

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS	)	
	)	
Complainant	)	PCB 2024-009
	)	
v.	)	
	)	
PULTE HOME COMPANY, LLC,	)	
	)	
Respondents.	)	
	)	

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**CERTIFICATE OF SERVICE**

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**TO:** Paul Pratapas at [paulpratapas@gmail.com](mailto:paulpratapas@gmail.com)

Paul Pratapas at 1779 Kirby Parkway, Ste 1, #92 Memphis, TN 38138

The undersigned attorney, on oath, state that I served the following discovery documents on behalf of Respondent, *Pulte Home Company, LLC* on counsel of record listed above via email and via the US Postal Service on or before 5:00 p.m. on December 7, 2023:

1. Respondents' Motion Requesting The Pollution Control Board Dismiss The Complaint And Complainant's Motion To Modify
2. Exhibit A- Naper Commons - Final Order PCB 23-55 (April 6, 2023)
3. Exhibit B- Complaint (July 27, 2023)
4. Exhibit C- Order (November 2, 2023)
5. Exhibit D- Motion To Modify (November 28, 2023)
6. Exhibit E- Sawgrass - Final Order PCB 23-74 (July 20, 2023)
7. Exhibit F- Wagner Farm - Final Order PCB 23-54 (June 1, 2023)
8. Exhibit G- Trillium Farm - Final Order PCB 23-63 (July 6, 2023)
9. Exhibit H- Winding Creek - Final Order PCB 23-79 (August 3, 2023)

**SWANSON, MARTIN & BELL, LLP**

*By: /s/ Robert R. Harmening*

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))  
 J. A. Koehler. ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))  
 Robert R. Harmening III ([rharmening@smbtrials.com](mailto:rharmening@smbtrials.com))  
**SWANSON, MARTIN & BELL, LLP**  
 330 N. Wabash Ave., Suite 3300  
 Chicago, IL 60611  
 Phone: (312) 321-9100/Fax: (312) 321-0990

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**RESPONDENTS' MOTION REQUESTING THE POLLUTION CONTROL BOARD  
DISMISS THE COMPLAINT AND COMPLAINANT'S MOTION TO MODIFY**

Respondent, PULTE HOME COMPANY, by and through their attorneys, SWANSON, MARTIN & BELL, LLP, respectfully moves the Illinois Pollution Control Board to dismiss this matter because Complainant Pratapuas failed to file a Second Amended Complaint in a timely matter. Alternatively, if this Honorable Board accepts Complainant's "Motion to Modify Complaint" as Complainant's Second Amended Complaint, then this Second Amended Complaint is insufficiently plead, frivolous, duplicative and alleges wholly past violations.

**I. NAPER COMMONS BY PULTE HOME COMPANY, LLC**

**A. Complainant Fails to File a Second Amended Complaint in a Timely Manner**

1. Respondent, denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
2. On November 9, 2022, Paul Christian Pratapas ("Pratapas") filed a citizen's complaint against Naper Commons by Pulte Home Company. (*See* Naper Commons Final Order PCB 23-55, attached as **Exhibit A.**)

3. On April 6, 2023, this Honorable Board entered an order dismissing a prior complaint by Pratapas, when he refused to follow this Honorable Board's directive regarding proper service. (*Id.*)
4. On July 27, 2023, Pratapas filed an identical and duplicative citizen's complaint against Naper Commons by Pulte Home Company. (July 27, 2023 Complaint, **Exhibit B.**) In this filing, Complainant lists the same respondent, the same site and the same, vague, conclusory allegations that were dismissed in docket number PCB 23-55.
5. On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the July 27, 2023 complaint failed to plead sufficient facts, failed state a claim, is frivolous and duplicative, and alleged a wholly past violations. (*See* November 2, 2023 Order, **Exhibit C.**)
6. On November 2, 2023, this Honorable Board directed Complainant Pratapas to file an second amended complaint by December 4, 2023. (*Id.*)
7. On November 28, 2023, Complainant filed a "Motion To Modify Formal Complaint" (hereafter, "Motion to Modify."). Within the Motion to Modify, the Complainant requests "that the Board amend the Formal Complaint" to include additional information on violations. (Motion to Modify, **Exhibit D.**)
8. This Honorable Board explicitly commanded "Pratapas to file a second amended complaint by December 4, 2023"; and Pratapas has failed to do so. (Exhibit C.)
9. The current action is duplicative of the prior docket which this Honorable Board dismissed after Complainant's failure to comply with Board directives. Once again, Complainant has failed to follow basic directives from this Honorable Board.
10. Complainant has failed to file a second amended complaint in a timely manner. Thus, this matter should be dismissed.

**B. Alternately, If This Honorable Board Accepts Complainant's Motion To Amend As His Second Amended Complaint, This Second Amended Complaint Fails To Plead Sufficient Facts And Law**

11. Respondent denies any claim that its activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
12. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 103.212, the Board should not accept a complaint for hearing if the complaint is “frivolous”, meaning the Board lacks the authority to grant relief where Complainant failed to state a cause of action.
13. Here, the complainant, an out-of-state citizen fails to state a cause of action upon which the Board can grant relief as required by 35 Ill. Adm. Code § 101.506, 35 Ill. Adm. Code § 101.100(b), and 735 ILCS § 5/2-615. Complainant's address is Germantown, Tennessee. (*See* July 27, 2023 Complaint, Exhibit B, at ¶ 1.)
14. This Board's procedural rules are silent as to pleading requirements to properly state a cause of action.
15. When the Board's procedural rules are silent, the Board may look to the Illinois Code of Civil Procedure for guidance. 35 Ill. Adm. Code § 101.100(b).
16. The Illinois Code of Civil Procedure provides for dismissal when allegations fail to properly plead a cause of action. 735 ILCS 5/2-615; *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).
17. Illinois is a fact pleading state. Accordingly, a well-pled complaint must allege all facts necessary to state a legally recognized cause of action. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989). While pleadings are liberally construed, plaintiffs must allege the facts necessary to state a cause of action. *Harris v. Johnson*, 218 Ill. App. 3d 588, 591-92 (2d Dist. 1991).

18. Mere conclusions are insufficient to state a cause of action and are subject to dismissal. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 105 Ill. App. 3d 951, 956 (2d Dist. 1982), *aff'd*, 96 Ill. 2d 150, (1983).
19. Here, the Motion to Modify fails to make factual allegation that **Naper Commons** Pulte Home Company violated any laws.
20. The Complaint fails to cite any laws, statutes, ordinances or case law that Pulte Home Company could have violated. The Motion to Modify merely lists vague allegations in incomplete sentence. (*See* Motion to Modify, Exhibit D.)
21. Additionally, Complainant fails to alleges any factual support for these allegations (e.g. when did these allegations occur, how each location violated any law).
22. Tellingly, this Motion to Modify contains a vague, self-serving narrative of discharges; but fails to state the method of purported release or whether the alleged discharges apply specifically to **Naper Commons** or to four other sites listed in the complaint. (*Id.*)
23. Pointedly, the Complaint merely lists, in bullet point format, general allegations, without even identifying any dates of alleged activities.
24. These allegations are wholly inadequate.
25. Beyond vague and conclusory statements, the “Complaint” lacks necessary facts that **Naper Commons** committed any violation. (*See Id.*)
26. As plead, Respondent must guess at what Complainant is asserting and what laws are allegedly being violated.
27. Complainant’s pleadings do not comply with Illinois law.
28. Pursuant to 735 ILCS § 5/2-615, Pulte Homes requests this Honorable Board to dismiss this matter.

**C. Wholly Past Violation**

29. Respondent recognizes this Honorable Board denied a similar motion contesting the standing of private citizens to separately enforce claims alleging “wholly past violations”. Recognizing this Honorable Board’s prior ruling, Respondent must bring a similar motion, now, to preserve the issue for appeal. Respondent means no disrespect for reasserting these legal arguments.
30. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.
31. The Complaint alleges wholly past, one-time violations, limited to May 24, 2022 in reference to **Naper Commons** site. (See July 27, 2023 Complaint, Exhibit B, at ¶ 4.)
32. Paragraph 4 of the Complaint alleges violations of 415 ILCS 5.12(a), 415 ICS 5/12(d), and 35 Ill. Adm. Code § 103.212 “on or around May 24, 2022”. (*Id.*)
33. 415 ILCS 5.12(a) addresses water pollution implementing The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et. seq.*
34. The U.S. Supreme Court directly held there is no standing for citizen suits where the relief addresses wholly past violations. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).
35. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by statutes. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).
36. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identified “[T]he provisions of the Act that Respondents *are alleged to be violating.*” (*emphasis added.*)

37. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
38. The only interpretation for the General Assembly’s statutory conjugation of the verb “to violate” into “*violating*” is by application of the present tense.
39. The statute is clear that complainants must identify actions Respondent is “...*violating*...” when the complaint is filed.
40. Consistent with the U.S. Supreme Court’s mandate in *Gwaltney* (supra), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as alleged here.
41. Unlike citizen’s claims, suits by the State of Illinois may pursue past violations. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d. Dist. 1990) (fines for wholly past violation allowed where action was brought by Illinois Environmental Protection Agency and Illinois Attorney General.)
42. This Board implicitly recognized that a private citizen cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss, finding the Respondent continued to own and operate equipment giving rise to continuing violations. Both cases acknowledged that citizens may pursue complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.

43. The allegations here are limited to purported, past violations in “on or around May 24, 2022”. (*See* Exhibit B, at ¶ 4.)
44. There are no allegations of continuing violation or injury.
45. This matter should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC respectfully move the Illinois Pollution Control Board not to accept the Citizens’ Motion to Modify Complaint on the basis the Complaint is frivolous, duplicative and alleges wholly past violations.

## **II. SAWGRASS BY PULTE HOME COMPANY, LLC**

### **A. Complainant Fails to File a Second Amended Complaint in a Timely Manner**

46. Respondent, denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
47. On December 12, 2022, Paul Christian Pratapas (“Pratapas”) filed a citizen’s complaint against Sawgrass by Pulte Home Company. (*See* Sawgrass Final Order PCB 23-74, attached as **Exhibit E.**)
48. On July 20, 2023, this Honorable Board entered an order dismissing a prior complaint by Pratapas, when he refused to follow this Honorable Board’s directive regarding proper service. (*Id.*)
49. On July 27, 2023, Pratapas filed an identical and duplicative citizen’s complaint against Sawgrass by Pulte Home Company. (July 27, 2023 Complaint, Exhibit B.) In this filing, Complainant lists the same respondent, the same site and the same, vague, conclusory allegations that were dismissed in docket number PCB 23-74.



