3.545 of the Act.

26. Respondent's sewer is designed to prevent water pollution.

27. Special Condition #4 of sewer construction permit nos. 2003-IA-5513-1 and 2003-IA-2945-1 provides as follows:

The Permittees shall not pump and haul sewage from the tributary service in lieu of this construction permit.

28. By pumping and hauling untreated sewage from its sewer and sewage lift stations to the Wheaton Sanitary District for treatment in early March 2004, Respondent violated Special Condition #4 of sewer construction permit nos. 2003-IA-5513-1 and 2003-IA-2945-1.

29. By violating Special Condition #4 of sewer construction permit nos. 2003-IA-5513-1 and 2003-IA-2945-1, Respondent violated Section 12(b) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and

regulations, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued thereafter;

5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

COUNT VI

CAUSING, THREATENING OR ALLOWING THE DISCHARGE OF CONTAMINANTS WITHOUT AN NPDES STORM WATER DISCHARGE PERMIT

1-18. Complainant realleges and incorporates by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count VI.

19. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), provides, in relevant part, as follows:

Actions Prohibited.

No person shall:

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program

20-26. Complainant realleges and incorporates by reference paragraphs 20 through 26 of Count I as paragraphs 20 through 26 of

this Count VI.

27. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required.

- (a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

28. Beginning on a date before September 24, 2002, until October 3, 2004, when it submitted notices of intent to be covered by the general NPDES storm water permit, Respondent caused, threatened or allowed the discharge of a contaminant into the waters of the State without an NPDES storm water discharge permit issued by the Illinois EPA.

29. By causing, threatening or allowing the discharge of a contaminant into the waters of the State without an NPDES storm water discharge permit issued by the Illinois EPA, Respondent violated Section 309.102(a) of the Board's Water Pollution Regulations and Section 12(f) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count VI:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;

3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;

4. Assessing against Respondent a civil penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continues;

5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

COUNT VII

VIOLATING NPDES STORM WATER DISCHARGE PERMIT

1-18. Complainant realleges and incorporates by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count VII.

19-27. Complainant realleges and incorporates by reference paragraphs 19 through 27 of Count VI as paragraphs 19 through 27 of this Count VII.

28. Part IV of the general NPDES storm water permit no. ILR107421 provides, in part, as follows:

Storm Water Pollution Prevention Plans.

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction site activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction site activity and to assure compliance with the terms and

conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

29. Part VI of the general NPDES storm water permit no. ILR107421 provides, in part, as follows:

A. Duty to Comply.

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Illinois Environmental Protection Act and the CWA and is grounds for enforcement action; for permit termination, revocation and issuance, or modification; or for denial of a permit renewal application.

30. Respondent failed to implement a storm water pollution prevention plan on September 24, 2002, when there were inadequate erosion and silt control measures at the site and on March 5, 2004, when there were a lack of erosion and silt control measures at the site.

31. By failing to implement a storm water pollution prevention plan on September 24, 2002, and on March 5, 2004, Respondent violated Parts IV and VI of general NPDES storm water permit no. ILR107421.

32. By violating Parts IV and VI of general NPDES storm water permit no. ILR107421, Respondent also violated Section 309.102(a) of the Board's Water Pollution Regulations and Section 12(f) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count VII:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continues;
5. Awarding to Complainant its costs and reasonable attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

COUNT VIII

FAILING TO SUBMIT PLANS AND SPECIFICATIONS FOR A PUBLIC WATER SUPPLY BEFORE CONSTRUCTION

1-18. Complainant realleges and incorporates by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count VIII.

19. Section 15(a) of the Act, 415 ILCS 5/15(a) (2004), provides as follows:

Plans and specifications; demonstration of capability.

- (a) Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality,

mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

20. Section 3.365 of the Act, 415 ILCS 5/3.365 (2004), provides, in relevant part, the following definition:

"PUBLIC WATER SUPPLY" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year

21. The public water supply pipes installed in excavated trenches at the site are a "public water supply" as that term is defined in Section 3.365 of the Act.

22. Respondent failed to submit plans and specifications to the Illinois EPA or to obtain written approval before starting construction of the public water supply at the site.

