

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                          |   |                  |
|--------------------------|---|------------------|
| PAUL CHRISTIAN PRATAPAS, | ) |                  |
|                          | ) |                  |
| Complainant,             | ) |                  |
| v.                       | ) |                  |
|                          | ) | PCB No. 2023-063 |
| TRILLIUM FARMS BY PULTE  | ) | (Enforcement)    |
| HOMES                    | ) |                  |
|                          | ) |                  |
| Respondent.              | ) |                  |

**APPEARANCE**

The undersigned, as attorney, enters the appearance of the Respondent, PULTE HOME COMPANY, LLC, improperly sued as “TRILLIUM FARMS BY PULTE HOMES.”

By: /s/ Gregory M. Emry  
One of the 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))  
Gregory M. Emry ([gemry@smbtrials.com](mailto:gemry@smbtrials.com))  
Swanson, Martin & Bell, LLP  
330 North Wabash Avenue, Suite 3300  
Chicago, Illinois 60611  
312-321-9100/312-321-0990 (fax)  
Firm ID No. 29558

I certify that a copy of the within instrument was served on all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

/s/ Gregory M. Emry  
One of the Attorneys for Defendant,  
PULTE HOME COMPANY, LLC

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| PAUL CHRISTIAN PRATAPAS        | ) |                  |
| Complainant                    | ) | PCB No. 2023-063 |
| v.                             | ) |                  |
|                                | ) |                  |
| TRILLIUM FARMS by PULTE HOMES, | ) |                  |
| Respondent.                    | ) |                  |

**RESPONDENT’S MOTION REQUESTING THE POLLUTION CONTROL BOARD NOT ACCEPT COMPLAINT AND/OR DISMISS THE COMPLAINT**

Respondent, PULTE HOME COMPANY, LLC (“Pulte Home”), improperly sued as “Trillium Farms by Pulte Homes”, by and through its attorneys, SWANSON, MARTIN & BELL, LLP, pursuant to 35 Ill. Adm. Code §§ 103.212(b) and 101.506, respectfully moves the Illinois Pollution Control Board to not accept the Citizen’s Formal Complaint in this matter for hearing on the basis that Complainant never properly served Respondent and because the Complaint is frivolous, alleging wholly past violations for which private citizens lack authority to pursue. In support, Respondent states as follows:

**FAILURE TO PROPERLY SERVE RESPONDENTS**

1. Respondent denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
2. 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.
3. The Board should not accept this Complaint because Complainant failed to serve Respondent as required by 35 Ill. Adm. Code § 101.304.
4. 35 Ill. Adm. Code § 101.304(d) specifically provides that a proceeding is subject to dismissal for failure to comply with service requirements.

5. Although 35 Ill. Adm. Code § 101.304(c)(1) allows for service in several ways, Complainant's chosen method of service is via personal service, which is governed by 35 Ill. Adm. Code § 101.304(d). (See attached hereto as Exhibit A, for Complainant's Proof of Service.)
6. Complainant's "Documentation of Service" is improper and fails to supply required information necessary to give this Honorable Board jurisdiction over this matter or Complainant's Complaint.
7. With regards to Respondent Pulte Homes, the attached "Documentation of Service", acknowledges the lack of service, and furthermore fails provide any affidavit of proof of service. (See attached Exhibit A, "Documentation of Service".)
8. For personal service on a corporation, Illinois requires delivery of the complaint to a registered agent or other individual authorized to receive the complaint. *See* 35 Ill. Adm. Code § 101.100(b) (applying the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules when the Board's procedural rules are silent).
9. Complainant's "Documentation of Service" is inadequate.
10. A simple internet search of the Illinois Secretary of State shows the registered agent for Pulte Homes (of 3350 Peachtree Rd.. NE, STE 1500, Atlanta, GA 30326) at 801 Adlai Stevenson Drive Springfield, IL 62703. (See Pulte Homes, Registered Agent Information, attached as Exhibit B.)
11. Complainant's lack of service violates Illinois law.
12. This Honorable Board cannot proceed in this matter until service is perfected.
13. Because there is no proper service on Respondent, the Board should not accept Complainant's Complaint.