50. On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the July 27, 2023 complaint failed to plead sufficient facts, failed state a claim, is frivolous and duplicative, and alleged a wholly past violations. (*See* November 2, 2023 Order, Exhibit C)
51. On November 2, 2023, this Honorable Board directed Complainant Pratapas to file an second amended complaint by December 4, 2023. (*Id.*)
52. On November 28, 2023, Complainant filed a “Motion To Modify Formal Complaint” (hereafter, “Motion to Modify.”). Within the Motion to Modify, the Complainant requests “that the Board amend the Formal Complaint” to include additional information on violations. (Motion to Modify, Exhibit D).
53. This Honorable Board explicitly commanded “Pratapas to file a second amended complaint by December 4, 2023”; and Pratapas has failed to do so. (Exhibit C.)
54. The current action is duplicative of the prior docket which this Honorable Board dismissed after Complainant’s failure to comply with Board directives. Once again, Complainant has failed to follow basic directives from this Honorable Board.
55. Complainant has failed to file a second amended complaint in a timely manner. Thus, this matter should be dismissed.

**B. Alternately, If This Honorable Board Accepts Complainant’s Motion To Amend As His Second Amended Complaint, This Second Amended Complaint Fails To Plead Sufficient Facts And Law**

56. Respondent denies any claim that its activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
57. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 103.212, the Board should not accept a complaint for hearing if the complaint is “frivolous”, meaning the Board lacks the authority to grant relief where Complainant failed to state a cause of action.

58. Here, the complainant, an out-of-state citizen fails to state a cause of action upon which the Board can grant relief as required by 35 Ill. Adm. Code § 101.506, 35 Ill. Adm. Code § 101.100(b), and 735 ILCS § 5/2-615. Complainant's address is Germantown, Tennessee. (*See* July 27, 2023 Complaint, Exhibit B, at ¶ 1.)
59. This Board's procedural rules are silent as to pleading requirements to properly state a cause of action.
60. When the Board's procedural rules are silent, the Board may look to the Illinois Code of Civil Procedure for guidance. 35 Ill. Adm. Code § 101.100(b).
61. The Illinois Code of Civil Procedure provides for dismissal when allegations fail to properly plead a cause of action. 735 ILCS 5/2-615; *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).
62. Illinois is a fact pleading state. Accordingly, a well-pled complaint must allege all facts necessary to state a legally recognized cause of action. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989). While pleadings are liberally construed, plaintiffs must allege the facts necessary to state a cause of action. *Harris v. Johnson*, 218 Ill. App. 3d 588, 591-92 (2d Dist. 1991).
63. Mere conclusions are insufficient to state a cause of action and are subject to dismissal. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 105 Ill. App. 3d 951, 956 (2d Dist. 1982), *aff'd*, 96 Ill. 2d 150, (1983).
64. Here, the Motion to Modify fails to make factual allegation that **Sawgrass** Pulte Home Company violated any laws.

65. The Complaint fails to cite any laws, statutes, ordinances or case law that Pulte Home Company could have violated. The Motion to Modify merely lists vague allegations in incomplete sentence. (*See* Motion to Modify, Exhibit D.)
66. Additionally, Complainant fails to alleges any factual support for these allegations (e.g. when did these allegations occur, how each location violated any law).
67. Tellingly, this Motion to Modify contains a vague, self-serving narrative of discharges; but fails to state the method of purported release or whether the alleged discharges apply specifically to **Sawgrass** or to four other sites listed in the complaint. (*Id.*)
68. Pointedly, the Complaint merely lists, in bullet point format, general allegations, without even identifying any dates of alleged activities.
69. These allegations are wholly inadequate.
70. Beyond vague and conclusory statements, the “Complaint” lacks necessary facts that **Sawgrass** committed any violation. (*See Id.*)
71. As plead, Respondent must guess at what Complainant is asserting and what laws are allegedly being violated.
72. Complainant’s pleadings do not comply with Illinois law.
73. Pursuant to 735 ILCS § 5/2-615, Pulte Homes requests this Honorable Board to dismiss this matter.

**C. Wholly Past Violation**

74. Respondent recognizes this Honorable Board denied a similar motion contesting the standing of private citizens to separately enforce claims alleging “wholly past violations”. Recognizing this Honorable Board’s prior ruling, Respondent must bring a similar

motion, now, to preserve the issue for appeal. Respondent means no disrespect for reasserting these legal arguments.

75. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.
76. The Complaint alleges wholly past, one-time violations, limited to December 2022 in reference to **Sawgrass** site. (*See* July 27, 2023 Complaint, Exhibit B, at ¶ 4.)
77. Paragraph 4 of the Complaint alleges violations of 415 ILCS 5.12(a), 415 ICS 5/12(d), and 35 Ill. Adm. Code § 103.212 “on or around May 24, 2022”. (*Id.*)
78. 415 ILCS 5.12(a) addresses water pollution implementing The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et. seq.*
79. The U.S. Supreme Court directly held there is no standing for citizen suits where the relief addresses wholly past violations. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).
80. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by statutes. *See Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).
81. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identified “[T]he provisions of the Act that Respondents *are alleged to be violating.*” (*emphasis added.*)
82. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
83. The only interpretation for the General Assembly’s statutory conjugation of the verb “to violate” into “*violating*” is by application of the present tense.

84. The statute is clear that complainants must identify actions Respondent is “...violating....” when the complaint is filed.
85. Consistent with the U.S. Supreme Court’s mandate in *Gwaltney* (supra), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as alleged here.
86. Unlike citizen’s claims, suits by the State of Illinois may pursue past violations. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d. Dist. 1990) (fines for wholly pass violation allowed where action was brought by Illinois Environmental Protection Agency and Illinois Attorney General.)
87. This Board implicitly recognized that a private citizen cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss, finding the Respondent continued to own and operate equipment giving rise to continuing violations. Both cases acknowledged that citizens may pursue complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.
88. The allegations here are limited to purported past violations in “December 18, 2022 at 1:48 p.m.” (See Exhibit B, at ¶ 4.)
89. There are no allegations of continuing violation or injury.
90. This matter should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC respectfully move the Illinois Pollution Control Board not to accept the Citizens' Motion to Modify Complaint on the basis the Complaint is frivolous, duplicative and alleges wholly past violations.

**III. WAGNER FARM BY PULTE HOME COMPANY, LLC**

**A. Complainant Fails to File a Second Amended Complaint in a Timely Manner**

91. Respondent, denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
92. On November 9, 2022, Paul Christian Pratapas ("Pratapas") filed a citizen's complaint against Wagner Farm by Pulte Home Company. (*See* Wagner Farm Final Order PCB 23-54, attached as **Exhibit F**.)
93. On June 1, 2023, this Honorable Board entered an order dismissing a prior complaint by Pratapas, when he refused to follow this Honorable Board's directive regarding proper service. (*Id.*)
94. On July 27, 2023, Pratapas filed an identical and duplicative citizen's complaint against Wagner Farm by Pulte Home Company. (July 27, 2023 Complaint, Exhibit B.) In this filing, Complainant lists the same respondent, the same site and the same, vague, conclusory allegations that were dismissed in docket number PCB 23-54.
95. On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the July 27, 2023 complaint failed to plead sufficient facts, failed state a claim, is frivolous and duplicative, and alleged a wholly past violations. (*See* November 2, 2023 Order, Exhibit C)
96. On November 2, 2023, this Honorable Board directed Complainant Pratapas to file an second amended complaint by December 4, 2023. (*Id.*)

97. On November 28, 2023, Complainant filed a “Motion To Modify Formal Complaint” (hereafter, “Motion to Modify.”). Within the Motion to Modify, the Complainant requests “that the Board amend the Formal Complaint” to include additional information on violations. (Motion to Modify, Exhibit D).
98. This Honorable Board explicitly commanded “Pratapas to file a second amended complaint by December 4, 2023”; and Pratapas has failed to do so. (Exhibit C.)
99. The current action is duplicative of the prior docket which this Honorable Board dismissed after Complainant’s failure to comply with Board directives. Once again, Complainant has failed to follow basic directives from this Honorable Board.
100. Complainant has failed to file a second amended complaint in a timely manner. Thus, this matter should be dismissed.

**B. Alternately, If This Honorable Board Accepts Complainant’s Motion To Amend As His Second Amended Complaint, This Second Amended Complaint Fails To Plead Sufficient Facts And Law**

101. Respondent denies any claim that its activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
102. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 103.212, the Board should not accept a complaint for hearing if the complaint is “frivolous”, meaning the Board lacks the authority to grant relief where Complainant failed to state a cause of action.
103. Here, the complainant, an out-of-state citizen fails to state a cause of action upon which the Board can grant relief as required by 35 Ill. Adm. Code § 101.506, 35 Ill. Adm. Code § 101.100(b), and 735 ILCS § 5/2-615. Complainant’s address is Germantown, Tennessee. (*See* July 27, 2023 Complaint, Exhibit B, at ¶ 1.)

104. This Board's procedural rules are silent as to pleading requirements to properly state a cause of action.
105. When the Board's procedural rules are silent, the Board may look to the Illinois Code of Civil Procedure for guidance. 35 Ill. Adm. Code § 101.100(b).
106. The Illinois Code of Civil Procedure provides for dismissal when allegations fail to properly plead a cause of action. 735 ILCS 5/2-615; *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).
107. Illinois is a fact pleading state. Accordingly, a well-pled complaint must allege all facts necessary to state a legally recognized cause of action. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989). While pleadings are liberally construed, plaintiffs must allege the facts necessary to state a cause of action. *Harris v. Johnson*, 218 Ill. App. 3d 588, 591-92 (2d Dist. 1991).
108. Mere conclusions are insufficient to state a cause of action and are subject to dismissal. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 105 Ill. App. 3d 951, 956 (2d Dist. 1982), *aff'd*, 96 Ill. 2d 150, (1983).
109. Here, the Motion to Modify fails to make factual allegation that **Wagner Farm** by Pulte Home Company violated any laws.
110. The Complaint fails to cite any laws, statutes, ordinances or case law that Pulte Home Company could have violated. The Motion to Modify merely lists vague allegations in incomplete sentence. (*See* Motion to Modify, Exhibit D.)
111. Additionally, Complainant fails to alleges any factual support for these allegations (e.g. when did these allegations occur, how each location violated any law).



112. Tellingly, this Motion to Modify contains a vague, self-serving narrative of discharges; but fails to state the method of purported release or whether the alleged discharges apply specifically to **Wagner Farm** or to four other sites listed in the complaint. (*Id.*)
113. Pointedly, the Complaint merely lists, in bullet point format, general allegations, without even identifying any dates of alleged activities.
114. These allegations are wholly inadequate.
115. Beyond vague and conclusory statements, the “Complaint” lacks necessary facts that **Wagner Farm** committed any violation. (*See Id.*)
116. As plead, Respondent must guess at what Complainant is asserting and what laws are allegedly being violated.
117. Complainant’s pleadings do not comply with Illinois law.
118. Pursuant to 735 ILCS § 5/2-615, Pulte Homes requests this Honorable Board to dismiss this matter.

### **C. Wholly Past Violation**

119. Respondent recognizes this Honorable Board denied a similar motion contesting the standing of private citizens to separately enforce claims alleging “wholly past violations”. Recognizing this Honorable Board’s prior ruling, Respondent must bring a similar motion, now, to preserve the issue for appeal. Respondent means no disrespect for reasserting these legal arguments.
120. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.