23. By failing to submit plans and specifications to the Illinois EPA or to obtain written approval before starting construction of the public water supply at the site, Respondent violated Section 15(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count VIII:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent violated the Act and regulations as alleged herein;

3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;

4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued thereafter;

5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

COUNT IX

CAUSING OR ALLOWING THE CONSTRUCTION OR INSTALLATION OF A PUBLIC WATER SUPPLY WITHOUT A PERMIT

1. This Count is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion pursuant to Section 31 of the Act.

2-18. Complainant realleges and incorporates by reference paragraphs 2 through 18 of Count I as paragraphs 2 through 18 of this Count IX.

19. Section 18(a) of the Act, 415 ILCS 5/18(a) (2004), provides as follows:

Prohibitions; plugging requirements.

(a) No person shall:

- (1) Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or
- (2) Violate regulations or standards adopted by the Agency pursuant to Section 15(b) of this Act or by the Board under this Act; or
- (3) Construct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such permit.

20-26. Complainant realleges and incorporates by reference paragraphs 20 through 26 of Count I as paragraphs 20 through 26 of this Count IX.

27-28. Complainant realleges and incorporates by reference paragraphs 20 and 21 of Count VIII as paragraphs 27 and 28 of this Count IX.

29. Section 602.101(a) of the Board's Public Water Supply Regulations, 35 Ill. Adm. Code 602.101(a), provides, in relevant part, as follows:

Construction Permit.

- (a) No person shall cause or allow the construction of any new public water supply installation or cause or allow the change of or addition to any existing public water supply, without a construction permit issued by the Illinois Environmental Protection Agency (Agency)

30. Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations, 35 Ill. Adm. Code 652.101(a), provides as follows:

Construction Permit Requirements.

- (a) Construction permits shall be obtained by the official custodian of a water supply prior to beginning construction of any proposed community

water supply and prior to all alterations, changes or additions to an existing community water supply which may affect the sanitary quality, mineral quality or adequacy of the supply including changes pursuant to 25 Ill. Adm. Code 653.115.

31. Beginning on a date before September 24, 2002, Respondent caused or allowed the construction of a new public water supply without a construction permit issued by the Illinois EPA.

32. By causing or allowing the construction of a new public water supply without a construction permit issued by the Illinois EPA, Respondent violated Section 18(a) of the Act, Section 602.101(a) of the Board's Public Water Supply Regulations, and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, on this Count IX:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act and regulations, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued

thereafter;

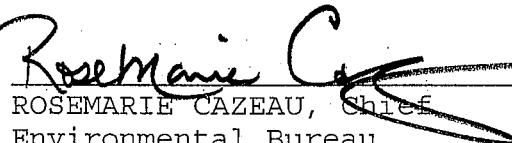
5. Awarding to Complainant its costs and reasonable attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel: (312) 814-2069

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 22 2005

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.

PCB No. 04-138
(Enforcement - Water)

MOTION FOR RELIEF FROM THE HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves for relief from the hearing requirement in this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the

Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act

3. On February 2, 2004, Complainant filed its Complaint with the Board.

4. Simultaneous with the filing of this Motion, Complainant also filed a Motion for Leave to Amend Complaint in order to add violations of the Act and associated regulations which occurred since the case was filed.

5. The parties have reached a settlement of all of the allegations contained in the proposed First Amended Complaint.

6. Therefore, also simultaneous with the filing of this Motion, a Stipulation and Proposal for Settlement accompanied by a Motion for Relief from the Hearing Requirement were filed with the Board.

7. No final judgment was entered in this case and no hearing is currently scheduled.


8. Finally, Respondent does not object to this Motion.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:



MICHAEL C. PARTEE
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
Tel.: (312)814-2069

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 22 2005

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.

PCB No. 04-138

(Enforcement - Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and the Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, an Illinois corporation, have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony that would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the First Amended Complaint except as otherwise provided herein. If the Board

approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, et seq. (2002).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it. This Stipulation may be signed in counterparts, all of which shall be considered one agreement.

III.

STATEMENT OF FACTS

A. Parties

1. On February 2, 2004, a Complaint was filed on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the

request of the Illinois EPA against Respondent pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002).

3. A First Amended Complaint was filed simultaneous with this Stipulation.

4. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).

5. At all times relevant to the First Amended Complaint, Respondent, PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES, was and is an Illinois corporation in good standing.

B. Site Description

1. Respondent is the developer of Liberty Lakes, a residential development located on Gilmer Road just west of Fairfield Road in Wauconda, Lake County, Illinois ("site"), where approximately 644 single-family homes and 156 townhomes will be built.

