

STATE OF ILLINOIS
ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,
Petitioner,

Docket No. PCB 2023-079

v.

WINDING CREEK by PULTE
HOMES
&
CITY OF BATAVIA

Respondents.

NOTICE OF FILING

TO: PAUL CHRISTIAN PRATAPAS
1330 E. Chicago Ave
Naperville, IL 60540
Email: paulpratapas@gmail.com

PLEASE TAKE NOTICE that on January 18, 2023, the attached Motion to Dismiss was filed before the Illinois Pollution Control Board.

Respectfully submitted,

City of Batavia

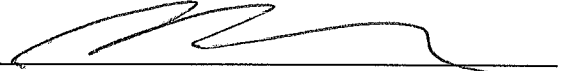


Roman J. Seckel, City Attorney

Roman J. Seckel, City Attorney
Drendel & Jansons Law Group
111 Flinn Street
Batavia, IL 60510
Email: rjs@batavialaw.com

CERTIFICATE OF SERVICE

I, Roman J. Seckel, Attorney for the City of Batavia, certify that on January 18, 2023, I caused the foregoing NOTICE OF FILING and MOTION TO DISMISS to be served on Paul Christian Pratapas and served on the parties below by mailing such documents via the United States Postal Service and via email to the address above.



Roman J. Seckel, City Attorney

STATE OF ILLINOIS
ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,
Petitioner,

Docket No. PCB 2023-079

v.

WINDING CREEK by PULTE
HOMES
&
CITY OF BATAVIA

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**CITY OF BATAVIA’S MOTION TO DISMISS PURSUANT
TO 415 ILCS 5/31(D)(1) AND 35 ILL.ADM.CODE 101.202**

Now Comes the City of Batavia, by and through its attorneys, Drendel & Jansons Law Group and for its **Motion to Dismiss Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill.Adm.Code 101.202**, states and argues as follows:

1. On December 15, 2022, Petitioner, Paul Christian Pratapas, (hereinafter “Petitioner”), filed a Formal Complaint with the Illinois Pollution Control Board.
2. In his Formal Complaint, Petitioner names the City of Batavia (hereinafter “Batavia”) and Winding Creek by Pulte Homes as a Respondents.
3. In his Formal Complaint, Petitioner alleges that Pulte Homes is building a housing development [Winding Creek] within the municipal limits of the City of Batavia, and in doing so has violated the following cited states:
 - a. 415 ILCS 5/12(a);
 - b. 415 ILCS 5/12(d);
 - c. 35 Ill.Adm.Code 304.141(b).
4. Each of these statutes or administrative code provisions generally prohibits a person from causing, discharging, threatening, or allowing contaminants into the environment so as to cause water pollution in Illinois or otherwise violate regulations and standards adopted by the Pollution Control Board.

5. In his Formal Complaint, Petitioner does not specifically allege how Batavia has allowed or caused pollutants to enter into the environment so as to cause pollution that would be violative of the cited statutes.

6. Specifically, under paragraph 5 of his Formal Complaint, Petitioner only alleges the following facts in regard to the alleged pollution entering the environment:

“Water: **Pulte** has not been implementing the BMPs they presented to obtain approval to construct multiple developments throughout Illinois, in violation of their permit. As a result, there has been widespread pollution from uncontrolled sediment and concrete washout entering the street and stormwater system.

Pulte continues to defy requests to comply with their obligations and on 12/13/2022 had their attorney’s secretary send me a threatening letter in an attempt to intimidate me away from viewing their sites. After reading the letter and forwarding it to The Board, Complainant briefly visited Winding Creek and observed inlets surrounded by sediment laden water and curbside gutters with topsoil accumulation. This part of the site had grass and ECB down indicating the pollutants were traveling across the site to low points.