121. The Complaint alleges wholly past, one-time violations, limited to May 21, 2022 in reference to **Wagner Farm** site. (See July 27, 2023 Complaint, Exhibit B, at ¶ 4.)
122. Paragraph 4 of the Complaint alleges violations of 415 ILCS 5.12(a), 415 ICS 5/12(d), and 35 Ill. Adm. Code § 103.212 “on or around May 21, 2022”. (*Id.*)
123. 415 ILCS 5.12(a) addresses water pollution implementing The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et. seq.*
124. The U.S. Supreme Court directly held there is no standing for citizen suits where the relief addresses wholly past violations. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).
125. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by statutes. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).
126. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identified “...[T]he provisions of the Act that Respondents *are alleged to be violating.*” (*emphasis added.*)
127. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
128. The only interpretation for the General Assembly’s statutory conjugation of the verb “to violate” into “*violating*” is by application of the present tense.
129. The statute is clear that complainants must identify actions Respondent is “...*violating*....” when the complaint is filed.
130. Consistent with the U.S. Supreme Court’s mandate in *Gwaltney* (*supra*), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as alleged here.

131. Unlike citizen's claims, suits by the State of Illinois may pursue past violations. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d. Dist. 1990) (fines for wholly past violation allowed where action was brought by Illinois Environmental Protection Agency and Illinois Attorney General.)
132. This Board implicitly recognized that a private citizen cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss, finding the Respondent continued to own and operate equipment giving rise to continuing violations. Both cases acknowledged that citizens may pursue complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.
133. The allegations here are limited to purported, past violations in "on or around May 21, 2022". (*See Exhibit B, at ¶ 4.*)
134. There are no allegations of continuing violation or injury.
135. This matter should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC respectfully move the Illinois Pollution Control Board not to accept the Citizens' Motion to Modify Complaint on the basis the Complaint is frivolous, duplicative and alleges wholly past violations.

#### **IV. TRILLIUM FARM BY PULTE HOME COMPANY, LLC**

##### **A. Complainant Fails to File a Second Amended Complaint in a Timely Manner**

136. Respondent, denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
137. On November 28, 2022, Paul Christian Pratapas (“Pratapas”) filed a citizen’s complaint against Trillium Farm by Pulte Home Company. (*See* Trillium Farm Final Order PCB 23-63, attached as **Exhibit G.**)
138. On July 6, 2023, this Honorable Board entered an order dismissing a prior complaint by Pratapas, when he refused to follow this Honorable Board’s directive regarding proper service. (*Id.*)
139. On July 27, 2023, Pratapas filed an identical and duplicative citizen’s complaint against Trillium Farm by Pulte Home Company. (July 27, 2023 Complaint, Exhibit B.) In this filing, Complainant lists the same respondent, the same site and the same, vague, conclusory allegations that were dismissed in docket number PCB 23-63.
140. On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the July 27, 2023 complaint failed to plead sufficient facts, failed state a claim, is frivolous and duplicative, and alleged a wholly past violations. (*See* November 2, 2023 Order, Exhibit C.)
141. On November 2, 2023, this Honorable Board directed Complainant Pratapas to file an second amended complaint by December 4, 2023. (*Id.*)
142. On November 28, 2023, Complainant filed a “Motion To Modify Formal Complaint” (hereafter, “Motion to Modify”). Within the Motion to Modify, the Complainant requests “that the Board amend the Formal Complaint” to include additional information on violations. (Motion to Modify, Exhibit D).

143. This Honorable Board explicitly commanded “Pratapas to file a second amended complaint by December 4, 2023”; and Pratapas has failed to do so. (Exhibit C.)
144. The current action is duplicative of the prior docket which this Honorable Board dismissed after Complainant’s failure to comply with Board directives. Once again, Complainant has failed to follow basic directives from this Honorable Board.
145. Complainant has failed to file a second amended complaint in a timely manner. Thus, this matter should be dismissed.

**B. Alternately, If This Honorable Board Accepts Complainant’s Motion To Amend As His Second Amended Complaint, This Second Amended Complaint Fails To Plead Sufficient Facts And Law**

146. Respondent denies any claim that its activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
147. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 103.212, the Board should not accept a complaint for hearing if the complaint is “frivolous”, meaning the Board lacks the authority to grant relief where Complainant failed to state a cause of action.
148. Here, the complainant, an out-of-state citizen fails to state a cause of action upon which the Board can grant relief as required by 35 Ill. Adm. Code § 101.506, 35 Ill. Adm. Code § 101.100(b), and 735 ILCS § 5/2-615. Complainant’s address is Germantown, Tennessee. (See July 27, 2023 Complaint, Exhibit B, at ¶ 1.)
149. This Board’s procedural rules are silent as to pleading requirements to properly state a cause of action.
150. When the Board's procedural rules are silent, the Board may look to the Illinois Code of Civil Procedure for guidance. 35 Ill. Adm. Code § 101.100(b).

151. The Illinois Code of Civil Procedure provides for dismissal when allegations fail to properly plead a cause of action. 735 ILCS 5/2-615; *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).
152. Illinois is a fact pleading state. Accordingly, a well-pled complaint must allege all facts necessary to state a legally recognized cause of action. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989). While pleadings are liberally construed, plaintiffs must allege the facts necessary to state a cause of action. *Harris v. Johnson*, 218 Ill. App. 3d 588, 591-92 (2d Dist. 1991).
153. Mere conclusions are insufficient to state a cause of action and are subject to dismissal. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 105 Ill. App. 3d 951, 956 (2d Dist. 1982), *aff'd*, 96 Ill. 2d 150, (1983).
154. Here, the Motion to Modify fails to make factual allegation that **Trillium Farm** Pulte Home Company violated any laws.
155. The Complaint fails to cite any laws, statutes, ordinances or case law that Pulte Home Company could have violated. The Motion to Modify merely lists vague allegations in incomplete sentence. (*See* Motion to Modify, Exhibit D.)
156. Additionally, Complainant fails to alleges any factual support for these allegations (e.g. when did these allegations occur, how each location violated any law).
157. Tellingly, this Motion to Modify contains a vague, self-serving narrative of discharges; but fails to state the method of purported release or whether the alleged discharges apply specifically to **Trillium Farm** or to four other sites listed in the complaint. (*Id.*)
158. Pointedly, the Complaint merely lists, in bullet point format, general allegations, without even identifying any dates of alleged activities.

159. These allegations are wholly inadequate.
160. Beyond vague and conclusory statements, the “Complaint” lacks necessary facts that **Trillium Farm** committed any violation. (*See Id.*)
161. As plead, Respondent must guess at what Complainant is asserting and what laws are allegedly being violated.
162. Complainant’s pleadings do not comply with Illinois law.
163. Pursuant to 735 ILCS § 5/2-615, Pulte Homes requests this Honorable Board to dismiss this matter.

**C. Wholly Past Violation**

164. Respondent recognizes this Honorable Board denied a similar motion contesting the standing of private citizens to separately enforce claims alleging “wholly past violations”. Recognizing this Honorable Board’s prior ruling, Respondent must bring a similar motion, now, to preserve the issue for appeal. Respondent means no disrespect for reasserting these legal arguments.
165. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.
166. The Complaint alleges wholly past, one-time violations, limited to November 24, 25 and 27 of 2023 in reference to **Trillium Farm** site. (*See* July 27, 2023 Complaint, Exhibit B, at ¶ 4.)
167. Paragraph 4 of the Complaint alleges violations of 415 ILCS 5.12(a), 415 ICS 5/12(d), and 35 Ill. Adm. Code § 103.212 “on or around May 24, 2022”. (*Id.*)

168. 415 ILCS 5.12(a) addresses water pollution implementing The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et. seq.*
169. The U.S. Supreme Court directly held there is no standing for citizen suits where the relief addresses wholly past violations. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).
170. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by statutes. *See Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).
171. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identified “[T]he provisions of the Act that Respondents *are alleged to be violating.*” (*emphasis added.*)
172. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
173. The only interpretation for the General Assembly’s statutory conjugation of the verb “to violate” into “*violating*” is by application of the present tense.
174. The statute is clear that complainants must identify actions Respondent is “...*violating*...” when the complaint is filed.
175. Consistent with the U.S. Supreme Court’s mandate in *Gwaltney* (*supra*), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as alleged here.
176. Unlike citizen’s claims, suits by the State of Illinois may pursue past violations. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d. Dist. 1990) (fines for wholly pass violation allowed where action was brought by Illinois Environmental Protection Agency and Illinois Attorney General.)



177. This Board implicitly recognized that a private citizen cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss, finding the Respondent continued to own and operate equipment giving rise to continuing violations. Both cases acknowledged that citizens may pursue complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.

178. The allegations here are limited to purported, past violations on “Thanksgiving 11/24/2022 at 3 in the afternoon, 11/25/2022 & 11/27/2023”. (See Exhibit B, at ¶ 4.)

179. There are no allegations of continuing violation or injury.

180. This matter should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC respectfully move the Illinois Pollution Control Board not to accept the Citizens’ Motion to Modify Complaint on the basis the Complaint is frivolous, duplicative and alleges wholly past violations.

## **V. WINDING CREEK BY PULTE HOME COMPANY, LLC**

### **A. Complainant Fails to File a Second Amended Complaint in a Timely Manner**

181. Respondent, denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.

182. On December 15, 2022, Paul Christian Pratapas (“Pratapas”) filed a citizen’s complaint against Winding Creek by Pulte Home Company. (See Winding Creek Final Order PCB 23-79, attached as **Exhibit H.**)

183. On August 3, 2023, this Honorable Board entered an order dismissing a prior complaint by Pratapas, when he refused to follow this Honorable Board's directive regarding proper service. (*Id.*)
184. On July 27, 2023, Pratapas filed an identical and duplicative citizen's complaint against Winding Creek by Pulte Home Company. (July 27, 2023 Complaint, Exhibit B.) In this filing, Complainant lists the same respondent, the same site and the same, vague, conclusory allegations that were dismissed in docket number PCB 23-79.
185. On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the July 27, 2023 complaint failed to plead sufficient facts, failed state a claim, is frivolous and duplicative, and alleged a wholly past violations. (*See* November 2, 2023 Order, Exhibit C)
186. On November 2, 2023, this Honorable Board directed Complainant Pratapas to file an second amended complaint by December 4, 2023. (*Id.*)
187. On November 28, 2023, Complainant filed a "Motion To Modify Formal Complaint" (hereafter, "Motion to Modify.>"). Within the Motion to Modify, the Complainant requests "that the Board amend the Formal Complaint" to include additional information on violations. (Motion to Modify, Exhibit D).
188. This Honorable Board explicitly commanded "Pratapas to file a second amended complaint by December 4, 2023"; and Pratapas has failed to do so. (Exhibit C.)
189. The current action is duplicative of the prior docket which this Honorable Board dismissed after Complainant's failure to comply with Board directives. Once again, Complainant has failed to follow basic directives from this Honorable Board.

190. Complainant has failed to file a second amended complaint in a timely manner.

Thus, this matter should be dismissed.

