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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEB - 2 2004

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

Complainant,

v.

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

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 04-138  
(Enforcement - Water)


NOTICE OF FILING

TO: Peter J. Brennan, Registered Agent  
Pinnacle Corporation d/b/a Town & Country Homes  
1806 South Highland Avenue  
Lombard, Illinois 60148

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that 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.

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

BY:



MICHAEL C. PARTEE  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-2069  
Attorney No. 99000

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Pollution Control Board

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COMPLAINT

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

COUNT I

CAUSING, THREATENING OR ALLOWING WATER POLLUTION

1. This Count is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

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

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

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

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

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

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

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

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

11. As of September 24, 2002, Respondent also had not obtained the prerequisite sewer and public water supply permits from the Illinois EPA.

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

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

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), provides as follows:

Actions Prohibited.

No person shall:

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

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

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

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

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

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

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

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), provides the following definition:

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

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), provides the following definition:

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

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

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

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

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

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

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

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

## COUNT II

### CAUSING OR ALLOWING THE CONSTRUCTION OF A SEWER WITHOUT A PERMIT

1-13. Complainant realleges and incorporates by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.

14. Section 12(c) of the Act, 415 ILCS 5/12(c) (2002), provides as follows:

Actions Prohibited.

No person shall:

\* \* \*

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

15-21. Complainant realleges and incorporates by reference paragraphs 15 through 21 of Count I as paragraphs 15 through 21 of this Count II.

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

Construction Permits.

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

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

as provided in paragraph (b).

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

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

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

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



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

COUNT III

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

1-13. Complainant realleges and incorporates by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), provides, in relevant part, as follows:

Actions Prohibited.

No person shall:

\* \* \*

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

15-21. Complainant realleges and incorporates by reference paragraphs 15 through 21 of Count I as paragraphs 15 through 21 of this Count III.

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

NPDES Permit Required.

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

23. Beginning on a date before September 24, 2002, Respondent caused, threatened or allowed the discharge of a contaminant into the waters of the State without an NPDES storm water discharge permit issued by the Illinois EPA.

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

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

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

violation continues;

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

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

#### COUNT IV

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

1-13. Complainant realleges and incorporates by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count IV.

14. Section 15(a) of the Act, 415 ILCS 5/15(a) (2002), provides as follows:

Plans and specifications; demonstration of capability.

- (a) Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

15. Section 3.365 of the Act, 415 ILCS 5/3.365 (2002), provides, in relevant part, the following definition:

"PUBLIC WATER SUPPLY" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used

or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year . . . .

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

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

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

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

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

thereafter;

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

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

#### COUNT V

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

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

2-13. Complainant realleges and incorporates by reference paragraphs 2 through 13 of Count I as paragraphs 2 through 13 of this Count V.

14. Section 18(a) of the Act, 415 ILCS 5/18(a) (2002), provides as follows:

Prohibitions; plugging requirements.

(a) No person shall:

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

15-21. Complainant realleges and incorporates by reference paragraphs 15 through 21 of Count I as paragraphs 15 through 21 of

this Count V.

22-23. Complainant realleges and incorporates by reference paragraphs 15 and 16 of Count IV as paragraphs 22 and 23 of this Count V.

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

Construction Permit.

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

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

Construction Permit Requirements.

- (a) Construction permits shall be obtained by the official custodian of a water supply prior to beginning construction of any proposed community water supply and prior to all alterations, changes or additions to an existing community water supply which may affect the sanitary quality, mineral quality or adequacy of the supply including changes pursuant to 25 Ill. Adm. Code 653.115.

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

27. By causing or allowing the construction of a new public water supply without a construction permit issued by the Illinois EPA, Respondent violated Section 18(a) of the Act, Section

602.101(a) of the Board's Public Water Supply Regulations, and Section 652.101(a) of the Illinois EPA's Public Water Supply Regulations.

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

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

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

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

BY: *Rose Marie Cazeau*  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General


OF COUNSEL:

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




CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on February 2, 2004.

BY:   
MICHAEL C. PARTEE

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on February 2, 2004:

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

BY:   
MICHAEL C. PARTEE