2. Complainant contends that, as of September 24, 2002, Respondent's construction activities had disturbed approximately 400 acres of land and that Respondent had installed hundreds of feet of sewer and public water supply pipes in excavated trenches at the site. Respondent contends that its construction activities disturbed less than 200 acres of land.

3. Complainant contends that, before commencing these construction activities at the site, Respondent did not obtain a general National Pollutant Discharge Elimination System permit for

storm water discharge associated with construction activity at the site ("general NPDES storm water permit") or construction permits for sanitary sewers and a public water supply at the site, and did not submit plans and specifications for a public water supply. Respondent contends that it obtained County storm water permits and that the County inspected the site. Further, the respondent contends that the Village inspected the sewer and water lines.

4. Complainant further contends that, after obtaining general NPDES storm water discharge permits and sewer construction permits, Respondent violated the terms and conditions of these permits. Respondent contends that a large storm caused the failure of the wier in one detention pond said failure being promptly corrected. Respondent further contends that a third party utility company contractor punctured a sewer line while augering under a road endangering the treatment plant and that respondent promptly located and repaired the punctured sewer line.

C. Allegations of Non-Compliance

Complainant contends that the Respondent violated the following provisions of the Act and regulations:

Count I: Causing, threatening or allowing water pollution in violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2002));

Count II: Creating offensive discharges in violation of Section 12(a) of the Act and Section 304.106 of the Board's Water Pollution Regulations (35 Ill. Adm. Code 304.106);

Count III: Creating offensive conditions in violation of Section 12(a) of the Act and Section 302.203 of the Board's Water Pollution Regulations (35

Ill. Adm. Code 302.203);

Count IV: Creating a water pollution hazard in violation of Section 12(d) of the Act (415 ILCS 5/12(d) (2002));

Count V: Causing or allowing the construction of a sewer without a permit in violation of Section 12(c) of the Act (415 ILCS 5/12(c) (2002)) and Section 309.202(a) of the Board's Water Pollution Regulations (35 Ill. Adm. Code 309.202(a));

Count VI: Violating sewer construction permits in violation of Section 12(b) of the Act (415 ILCS 5/12(b) (2002)) and Special Condition #4 of construction permit nos. 2003-IA-2495-1 and 2003-IA-5513-1;

Count VII: Causing, threatening or allowing the discharge of contaminants without an NPDES storm water discharge permit in violation of Section 12(f) of the Act (415 ILCS 5/12(f) (2002)) and Section 309.102(a) of the Board's Water Pollution Regulations (35 Ill. Adm. Code 309.102(a));

Count VIII: Violating NPDES storm water discharge permit in violation of Section 12(f) of the Act, Section 309.102(a) of the Board's Water Pollution Regulations (35 Ill. Adm. Code 309.102(a)), and permit no. ILR107421;

Count IX: Failing to submit plans and specifications for a public water supply before construction in violation of Section 15(a) of the Act (415 ILCS 5/15(a) (2002)); and

Count X: Causing or allowing the construction or installation of a public water supply without a permit in violation of Section 18(a) of the Act (415 ILCS 5/18(a) (2002)), Section 602.101(a) of the Board's Public Water Supply Regulations (35 Ill. Adm. Code 602.101(a)), and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations (35 Ill. Adm. Code 652.101(a)).

D. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the First Amended Complaint filed in this matter and referenced herein.

IV.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, employee or servant of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers or agents to take such action as shall be required to comply with the provisions of this Stipulation.

1. No change in ownership, corporate status or operator of the site shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the site, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

2. The Respondent shall notify each prime contractor to be retained to perform work required by any Order accepting and adopting the terms of this Stipulation of each of the requirements of said Order relevant to the activities to be performed by that

contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation and Proposal for Settlement to each contractor already retained no later than 30 days after the date of filing of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by any Order accepting and adopting the terms of this Stipulation.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

VI.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. Complainant contends that the environment was threatened and at least temporarily harmed, and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations. Respondent contends that the environment was threatened by reason of lack of permits, but was not harmed.

2. There is social and economic benefit to Respondent's construction activities at the site.

3. The construction activities are suitable for the area in which they are occurring provided that the terms and conditions of all applicable environmental permits issued to Respondent are complied with.

4. Obtaining and complying with general NPDES storm water discharge permits and sewer and public water supply construction permits was and is both technically practicable and economically reasonable.