**B. Alternately, If This Honorable Board Accepts Complainant's Motion To Amend As His Second Amended Complaint, This Second Amended Complaint Fails To Plead Sufficient Facts And Law**

191. Respondent denies any claim that its activities caused or allowed pollution or constitute a violation of Illinois law or regulations.

192. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 103.212, the Board should not accept a complaint for hearing if the complaint is “frivolous”, meaning the Board lacks the authority to grant relief where Complainant failed to state a cause of action.

193. Here, the complainant, an out-of-state citizen fails to state a cause of action upon which the Board can grant relief as required by 35 Ill. Adm. Code § 101.506, 35 Ill. Adm. Code § 101.100(b), and 735 ILCS § 5/2-615. Complainant's address is Germantown, Tennessee. (*See* July 27, 2023 Complaint, Exhibit B, at ¶ 1.)

194. This Board's procedural rules are silent as to pleading requirements to properly state a cause of action.

195. When the Board's procedural rules are silent, the Board may look to the Illinois Code of Civil Procedure for guidance. 35 Ill. Adm. Code § 101.100(b).

196. The Illinois Code of Civil Procedure provides for dismissal when allegations fail to properly plead a cause of action. 735 ILCS 5/2-615; *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).

197. Illinois is a fact pleading state. Accordingly, a well-pled complaint must allege all facts necessary to state a legally recognized cause of action. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989). While pleadings are liberally construed, plaintiffs

must allege the facts necessary to state a cause of action. *Harris v. Johnson*, 218 Ill. App. 3d 588, 591-92 (2d Dist. 1991).

198. Mere conclusions are insufficient to state a cause of action and are subject to dismissal. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 105 Ill. App. 3d 951, 956 (2d Dist. 1982), *aff'd*, 96 Ill. 2d 150, (1983).
199. Here, the Motion to Modify fails to make factual allegation that **Winding Creek by Pulte Home Company** violated any laws.
200. The Complaint fails to cite any laws, statutes, ordinances or case law that Pulte Home Company could have violated. The Motion to Modify merely lists vague allegations in incomplete sentence. (*See* Motion to Modify, Exhibit D.)
201. Additionally, Complainant fails to alleges any factual support for these allegations (e.g. when did these allegations occur, how each location violated any law).
202. Tellingly, this Motion to Modify contains a vague, self-serving narrative of discharges; but fails to state the method of purported release or whether the alleged discharges apply specifically to **Winding Creek** or to four other sites listed in the complaint. (*Id.*)
203. Pointedly, the Complaint merely lists, in bullet point format, general allegations, without even identifying any dates of alleged activities.
204. These allegations are wholly inadequate.
205. Beyond vague and conclusory statements, the “Complaint” lacks necessary facts that **Winding Creek** committed any violation. (*See Id.*)
206. As plead, Respondent must guess at what Complainant is asserting and what laws are allegedly being violated.
207. Complainant’s pleadings do not comply with Illinois law.

208. Pursuant to 735 ILCS § 5/2-615, Pulte Homes requests this Honorable Board to dismiss this matter.

**C. Wholly Past Violation**

209. Respondent recognizes this Honorable Board denied a similar motion contesting the standing of private citizens to separately enforce claims alleging “wholly past violations”. Recognizing this Honorable Board’s prior ruling, Respondent must bring a similar motion, now, to preserve the issue for appeal. Respondent means no disrespect for reasserting these legal arguments.

210. Pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code § 101.202(b), the Board will not accept a complaint for hearing if the Board finds the complaint is “frivolous”, meaning the Board lacks the authority to grant the requested relief.

211. The Complaint alleges wholly past, one-time violations, limited to December 2022 in reference to **Winding Creek** site. (See July 27, 2023 Complaint, Exhibit B, at ¶ 4.)

212. Paragraph 4 of the Complaint alleges violations of 415 ILCS 5.12(a), 415 ICS 5/12(d), and 35 Ill. Adm. Code § 103.212 on “12/13/2022 ...at 11:13 PM following rainfall”. (Id.)

213. 415 ILCS 5.12(a) addresses water pollution implementing The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et. seq.*

214. The U.S. Supreme Court directly held there is no standing for citizen suits where the relief addresses wholly past violations. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).

215. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by statutes. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).

216. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identified “...[T]he provisions of the Act that Respondents *are alleged to be violating.*” (*emphasis added.*)
217. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
218. The only interpretation for the General Assembly’s statutory conjugation of the verb “to violate” into “*violating*” is by application of the present tense.
219. The statute is clear that complainants must identify actions Respondent is “...*violating*....” when the complaint is filed.
220. Consistent with the U.S. Supreme Court’s mandate in *Gwaltney* (*supra*), 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, such as alleged here.
221. Unlike citizen’s claims, suits by the State of Illinois may pursue past violations. *See, e.g., Modine Mfg. Co v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 648 (2d. Dist. 1990) (fines for wholly pass violation allowed where action was brought by Illinois Environmental Protection Agency and Illinois Attorney General.)
222. This Board implicitly recognized that a private citizen cannot maintain actions for wholly past violations in *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010), when the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. Further, in *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss, finding the Respondent continued to own and operate equipment giving rise to continuing violations. Both cases acknowledged that

citizens may pursue complaints for current and ongoing violations, which is the opposite of what Complainant alleges here.

223. The allegations here are limited to purported, past violations in on “12/13/2022 ...at 11:13 PM following rainfall”. (See Exhibit B, at ¶ 4.)

224. There are no allegations of continuing violation or injury.

225. This matter should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC respectfully move the Illinois Pollution Control Board not to accept the Citizens’ Motion to Modify Complaint on the basis the Complaint is frivolous, duplicative and alleges wholly past violations.

**SWANSON, MARTIN & BELL, LLP**

/s/ Michael J. Maher/Jay Koeler  
**Attorneys for Respondent,**  
PULTE HOME COMPANY, LLC

Michael J. Maher ([mmaher@smbtrials.com](mailto:mmaher@smbtrials.com))  
J. A. Koehler. ([jkoehler@smbtrials.com](mailto:jkoehler@smbtrials.com))  
Robert R. Harmening III ([rharmening@smbtrials.com](mailto:rharmening@smbtrials.com))  
**SWANSON, MARTIN & BELL, LLP**  
330 N. Wabash Ave., Suite 3300  
Chicago, IL 60611  
Phone: (312) 321-9100/Fax: (312) 321-0990

# Exhibit A



ILLINOIS POLLUTION CONTROL BOARD

April 6, 2023

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 23-55
	)	(Enforcement – Water)
PULTE HOME COMPANY, LLC, a	)	
Michigan corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Van Wie):

On November 9, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen's complaint against Naper Commons by Pulte Homes, known as Pulte Home Company, LLC (Pulte). The complaint concerns Pulte's residential construction project located at 2308 West Lucent Lane in Naperville, DuPage County.

On December 12, 2022, Pulte filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint on Pulte, as well as a motion to dismiss the action on the grounds that Mr. Pratapas alleges a wholly past violation. On February 16, 2023, the Board granted Pulte's motion to not accept the complaint for failure to serve; denied Pulte's motion to dismiss the complaint; and directed Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Monday, March 20, 2023, or face dismissal of the complaint for failure to properly serve the complaint. *See* 35 Ill. Adm. Code 101.304(c), (d); *see also* 35 Ill. Adm. Code 103.204(a). Because Mr. Pratapas failed to timely file the required proof of service of the complaint, the Board dismisses this case and closes the docket.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 6, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

# Exhibit B



## Notice of Service of Process

null / ALL  
Transmittal Number: 27417681  
Date Processed: 08/07/2023

**Primary Contact:** Shani Pipkin  
Pulte Group  
27401 Los Altos  
Ste 400  
Mission Viejo, CA 92691-8550

**Electronic copy provided to:** Kim Roser  
Jane Celovsky

---

**Entity:** Pulte Home Company, LLC  
Entity ID Number 3655767

**Entity Served:** Pulte Home Company, LLC

**Title of Action:** Paul Christian Pratapas vs. Pulte Home Company, LLC

**Matter Name/ID:** Paul Christian Pratapas vs. Pulte Home Company, LLC (14433709)

**Document(s) Type:** Complaint

**Nature of Action:** Property

**Court/Agency:** Pollution Control Board, IL

**Case/Reference No:** PCB 2024-009

**Jurisdiction Served:** Illinois

**Date Served on CSC:** 08/04/2023

**Answer or Appearance Due:** 30 Days

**Originally Served On:** CSC

**How Served:** Certified Mail

**Sender Information:** Paul Christian Pratapas  
630-210-1637

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

**FORMAL COMPLAINT**

**Before the Illinois Pollution Control Board**

Paul Christian Pratapas

*An American*

Complainant,

v.

PCB 20

*[For Board use only]*

Pulte Home Company, LLC

Respondent

**1. Your Contact Information**

Name: Paul Christian Pratapas  
Street Address: 1779 Kirby Parkway, Suite 1-92  
Germantown, TN 38135  
County: Shelby County  
Phone Number: 630.210.1637

**2. Name and Address of the Respondent**

Name: Pulte Home Company, LLC  
Street Address: 3350 Peachtree RD. NE, STE 1500  
Atlanta, GA 30326  
County: Fulton  
Phone Number: (847) 230-5400

**3. Describe the type of business or activity that you allege is causing or allowing pollution.**

Pulte Homes is building new neighborhoods of residential housing. There are single family homes and neighborhoods designated for senior citizens, among other types as described in the SWPPP for each respective site. Pulte failed to post required regulatory signage and also has refused access to all SWPPP Books for permitted sites.

**Individually Permitted Sites in this complaint:** Sawgrass, Winding Creek, Trillium Farm, Naper Commons, Wagner Farms

**4. List specific sections that you allege have been or are being violated.**

1. 415 ILCS 5.12(a)
2. 415 ILCS 5/12 (d)
3. IL Admin Code Title 35, 304.141(b)

**Describe the type of pollution that you allege**

Water:

Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Photographs show concrete trucks have been cleaning out at the end of driveways. Sediment and sediment laden water freely allowed to enter the street and inlets. Inlet filter baskets filled with water and overflowing indicating they are clogged with the fine sediment and require maintenance. Workers photographed on a dirt covered road cleaning their boots off on the curb next to an inlet surrounded with sediment laden water. There appeared to be a total unawareness of any issues at hand. Cut out curbs left without BMPs. Pollutants are not controlled.

Extent, Severity and Duration: A review of the SWPPP Book would be required to completely answer this question. Pulte has refused access.

**Sawgrass Photographed:** December 18, 2022 at 1:48pm on a Sunday afternoon.

**Location of Pollution:** 16646 S Sunmeadow Dr., Lockport DR, IL 60441

**Wagner Farm Photographed:** On or around May 21, 2022. Photographed on a weekend immediately following the rain when nobody was working. Site is how it was left for the weekend.