The SWPPP signage observed by complainant was for contractors and did not have required information relating to their permit obligations which are to be posted for the public in a high visibility location.” *Emphasis added*

7. Further in paragraph 6, Petitioner alleges:

“Observed on 12/13/2022 at 11:13 PM following rainfall. Each day **Pulte Homes** is allowed to build, the risk of pollution jumps exponentially. And the amount of fraudulent paperwork to be reviewed later becomes harder and harder to manage.” *Emphasis added.*

8. None of the above allegations indicates how Batavia has allowed or caused pollutants to enter the environment in such a way as to violate the cited statutes and administrative code.

9. Furthermore, Petitioner does not allege how Batavia has control over the property where the alleged pollution is occurring or otherwise has the ability to control over the pollution.

10. Illinois courts have determined that to violate 415 ILCS 5/12, it must be shown, “the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred.” People v. A. J. Davinjoy Contractors, 249 Ill.App.3d 788, 793 (5th Dist. 1993).

11. In the A.J. Davinjoy case cited above, the court found the Defendant, A.J. Davinjoy, had sufficient control over the source of the pollution due its contract with the Village of Cahokia established the Defendant was “responsible for the operation and maintenance of the existing pumping system at the particular location once excavation began” and did not maintain the system they chose to use.” Id. at 794.

12. Similar in this case, Petitioner has not alleged how Batavia is contractually liable for the alleged pollution caused by housing development Pulte is building or that Batavia is reasonable for how Pulte conducts its operations.

13. The only allegations directly related to the City of Batavia are Petitioner's perceived gatekeeping behavior of one of Batavia's City Engineers, Andrea Podraza, wherein Petitioner denies he was allowed to view the SWPPP. Petitioner also alleges in paragraph 7 two unnamed employees hung up on him for not providing irrelevant personal information they do not need to hand him a piece of paper.

14. Petitioner goes onto complain in paragraph 7 of his Formal Complaint, "The need to follow up on City's like Batavia who approve serial polluters has creased created a massive workload for me [Petitioner] and has exposed chinks hint eh armor of the program..."

15. On or about December 22, 2022, Laura Newman, responded to Petitioner's request to view the SWPPP and provided times he could come and review it. In response on December 27, 2022, Petitioner responded, "I already know whatever it says, they will not and are not capable of doing...Based on your behavior and the behavior of your staff, I will see you at the hearing(s) and will be demanding maximum penalties and to prohibit all additional permitting in Batavia. In large Part because yoi [sic] think you and your attorney are the new gatekeepers. While totally incompetent." See Exhibit 1, attached hereto and incorporated herein.

16. In his requested relief towards Batavia, Petitioner only seeks:

- 3) "A board order prohibiting Andrea Podraza from acting as a gate keeper in her role with the NPDES program because of her ego."
7. "An order requiring The City of Batavia provide complainant with the opportunity to view the originally approved SWPPP."


16. While the Illinois Pollution Control Board has authority to order certain remedies, there is no direct statutory authority under 415 ILCS 5/33 or 415 ILCS 5/42 for the Board to grant the relief requested by Petitioner, namely, to bar a City Employee from performing part of her job requirements simply because Petitioner feels he was disrespected. Further, the Illinois Pollution Control Board lacks the authority to the City to grant access to Petitioner to review the SWPPP.

17. Petitioner cites no basis for the Illinois Pollution Control Board to require Batavia to what or how their employees conduct their jobs.

18. To the extent the SWPPP is a public record pursuant to FOIA, Petitioner's remedies would be under that statute and not under the statutes cited in his Formal Complaint. It is also noted that Petitioner was granted access to the SWPPP, but has rejected such a request.

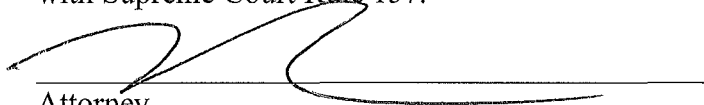
WHEREFORE, the CITY OF BATAVIA, respectfully requests the Illinois Pollution Control Board dismiss Petitioner's Petition in relation to the City of Batavia and grant to the City of Batavia any other relief the Illinois Pollution Control Board deems equitable and just.