5. Respondent subsequently complied with the Act and the Board Regulations.

VII.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement

action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The Complainant contends that the Respondent failed to obtain required permits for storm water discharges and installation of sanitary sewers and a public water supply prior to initiating construction and violated provisions of its storm water discharge and sanitary sewer permits once such permits were obtained. The complaint contends that the violations began on or around September 24, 2002, and were individually resolved at various times over the following two years. Respondent contends that it obtained County storm water permits and that the County inspected the site. Further, the respondent contends that the Village inspected the sewer and water lines and that all necessary state permits were obtained within 5 months.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. On or about October, 2002, Respondent hired an erosion control consultant to assist in coordinating erosion control measures on an ongoing basis. This has resulted in an increase to \$700,000.00 for erosion control in the project budget since the erosion control consultant was hired.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eighty Thousand Dollars (\$80,000.00) will serve to recover any economic benefit accrued by the Respondent, to deter further violations and aid in future voluntary compliance with the Act, regulations thereunder, and permit conditions.

5. The Complainant is not aware of previously adjudicated violations of the Act by the Respondent, and Respondent represents that it does not have any previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

VIII.

TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a total civil penalty in the sum of Eighty Thousand Dollars (\$80,000.00). Payment shall be made as follows:

a. Payment in the amount of Forty Thousand Dollars (\$40,000.00) shall be made by certified check, money order or wire transfer payable to the "Illinois EPA," designated for deposit in the "Environmental Protection Trust Fund," and sent to the following address within 30

days from the date the Board adopts and accepts this
Stipulation:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

The case name and number, and Respondent's Federal
Employer Identification Number ("FEIN"), 36-321732, shall
appear on the certified check, money order or wire
transfer. A copy of the certified check or money order
and the transmittal letter, or a copy of the wire
transfer receipt, shall be sent to:

Michael C. Partee
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

Charles Gunnarson
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

b. Payment in the amount of Twenty Thousand Dollars
(\$20,000.00) shall be made by certified check, money
order or wire transfer payable to the "Illinois EPA,"
designated for deposit in the "Hazardous Waste Fund," and
sent to the following address within 30 days from the
date the Board adopts and accepts this Stipulation:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

The case name and number, and Respondent's FEIN shall appear on the certified check, money order or wire transfer. A copy of the certified check or money order and the transmittal letter, or a copy of the wire transfer receipt, shall be sent to:

Michael C. Partee
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

Charles Gunnarson
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

c. Payment in the amount of Twenty Thousand Dollars (\$20,000.00) shall be made by certified check or money order payable to the "Illinois Attorney General's Projects and Court Ordered Distribution Fund (801 Fund)," and sent to the following address within 30 days from the date the Board adopts and accepts this Stipulation:

Michael C. Partee
Assistant Attorney General
Environmental Bureau/North
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601

The case name and number, and Respondent's FEIN shall also appear on this certified check or money order.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check or money order, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondent may be reached at the following address:

John McFarland
Vice President
Town and Country Homes
1806 South Highland Avenue
Suite 100
Lombard, Illinois 60148

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, the Respondent agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the First Amended Complaint in this matter, for purposes of Sections 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h) (2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action, any allegations that these alleged violations were adjudicated.

C. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's site which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

D. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the First Amended Complaint as outlined in Section III.C. of this Stipulation.

E. Release from Liability

In consideration of the Respondent's payment of the \$80,000.00 penalty and upon the Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and regulations that were the subject matter of the First Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in the First Amended Complaint filed simultaneous with this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), or entity other than the Respondent.

F. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation as written.

PEOPLE OF THE STATE OF ILLINOIS,

ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: R. Cazeau
ROSEMARIE CAZEAU, Chief
Environmental Bureau/North
Assistant Attorney General

DATE: 1/3/05

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: Joseph E. Svoboda
Joseph E. Svoboda, Chief
Chief Legal Counsel

DATE: 12-28-04

PINNACLE CORPORATION d/b/a TOWN & COUNTRY HOMES

BY: Thomas Ryan
PRINTED NAME: Thomas Ryan
TITLE: CEO - Chicago

DATE: 1/20/05

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of Motion for Leave to Amend Complaint, First Amended Complaint, Motion for Relief from Hearing Requirement, Stipulation and Proposal for Settlement, and Notice of Filing were mailed, first class postage prepaid, to the persons listed on the Notice of Filing on February 22, 2005.

BY:



MICHAEL C. PARTEE

It is hereby certified that the originals plus nine (9) double-sided copies of the foregoing were hand-delivered to the following person on February 22, 2005:

Pollution Control Board, Attn: Clerk
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

BY:



MICHAEL C. PARTEE