**Location of Pollution:** 3723 Quick Fire Dr, Naperville, IL 60564

**Trillium Farm Photographed:** Thanksgiving 11/24/2022 at 3 in the afternoon. 11/25/2022 & 11/27/2022

**Location of Pollution:** 28W785 Trillium Dr., Winfield, IL 60190

**Winding Creek Photographed:** 12/13/2022 at 11:13 PM following rainfall.

**Location of Pollution:** 242 Olmstead Ct., Batavia, IL 60510

**Naper Commons Photographed:** On or around May 24, 2022

**Location of Pollution:** 2308 Weatherbee Ln., Naperville, IL 60563

The impacts on wildlife, plants and the environment cannot be appropriately assessed without viewing the SWPPP Book, but the pollution poses immediate risk to wildlife and residents of partially completed developments, especially in the senior community.

**Describe the relief that you seek from the Board.**

1. Find that Respondent has violated their permits
2. Assess a civil penalty of Fifty Thousand Dollars (\$ 50,000.00) against Respondent for each violation of the Act and Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation
3. Examination of SWPPP inspection reports and contractor certifications by The Board
4. An order stating SWPPP plan(s) for phasing, curbside protection, concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual.
5. An order stating pollutants must be controlled and minimized from entering the street and/or stormwater system and required regulatory signage posted
6. An order stating concrete washout must not be discharged into the environment
7. A Board order requiring resonant to provide access to the SWPPP Books for the permitted sites referred to in this complaint
8. Any other relief the board finds appropriate

**Identify any identical or substantially similar case you know of brought before the Board or in another forum against this respondent for the same alleged pollution**

Previous cases dismissed without prejudice do to procedural error during service consolidated into this complaint. Errors were due in part to failures to comply with permit guidelines related to citizen enforcement actions.

PCB 2023-074

PCB 2023-079

PCB 2023-063

PCB 2023-054

PCB 2023-055

10. Paul Christian Pratas

Complainant's Signature

**CERTIFICATION**

I, PAUL C PRATA PAS, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

Paul Christian Pratas

Complainant's Signature

Subscribed to and sworn before me

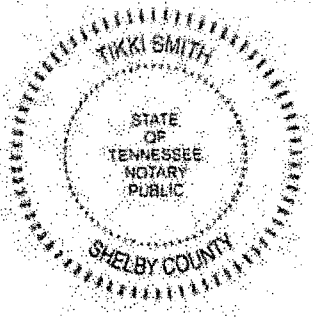
this 26<sup>th</sup> day

of July, 2023

Tikki Smith

Notary Public

My Commission Expires: 06/28/2027



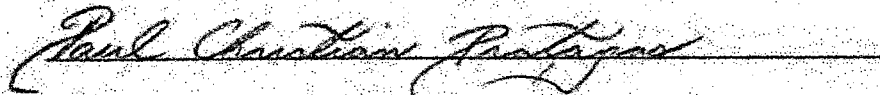


**NOTICE OF FILING**

**Note to the Complainant:** This Notice of Filing must accompany the Formal Complaint and the Documentation of Service. Once you have completed the Notice of Filing, the Formal Complaint, and the Documentation of Service, you must file these three documents with the Board's Clerk and serve a copy of each document on each respondent.

Please take notice that today I, Paul Christian Pratapas, filed with the Clerk of the Illinois Pollution Control Board (Board) a Formal Complaint, a copy of which is served on you along with this Notice of Filing. You may be required to attend a hearing on a date set by the Board.

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**



Complainant's Signature

Street: 1779 Kirby Parkway, Suite 1-92

City/State/Zip: Germantown, TN 38135

Date: 7/26/23

**INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

The following information has been prepared by the Board for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation. Information about the Formal Complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5) and the Board's procedural rules (35 Ill. Adm. Code 101, 103). These can be accessed on the Board's website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules.

**Board Accepting Formal Complaint for Hearing: Motions**

The Board will not accept this Formal Complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202 (definitions of the terms "duplicative" and "frivolous")). "Duplicative" means the complaint is identical or substantially similar to a case brought before the Board or another forum. See 35 Ill. Adm. Code 103.212(a) and item 10 of the Formal Complaint.

"Frivolous" means that the Formal Complaint seeks relief that the Board does not have the authority to grant or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does

not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 through 9 of the Formal Complaint.

If you believe that this Formal Complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you received the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. See 35 Ill. Adm. Code 101.504, 103.212(b). If you need more than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after you received the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the Formal Complaint is duplicative or frivolous will stay the 60-day period for filing an Answer to the complaint. See 35 Ill. Adm. Code 103.204(e), 103.212(b); see also 35 Ill. Adm. Code 101.506 (generally, all motions to strike, dismiss, or challenge the sufficiency of any pleading must be filed within 30 days after service of the challenged document).

The party making a motion must "file" the motion with the Board's Clerk and "serve" a copy of the motion on each of the other parties to the proceeding. The Board's filing and service requirements are set forth in its procedural rules (35 Ill. Adm. Code 101.300, 101.302, 101.304), which are located on the Board's website ([pcb.illinois.gov](http://pcb.illinois.gov)).

If you do not file a motion with the Board within 30 days after the date on which you received the Formal Complaint, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing without any input from you. The Board will then assign a hearing officer who will contact you to schedule times for holding telephone status conferences and a hearing. See 35 Ill. Adm. Code 103.212(a).

### **Answer to Complaint**

You have the right to file an Answer to this Formal Complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an Answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

Failing to file an Answer to the Formal Complaint within 60 days after you were served with the complaint may have severe consequences. Failure to timely file an Answer will mean that all allegations in the Formal Complaint will be taken as if you admitted them for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney. See 35 Ill. Adm. Code 103.204(f).

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an Answer and any motions or briefs and present a defense at hearing.

In defending against this Formal Complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file with the Board your Answer or any other document in the enforcement proceeding. The Board will pay its own hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3461.

**Note to the Complainant:** This Documentation of Service must accompany the Formal Complaint and the Notice of Filing. Once you have completed the Documentation of Service, the Formal Complaint, and the Notice of Filing, you must file these three documents with the Board's Clerk and serve a copy of each document on each respondent.

This form for the Documentation of Service is designed for use by a non-attorney and must be notarized, i.e., it is an "affidavit" of service. An attorney may modify the form for use as a "certificate" of service, which is not required to be notarized.

**Affidavit of Service**

I, Paul Christian Pratapas, certify that I caused the foregoing FORMAL COMPLAINT to be served all parties of record, as shown below:

Pulte Home Company, LLC  
C/O Todd N. Sheldon  
ILLINOIS CORPORATION SERVICE COMPANY  
801 ADLAI STEVENSON DRIVE  
SPRINGFIELD, IL 62703-4261

by causing a copy of same to be sent via USPS Certified Mail to the mailing address reflected above, <sup>by PP</sup> ~~on~~ <sup>7/26/23</sup> the 29<sup>TH</sup> day of JULY, 2023 at 1:00 PM. However, the Proof of Service is not available to me at this time, but will be filed within seven days of receipt.

**RESPONDENT'S ADDRESS:**

**Name:** Pulte Home Company, LLC  
**Street:** 3350 PEACHTREE RD. NE, STE 1500  
**City/State/Zip:** ATLANTA, GA 30326

*Paul Christian Pratapas*

Complainant's Signature

**Street:** 1779 Kirby Parkway, Suite 1-92  
**City, State, Zip Code:** Germantown, TN 38135  
**Date:** 7/26/23

Subscribed to and sworn before me

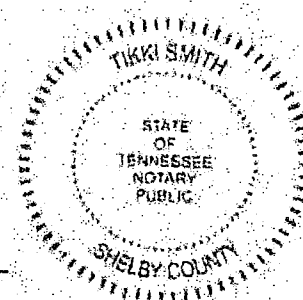
this 26<sup>th</sup> day

of July, 2023

*Tikki Smith*

Notary Public

My Commission Expires: 06/28/2027



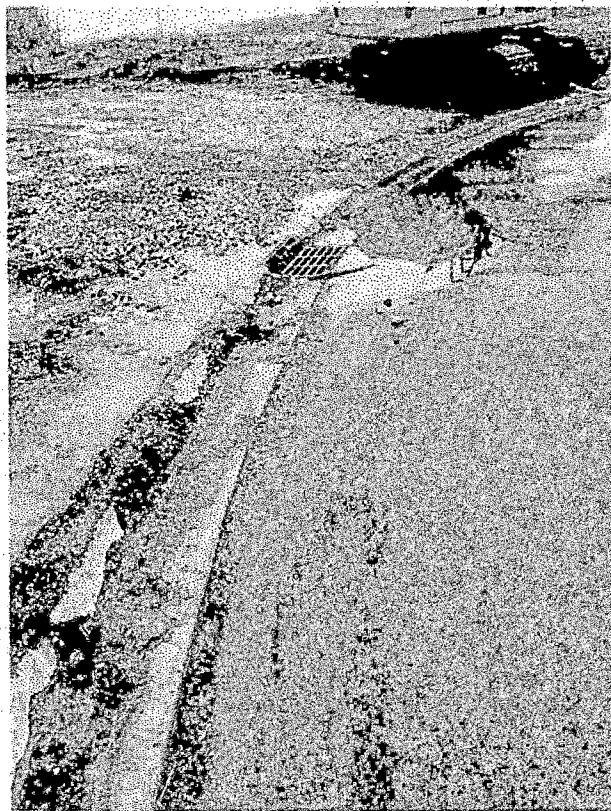
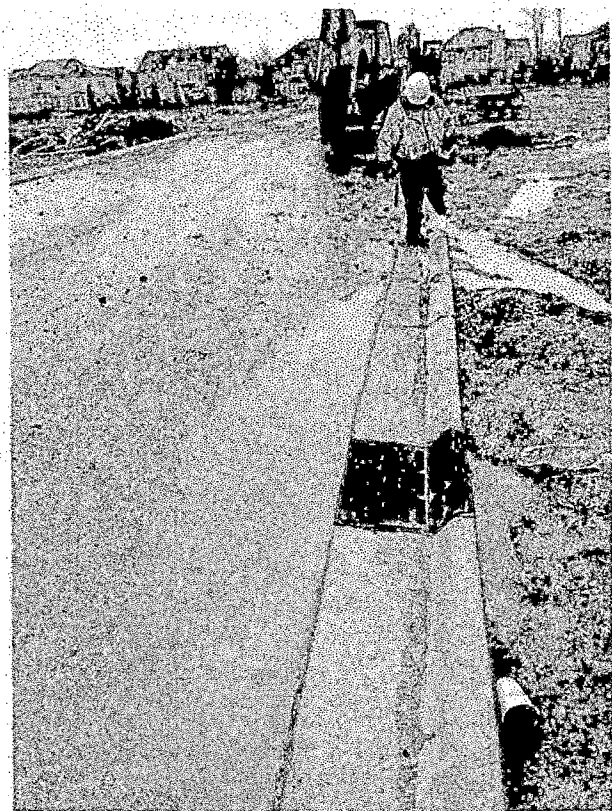
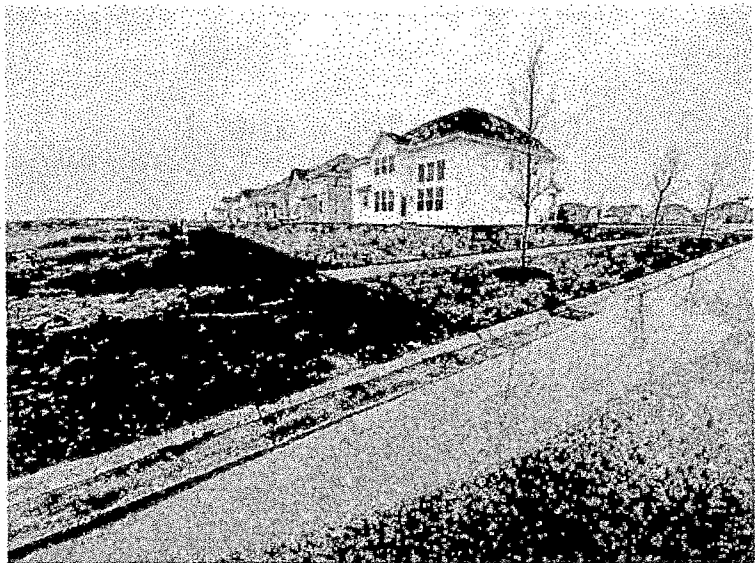