Respectfully Submitted:



Roman J. Seckel, Attorney for City of Batavia

This pleading prepared by the undersigned and executed in accordance with Supreme Court Rule 137.


Attorney

Drendel & Jansons Law Group
111 Flinn Street
Batavia, IL 60510
Email: rjs@batavialaw.com
Phone: 630-406-5440
ARDC #: 6287346

Exhibit

1

to City of Batavia's Motion to Dismiss

Begin forwarded message:

From: Paul Pratapas <paulpratapas@gmail.com>
Date: December 27, 2022 at 3:38:41 AM CST
To: "Newman, Laura" <lnewman@cityofbatavia.net>
Cc: "Drendel, Kevin G." <kgd@batavialaw.com>
Subject: Re: Felony Intimidation and Violation of Civil Liberties by Pulte Homes

Caution: This message originated outside of the City of Batavia -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe. If you have any doubt, contact the sender by phone to confirm.

I already know whatever it says, they will not and are not capable of doing.

You already failed to figure this out yourselves and have several other projects planned which contractors cannot meet environmental regulations for.

The Caseys Gas Station: They are going to need to mix mortar which requires a containment area they cannot and will not create. Look no further than the other Pulte complaints I filed. You approved this project also? Have you seen the nearby Casey's build site by Cantigny? Guess who is also getting a formal complaint?

Based on your behavior, and the behavior of your staff, I will see you at the hearing(s) and will be demanding maximum penalties and to prohibit all additional permitting in Batavia. In large Part because you think you and your attorney are the new gatekeepers. While totally incompetent.

This is fundamental constitutional right and your office does not seem to get the vibe of the law.

On Thu, Dec 22, 2022 at 11:20 AM Newman, Laura <lnewman@cityofbatavia.net> wrote:

Paul:

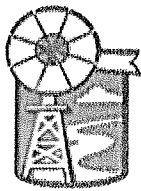
We will make the SWPPP available for you to review in person in our office. My availability is as follows:

Tuesday 12/27: 9:30 AM – 11:30 AM

Wednesday 12/28: afternoon

Thursday and Friday 12/29 and 12/30: all day

Please let me know if any of these times will be convenient for you.



Laura Newman

City Administrator | City of Batavia

P: 630.454.2000 C: 224.325.7360 F: 630.454.2001

W: cityofbatavia.net E: lnewman@cityofbatavia.net

100 N Island Ave, Batavia, Illinois 60510

From: Paul Pratapas <paulpratapas@gmail.com>

Sent: Wednesday, December 14, 2022 3:58 PM

To: Newman, Laura <lnewman@cityofbatavia.net>

Cc: Drendel, Kevin G. <kgd@batavialaw.com>

Subject: Re: Felony Intimidation and Violation of Civil Liberties by Pulte Homes

Caution: This message originated outside of the City of Batavia -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe. If you have any doubt, contact the sender by phone to confirm.

Laura,

Your name will be added to the formal complaint with the others. It is being written right now.

Kind Regards,

Paul Pratapas

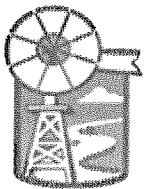
630.696.2843

On Wed, Dec 14, 2022 at 3:41 PM Newman, Laura <lnewman@cityofbatavia.net> wrote:

Dear Mr. Pratapas:

Please direct all further communications regarding this matter to me. I have advised employees not to respond directly to you due to your hostile tone, accusations of illegal behavior and threats of litigation. In the event they receive communication from you, they have been directed to forward it to me. You are entitled to make requests for information under the Freedom of Information Act and the city will provide you with responsive documents according to its legal obligations and as our city attorney advises.

Please be advised that under FOIA, the city has five business days to respond to your request.



Laura Newman

City Administrator | City of Batavia

P: 630.454.2000 C: 224.325.7360 F: 630.454.2001

W: cityofbatavia.net E: lnewman@cityofbatavia.net

100 N Island Ave, Batavia, Illinois 60510