**WHOLLY PAST VIOLATION**

14. Respondent denies any claim that its actions or activities caused or allowed pollution or constitute a violation of Illinois law or regulations.
15. 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.
16. Paragraph 6 of the Formal Complaint alleges wholly past violations, limited to Complainant stating he “photographed and reported to ILEPA while he drove through the country on Thanksgiving 11/24/2022 at 3 in the afternoon”.
17. Paragraph 4 of the Formal Complaint alleges violations of 415 ILCS 5.12(a), 5.12(d) and IL. Admin Code Title 35, 204.141(b).
18. 415 ILCS 5.12(a) addresses water pollution identical to provisions of the Federal Clean Water Act, 33 U.S.C. 1251, *et.seq.*
19. The U.S. Supreme Court directly and clearly holds there is no standing for citizen suits where the relief addresses wholly past violations of the Clean Water Act. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).
20. In Illinois, citizens only possess authority to enforce statutes as specifically allowed and authorized by status. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999).
21. Specifically, 35 Ill Adm. Code § 103.204(c)(1) requires the complainant to identify “...[T]he provisions of the Act that Respondents *are alleged to be violating.*” (*emphasis added.*)

22. The language of 35 Ill. Adm. Code § 103.204(c)(1) unambiguously addresses current violations which are alleged to be ongoing—hence “*violating*—at the time the complaint is filed.
23. The only plausible interpretation for the regulations conjugation of the verb “to violate” into “*violating*” is by application of the present tense.
24. 35 Ill Adm. Code § 103.204(c)(1) is clear that complainants must identify actions Respondent is alleged “[T]o be *violating* . . .” when the complaint is filed. (*emphasis added*.)
25. Therefore, consistent with the U.S. Supreme Court’s holding 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.
26. Complainant’s suit is not brought by the State of Illinois, for which suits alleging past violations are authorized. *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 EPA or Illinois Attorney General.)
27. 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 continued operation of equipment giving rise to the alleged violation. Both of these cases acknowledge that citizens may pursue

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

28. The allegations here are clear: alleged, past violations on “Thanksgiving 11/24/2022”.

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

30. Complainant’s Complaint should be dismissed.

WHEREFORE, for the foregoing reasons, Respondent, PULTE HOME COMPANY, LLC, respectfully moves the Illinois Pollution Control Board not to accept the Citizens’ Formal Complaint for hearing on the basis the Complaint is frivolous and/or the Complaint in this matter was improperly served.

**SWANSON, MARTIN & BELL, LLP**

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

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

COMPLAINANT:

PAUL CHRISTIAN PRATAPAS

RESPONDANT:

TRILLIUM FARM BY PULTE HOMES

**PROOF OF SERVICE**

Concerning: Federal Law

Case Name: PCP v TF

Case#

IPCB 2023-063

Name of Paper(s) Served: CIVIL LIBERTIES VIOLATIONS

Method of Service:

First-Class Mail

Registered Mail (Copy of Receipt Attached)

Certified Mail (Copy of Receipt Attached)

Fax

Electronic Service

Personal Service

After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: UNREASONABLE REQUIREMENTS, NOBODY IDENTIFIED

Address Served: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Fax No. Served: \_\_\_\_\_

Time of Service: \_\_\_\_\_

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and that I served the papers on the date of \_\_\_\_\_

Name of Server: PAUL CHRISTIAN PRATAPAS

Miles Traveled: \_\_\_\_\_

Fee: \_\_\_\_\_

Service Fee: \_\_\_\_\_

Incorrect Address Fee: \_\_\_\_\_

Total Fee: \_\_\_\_\_

Paul Christian Pratapas  
Signature

12.02.2022  
Date





Office of the Secretary of State Jesse White

ilsos.gov

## Corporation/LLC Search/Certificate of Good Standing

### LLC File Detail Report

|             |                         |
|-------------|-------------------------|
| File Number | 05999588                |
| Entity Name | PULTE HOME COMPANY, LLC |
| Status      | ACTIVE                  |

| Entity Information          |  |
|-----------------------------|--|
| Principal Office            | 3350 PEACHTREE RD. NE, STE 1500<br>ATLANTA, GA 30326 |
| Entity Type                 | LLC  |
| Type of LLC                 | Foreign  |
| Organization/Admission Date | Thursday, 5 January 2017                             |
| Jurisdiction                | MI   |
| Duration                    | PERPETUAL  |

Exhibit B

**Electronic Filing: Received, Clerk's Office 12/19/2022****Agent Information**

Name

ILLINOIS CORPORATION SERVICE COMPANY

Address

801 ADLAI STEVENSON DRIVE

SPRINGFIELD , IL 62703

Change Date

Thursday, 5 January 2017

**Annual Report**

For Year

2023

Filing Date

Monday, 5 December 2022

**Managers**

Name

Address

SHELDON, TODD N.

SUITE 1500 3350 PEACHTREE ROAD NE

ATLANTA, GA 30326

**Series Name**

NOT AUTHORIZED TO ESTABLISH SERIES

[Return to Search](#)[File Annual Report](#)[Adopting Assumed Name](#)[Articles of Amendment Effecting A Name Change](#)[Change of Registered Agent and/or Registered Office](#)

(One Certificate per Transaction)

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Mon Dec 19 2022