Exhibit A: Sawgrass Site

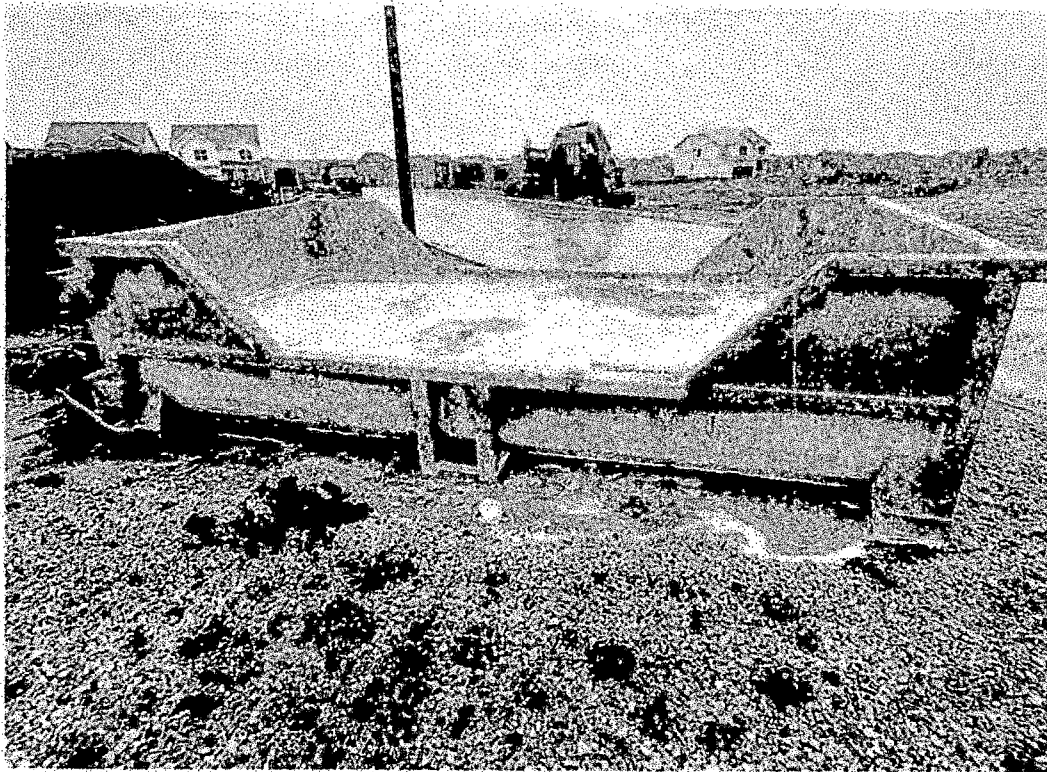


Exhibit B: Wagner Farms Site

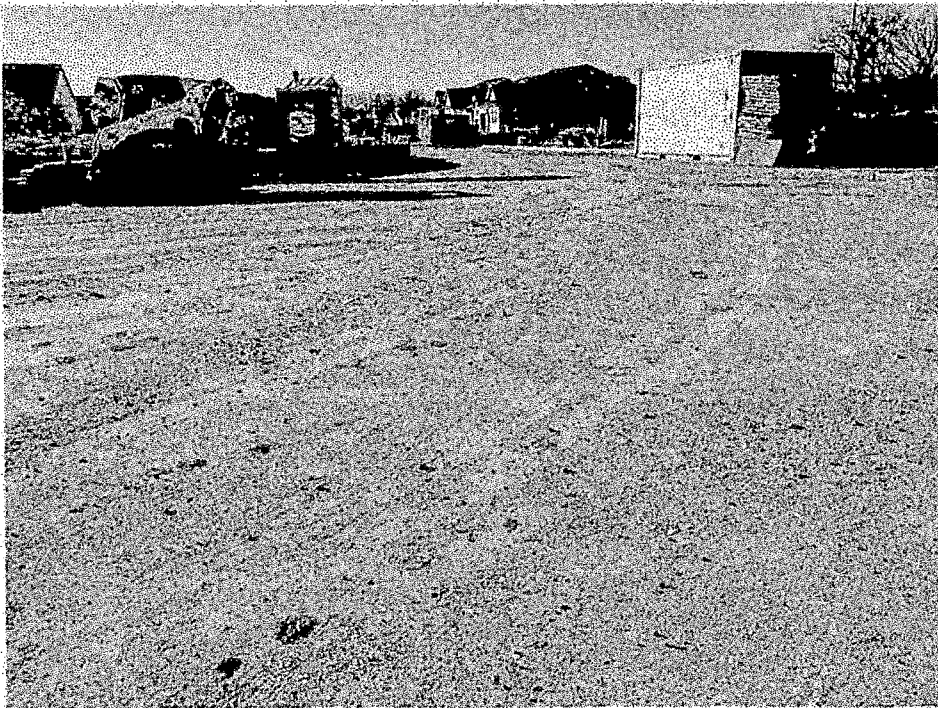


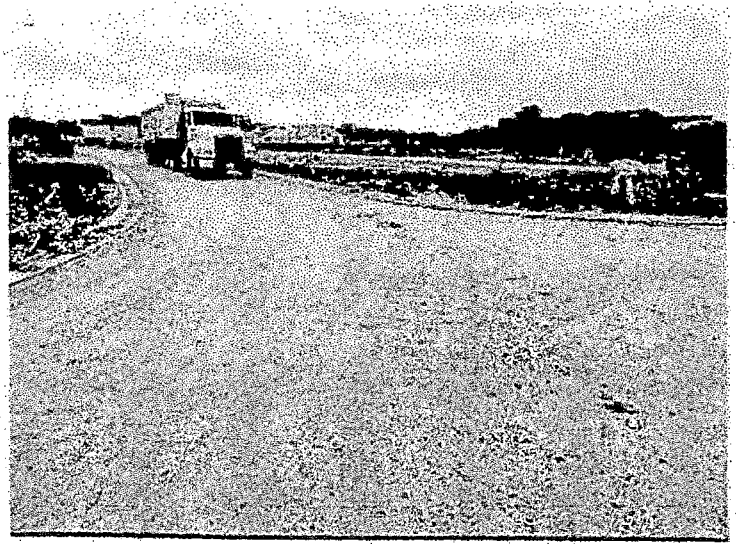
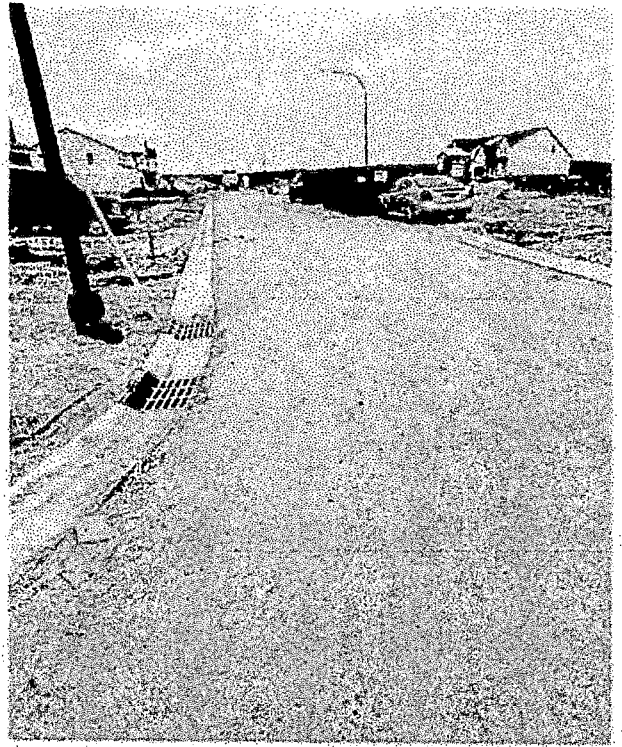
Exhibit C: Trillium Farm Site



Exhibit D: Winding Creek Site



Exhibit E: Naper Commons Site



Paul Pratas  
1779 Kirby Parkway  
Suite 1-92  
Serrantown, TN 38135

Electronic Filing: Received, Clerk's Office 12/07/2023

Retail



62703

U.S. POSTAGE PAID  
FCM LG ENV  
MEMPHIS, TN 38117  
JUL 29, 2023

\$6.99

R2307M152925-80

RDC 99



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



7022 1670 0002 8011 6409

Pulte Home Company, LLC  
c/o Todd Sheldon  
Illinois Corporation Service Company  
801 Dallas Stevenson Drive  
Springfield, Ill 62703-4261

# Exhibit C

ILLINOIS POLLUTION CONTROL BOARD

November 2, 2023

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 24-09
	)	(Citizens Enforcement - Water)
PULTE HOME COMPANY, LLC,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by B. F. Currie):

On July 27, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Pulte Home Company, LLC (Pulte). The complaint concerns five residential home construction sites: Wagner Farms, located at 3723 Quick Fire Drive in Naperville, Will County; Trillium Farms located at Purnell Road, in Winfield, DuPage County; Winding Creek, located at the intersection of McKee Street and Deerpath Road, in Batavia, Kane County; Naper Commons located at 2308 West Lucent Lane in Naperville, DuPage County; and Sawgrass located at Hassert Boulevard and Sedge Drive in Lockport, Will County.

On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the complaint fails to plead sufficient facts, fails state a claim, is frivolous and duplicative, and alleges a wholly past violations (Mot. to Dismiss). Within the motion to dismiss, Pulte requests that the Board impose sanctions as Mr. Pratapas has previously filed complaints against the five sites at issue in this case. On September 7, 2023, Mr. Pratapas filed a motion to amend the complaint (Mot. to Amend) as well as a response to Pulte’s motion to dismiss (Resp.). Pulte did not file a response to the motion to amend.

The Board first addresses the original complaint and Pulte’s motion to dismiss. The Board defers on deciding Pulte’s motion to dismiss, and directs Mr. Pratapas to file an amended complaint to plead with specificity the violations regarding the five sites. Next, the Board addresses Pulte’s motion for sanctions and Mr. Pratapas’ motion to amend the complaint. The Board denies Pulte’s motion for sanctions and grants Mr. Pratapas’ motion to amend the complaint.

**MOTION TO DISMISS**

Pulte asks the Board to dismiss and not accept the complaint on the basis that the complaint, “is insufficiently pled, frivolous, duplicative, and alleges wholly past violations.” Mot. to Dismiss at 1. Pulte argues that the complaint fails to state a cause of action upon which the Board can grant relief, but rather the complaint “merely recites a list of laws that complainant alleges were violated. *Id.* at 2.

Mr. Pratapas' original complaint alleged that Pulte violated: 415 ILCS 5/12(a), (d) (2022), and 35 Ill. Adm. Code 304.141(b). Comp. at 2. In describing the alleged violations, Mr. Pratapas said:

Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Photographs show concrete trucks have been cleaning out at the end of driveways. Sediment and sediment laden water freely allowed to enter the street and inlets. Inlet filter baskets filled with water and overflowing indicating they are clogged with the fine sediment and require maintenance. Workers photographed on a dirt covered road cleaning their boots off on the curb next to an inlet surrounded with sediment laden water. There appeared to be a total unawareness of any issues at hand. Cut out curbs left without BMPs. Pollutants are not controlled. Comp. at 3.

Mr. Pratapas does not specify to which the five sites the above description of alleged violations applies. Included in the original complaint are 13 photographs. The location and date of the photographs are listed in the complaint, however there is no additional information regarding the alleged violations at each site or how the photographs support the alleged violations. Comp. at 3, 10-14.

### **Discussion**

The Board's procedural rules require complaints to include "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). The Board's rules also require that "[f]acts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification consistent with Section 1-109 of the Code of Civil Procedure." 35 Ill. Adm. Code 101.504. The Board's rules define "frivolous" as "a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202.

### **Board Findings**

A complaint is required to plead facts that, if proven, would establish each element of the violations alleged. The Board finds that the information provided in the initial complaint as well as the motion to amend the complaint do not provide adequate information as to the nature, extent, duration and strength of the discharges alleged to constitute violations. The Board finds that the complaint lacks sufficient details describing with specificity how each of the five sites violated Sections 12(a) and (d) of the Illinois Environmental Protection Act (Act) as well as 35 Ill. Adm. Code 304.141(b). The Board directs Mr. Pratapas to amend his complaint so as to provide specificity of the violations for each of the five locations. The Board directs Mr. Pratapas to file an amended complaint by December 4, 2023. The Board defers its decision on the motion to dismiss until after December 4, 2023.

**MOTION FOR SANCTIONS**

Mr. Pratapas had previously filed five complaints against Pulte regarding the five sites at issue in this complaint. In each case, the Board dismissed the filing for either failure to properly serve the respondent or failure to amend the complaint. *See*, PCB 23-54 (dismissed on June 1, 2023 for failure to properly serve complaint); PCB 23-55 (dismissed on April 6, 2023 for failure to properly serve complaint); PCB 23-74 (dismissed on July 20, 2023 for failure to properly serve complaint); PCB 23-79 (dismissed on August 3, 2023 for failure to timely file an amended complaint); and PCB 23-63 (dismissed on July 6, 2023 for failure to properly serve the complaint). The Board dismissed the previous five cases without prejudice.

Pulte asks the Board to impose sanctions upon Mr. Pratapas for filing duplicative complaints. Pulte requests, “costs and expenses from dismissal of the prior – identical – actions as sanction for complainant’s failure to follow prior Board orders.” Mot. to Dismiss at 1.

**Board Discussion and Findings**

The Board’s procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board’s procedural rules. *See* 35 Ill. Adm. Code 101.800. Sanctions may include dismissing a proceeding with prejudice, or barring a party from maintaining a claim or defense. The Board has on rare occasions issued sanctions. For repeated failure to timely file an initial brief, the Board granted an IEPA motion for sanctions that requested to dismiss the proceeding with prejudice. Modine Manufacturing Company v. IEPA, PCB 87-124, slip op. at 3 (November 17, 1988) *aff’d*, 192 Ill. App. 3d 511. On remand from the Fourth District Appellate Court, the Court directed the Board to issue sanctions in the form of awarding attorney fees in an air permit appeal. The Grigoleit Company v. IEPA, PCB 89-184, slip op. at 4 (March 17, 1994).

The Board has broad discretion in determining the imposition of sanctions. *See IEPA v. Celotex Corp.*, 168 Ill. App. 3d 592, 597 (3d Dist. 1988); Modine Manufacturing Co. v. PCB, 192 Ill. App. 3d 511, 519 (2d Dist. 1989). In exercising this discretion, the Board considers such factors as “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c).

In this case, the Board does not find that Mr. Pratapas has failed to comply with a previous Board order or the Board’s procedural rules. The five previous complaints were dismissed on procedural grounds and without prejudice. The Board does not find evidence of bad faith in the filing of this complaint. The Board therefore dismisses Pulte’s motion for sanctions.

**MOTION TO AMEND COMPLAINT**

On September 7, 2023, Mr. Pratapas filed a motion to amend formal complaint which included the text of several sections of a National Pollutant Discharge Elimination System permit


as well as two pages of additional facts. Pulte did not respond to the motion. The Board grants Mr. Pratapas' motion to amend the complaint.

**ORDER**

1. The Board defers on deciding Pulte's motion to dismiss the complaint until after December 4, 2023.
2. The Board directs Mr. Pratapas to file a second amended complaint by December 4, 2023.
3. The Board grants Mr. Pratapas' motion to amend the complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 2, 2023, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

# Exhibit D



Paul Christian Pratapas  
*Complainant*

v

Pulte Home Company, LLC  
*Respondent*

### **COMPLAINANTS MOTION TO MODIFY FORMAL COMPLAINT**

On July 27, 2023, Paul Christian Pratapas filed a citizen's complaint against Pulte Home Company, LLC (Pulte). The complaint concerns five residential home construction sites: Wagner Farms, located at 3723 Quick Fire Drive in Naperville, Will County; Trillium Farms located at Purnell Road, in Winfield, DuPage County; Winding Creek, located at the intersection of McKee Street and Deerpath Road, in Batavia, Kane County; Naper Commons located at 2308 West Lucent Lane in Naperville, DuPage County; and Sawgrass located at Hassert Boulevard and Sedge Drive in Lockport, Will County.

At the time of the original filing, the true locations of the developments corresponding to their respective permit numbers were unknown because Pulte repeatedly and knowingly refused access to the SWPPP binders and at no time planned to or did install required regulatory signage, both basic tenants of their permit requirements. Historically, The ILEPA and The Board has allowed permit holders to file defenses against permit violations which are based in their undisputed failures to comply.

The Board has since requested clarification of the following portion of the initial complaint filing to specify which violation(s) occurred at which [NPDES permitted] sites:

Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Photographs show concrete trucks have been cleaning out at the end of driveways. Sediment and sediment laden water freely allowed to enter the street and inlets. Inlet filter baskets filled with water and overflowing indicating they are clogged with the fine sediment and require maintenance. Workers photographed on a dirt covered road cleaning their boots off on the curb next to an inlet surrounded with sediment laden water. There appeared to be a total unawareness of any issues at hand. Cut out curbs left without BMPs. Pollutants are not controlled.

Complainant requests The Board amend the Formal Complaint to include site specific information on violations as follows:

**Sawgrass Site:**

- Pollutants are not controlled
- Workers photographed on a dirt covered road cleaning their boots off on the curb next to an inlet surrounded with sediment laden water
- Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not controlled
- Sediment and sediment laden water freely allowed to enter the street and inlets
- Curbside protection required because of execution of construction plans is missing
- Trackout onto roads not removed by end of day
- Sediment accumulation in curbside gutters not removed by end of day
- Prohibited discharge of sediment laden water into stormwater system and potentially leaving the site
- Refusal to allow public access of SWPPP binder to assess the previous bullet point(s)
- Improper vehicle storage
- Not building in the phases approved with permit
- Designate concrete washout area not built to required specs
- Regulatory signage and permit number not posted anywhere

**Wagner Farms Site:**

- Pollutants are not controlled
- Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not controlled
- Concrete washout container not covered
- Concrete washer container not serviced as required leading to spillage
- Designate concrete washout area not built to required specs
- Designate concrete washout area and container not flat
- Designate concrete washout area missing perimeter protection and barrier between stones and soil
- Sediment and sediment laden water freely allowed to enter the street and inlets
- Curbside protection required because of execution of construction plans is missing
- Trackout onto roads not removed by end of day
- Sediment accumulation in curbside gutters not removed by end of day
- Prohibited discharge of sediment laden water into stormwater system and potentially leaving the site
- Refusal to allow public access of SWPPP binder to assess the previous bullet point(s)
- Not building in the phases approved with permit
- Improper vehicle storage

- Stockpile missing perimeter controls and located too near the road which also lacks appropriate curbside BMPs
- Regulatory signage and permit number not posted anywhere

**Trillium Farm Site:**

- Pollutants are not controlled
- Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not controlled
- Concrete washout container not covered
- Concrete washer container not serviced as required
- Designate concrete washout area not built to required specs
- Designate concrete washout area missing perimeter protection and barrier between stones and soil
- Sediment and sediment laden water freely allowed to enter the street and inlets
- Curbside protection required because of execution of construction plans is missing
- Trackout onto roads not removed by end of day
- Sediment accumulation in curbside gutters not removed by end of day
- Prohibited discharge of sediment laden water into stormwater system and potentially leaving the site
- Refusal to allow public access of SWPPP binder to assess the previous bullet point(s)
- Not building in the phases approved with permit
- Improper vehicle storage
- Regulatory signage and permit number not posted anywhere

**Winding Creek Site:**

- Pollutants not controlled
- Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not controlled
- Concrete washout container not covered
- Concrete washer container not serviced as required
- Designate concrete washout area not built to required specs
- Designate concrete washout area missing perimeter protection and barrier between stones and soil
- Sediment and sediment laden water freely allowed to enter the street and inlets
- Curbside protection required because of execution of construction plans is missing
- Sediment accumulation in curbside gutters not removed by end of day
- Prohibited discharge of sediment laden water into stormwater system and potentially leaving the site
- Refusal to allow public access of SWPPP binder to assess the previous bullet point(s)

- Hiring illegal immigrants with an education nowhere near comparable to that of the minimum American education leading to greater violations of law by way of ignorance
- Not building in the phases approved with permit
- Improper vehicle storage
- Regulatory signage and permit number not posted anywhere

**Naper Commons Site:**

- Pollutants not controlled
- Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not controlled
- Concrete washout container not covered
- Concrete washer container not serviced as required
- Designate concrete washout area not built to required specs
- Designate concrete washout area missing perimeter protection and barrier between stones and soil
- Sediment and sediment laden water freely allowed to enter the street and inlets
- Curbside protection required because of execution of construction plans is missing
- Sediment accumulation in curbside gutters not removed by end of day
- Prohibited discharge of sediment laden water into stormwater system and potentially leaving the site
- Refusal to allow public access of SWPPP binder to assess the previous bullet point
- Hiring illegal immigrants with an education nowhere near comparable to that of the minimum American education leading to greater violations of law by way of ignorance
- Not building in the phases approved with permit
- Improper vehicle storage

*\*Specs for all BMPs must meet standards found in the Illinois Urban Manual found at <https://illinoisurbanmanual.org/>*

*Paul Christian Pratapas*

*11/17/2023*

Paul Christian Pratapas  
1779 Kirby Parkway, Ste 1-92  
Germantown, TN 38138  
(901)-352-1219

# Exhibit E

ILLINOIS POLLUTION CONTROL BOARD

July 20, 2023

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 23-74
	)	(Citizen's Enforcement - Water)
PULTE HOME COMPANY, LLC,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. Gibson):

On December 12, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against "Sawgrass by Pulte Homes" (Pulte), alleging violations related to a development in DuPage County, Illinois.

On December 19, 2022, Pulte filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint, as well as a motion to dismiss the complaint on the grounds that Mr. Pratapas alleges a wholly past violation.

On June 1, 2023, The Board directed Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than July 3, 2023, or face dismissal of the complaint for failure to properly serve the respondent. *See* 35 Ill. Adm. Code 101.304(c), (d); *see also* 35 Ill. Adm. Code 103.204(a).

On July 3, 2023, Mr. Pratapas filed a motion for extension of time to file the required proof of service. (Pratapas Mot.) Mr. Pratapas' reasons for requesting an extension of time are that he "currently cannot afford to re-serve Respondent via certified mail..." and that he "still has not been able to identify a registered agent to receive service." Pratapas Mot. at 1. Also on July 3, 2023, Pulte filed a motion objecting to Mr. Pratapas' motion. (Pulte Mot.) Pulte argues that Mr. Pratapas' motion is "devoid of justification for extension, at law or in equity." Pulte Mot. at 1.

On July 17, 2023, Mr. Pratapas filed a certified mail receipt indicating that he mailed something to the respondent's attorney that was mailed on July 15, 2023. Mr. Pratapas did not file documentation of what was mailed on July 15, 2023

A total of 220 days have elapsed since Mr. Pratapas initially filed the complaint with the Board. Additionally, the Board has already granted Mr. Pratapas an extension of 30 days to file the required proof of service. The Board notes that Mr. Pratapas used a sample citizen complaint form, available on the Board's website. The instructions accompanying those forms include detailed steps on how to serve complaints on respondents in accordance with the Board's rules. *See* IPCB Form. Comp. Pkg. at 4. Additionally, the instructions inform potential files of the following:

To file with the Board your Formal Complaint or any other document in the enforcement proceeding, you do not pay any filing fee to the Board. The Board will pay its own hearing costs, such as hearing room rental, court reporting fees, and hearing officer expenses. You are responsible for the costs that you or your attorney may incur in pursuing your complaint (e.g., attorney fees, duplicating charges, travel expenses, and witness fees). *Id.* at 6.

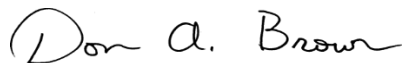
The nominal expense of serving the complaint upon a respondent is an expense that must be borne by the complainant. Therefore, the Board denies Mr. Pratapas' motion. Because Mr. Pratapas failed to timely file the required proof of service of the complaint, the Board does not accept the complaint and the respondent's motion to dismiss is moot. Therefore, the Board dismisses this case and closes the docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Paul Christian Pratapas 1779 Kirby Parkway, Ste. 1, #92 Memphis, Tennessee, 38138 paulpratapas@gmail.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov
SWANSON, MARTIN & BELL, LLP Michael J. Maher J. A. Koehler 330 N. Wabash Ave., Suite 3300 Chicago, IL 60611 <a href="mailto:mmaher@smbtrials.com">mmaher@smbtrials.com</a> <a href="mailto:jkoehler@smbtrials.com">jkoehler@smbtrials.com</a>	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 20, 2023, by a vote of 3-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board



# Exhibit F

ILLINOIS POLLUTION CONTROL BOARD

June 1, 2023

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 23-54
	)	(Citizen's Enforcement - Water)
WAGNER FARMS BY PULTE HOMES,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Van Wie):

On November 9, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against Wagner Farms by Pulte Homes (Pulte or respondent). The complaint concerns Pulte's residential construction at 3723 Quick Fire Drive in Naperville, Will County. Comp. at 2. On December 5, 2022, the Board directed Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than Tuesday, January 16, 2023 (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint.

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

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

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

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

**NAMED RESPONDENT**

As filed, Mr. Pratapas named "Wagner Farms by Pulte Homes" as the respondent in this complaint. In its January 17, 2023, motion, the attorney for respondent indicated that the proper name for the respondent is "Pulte Home Company, LLC". The Board corrects the caption in this order and directs the Clerk to correct the respondent's name in the docket of this case.

**SERVICE OF COMPLAINT**

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103. Under the Board's rules, an enforcement proceeding begins by serving a notice and the complaint on a respondent. *See* 35 Ill. Adm. Code 103.204(a), (b). Specifically, service must be "by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service." *Id.* Notably, enforcement complaints may not be served by e-mail. *See* 35 Ill. Adm. Code 101.1000(e).

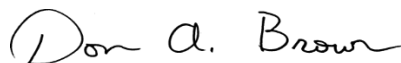
If service is not timely initiated or completed, then the "proceeding is subject to dismissal, and the filing party is subject to sanctions." 35 Ill. Adm. Code 101.304(b)(4). In this case, Mr. Pratapas improperly served the complaint, and the Board offered him the opportunity to correct the service. Mr. Pratapas instead filed proof that something was mailed to respondent's attorneys. The complaint was sent via certified mail to a person not authorized by law to accept service. Illinois law requires that a private corporation be served by "(1) leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law." 735 ILCS 5/2-204 (2020).

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

Because Mr. Pratapas has failed to timely perfect service of the complaint on the respondent, the Board grants the motion to not accept the complaint. Further, because Mr. Pratapas was given an opportunity to correct service errors, and failed to do so, the Board dismisses the complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 1, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

# Exhibit G

ILLINOIS POLLUTION CONTROL BOARD

July 6, 2023

PAUL CHRISTIAN PRATAPAS, )  
)  
Complainant, )  
)  
v. ) PCB 23-63  
) (Citizen Enforcement Action – Water)  
PULTE HOME COMPANY, LLC, a Michigan )  
limited liability company, )  
)  
Respondent. )

ORDER OF THE BOARD (by M. Gibson):

On November 28, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint against Trillium Farms by Pulte Homes, LLC. The complaint concerns Pulte’s residential construction located at Purnell Road, Winfield, DuPage County. On December 19, 2022, Pulte filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint, as well as a motion to dismiss on the grounds that the complaint is frivolous and alleges a wholly past violation.

On May 18, 2023, the Board granted Pulte’s motion to not accept the complaint for failure to properly serve the respondent, and directed Mr. Pratapas to file the required proof of service of the complaint on the respondent no later than June 19, 2023, or face dismissal of the complaint for failure to properly serve the respondents. *See* 35 Ill. Adm. Code 101.304(c), (d); *see* also 35 Ill. Adm. Code 103.204(a). Because Mr. Pratapas failed to timely file the required proof of service of the complaint, the Board dismisses this case and closes the docket.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 6, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

# Exhibit H

ILLINOIS POLLUTION CONTROL BOARD

August 3, 2023

PAUL CHRISTIAN PRATAPAS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 23-79  
 ) (Citizens Enforcement - Water)  
 PULTE HOME COMPANY, LLC, a )  
 Michigan corporation, and CITY OF )  
 BATAVIA, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by J. Van Wie):

On December 15, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen's complaint (Comp.) against Winding Creek by Pulte Homes (Pulte) and the City of Batavia (Batavia). The complaint concerns Pulte's residential construction project located at the intersection of McKee Street and Deerpath Road in Batavia, Kane County.<sup>1</sup>

On January 11, 2023, Pulte filed a motion that the Board not accept the complaint for failure to properly serve, as well as a motion to dismiss the complaint on the grounds that Mr. Pratapas alleges a wholly past violation (Pulte Mot.). On January 18, 2023, Batavia filed a motion to dismiss pursuant to 415 ILCS 5/31(d)(1)(2020) and 35 Ill. Adm. Code 101.202 (Batavia Mot.). On June 15, 2023, the Board directed the Clerk to correct the name of Pulte in the docket; struck three of Mr. Pratapas' requests for relief; granted, in part, Batavia's motion to dismiss; and granted Pulte's motion not to accept the complaint, but directed Mr. Pratapas to file proof of service, as well as an amended complaint, within 30 days, or face dismissal of the complaint.

**FAILURE TO FILE AMENDED COMPLAINT**

On June 15, 2023, the Board directed Mr. Pratapas to file an amended complaint that cures the deficiencies in the complaint no later than July 17, 2023, or face dismissal of the complaint for failure to plead the violations and requests for relief with specificity. *See* 35 Ill. Adm. Code 101.202(b). Mr. Pratapas has failed to file an amended complaint. Because Mr. Pratapas failed to timely file an amended complaint, the Board dismisses this case and closes the docket.

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<sup>1</sup> The complaint does not cite the specific address of the alleged violation. Rather, it states that the violation happened at the intersection of McKee Street and Deerpath Road in Batavia. Comp. at 2.

To the extent that the Board has not yet ruled on Batavia's motion to dismiss, because this case has now been dismissed, the Board denies Batavia's motion to dismiss as moot.

IT IS SO ORDERED.

Board Member M.D. Mankowski abstained.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Paul Christian Pratapas 1779 Kirby Parkway, Ste. 1, #92 Memphis, Tennessee, 38138 <a href="mailto:paulpratapas@gmail.com">paulpratapas@gmail.com</a>	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren St., Suite 630 Chicago, Illinois 60605
Swanson, Martin & Bell Attn: Michael J. Maher Attn: Gregory M. Emry Attn: J.A. Koehler 330 North Wabash Ave., Ste. 3300 Chicago, Illinois 60611 <a href="mailto:mmaher@smbtrials.com">mmaher@smbtrials.com</a> <a href="mailto:gemry@smbtrials.com">gemry@smbtrials.com</a> <a href="mailto:jkoehler@smbtrials.com">jkoehler@smbtrials.com</a>	
Drendel & Jansons Law Group Attn: Roman J. Seckel, City Attorney 111 Flinn Street Batavia, Illinois 60510 <a href="mailto:rjs@batavialaw.com">rjs@batavialaw.com</a>	



I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 3, 2023, by a vote of 3-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large initial "D" and "B".

Don A. Brown, Clerk  
Illinois Pollution Control Board