

ILLINOIS POLLUTION CONTROL BOARD  
October 2, 2014

MR. GARY L. POLCHOW, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 14-112  
 ) (Citizens Enforcement – Air, Water)  
 AARON WARREN and SEAN )  
 MCALLISTER, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by J.A. Burke):

On February 28, 2014, Gary L. Polchow filed a complaint (Comp.) against Aaron Warren and Sean McAllister. The complaint concerned the Village of Rankin’s public works property in Vermilion County.

On July 24, 2014, the Board dismissed the complaint as frivolous but granted Mr. Polchow until August 25, 2014, to file an amended complaint. Mr. Polchow filed a one-page document on August 22, 2014. On August 25, 2014, Mr. Polchow filed a document amending the August 22, 2014 document to add an additional page. On September 3, 2014, Mr. Polchow filed proof of service (a copy of a signed green card) on respondent Sean McAllister on August 28, 2014. On September 8, 2014, Mr. Polchow filed a document stating that Aaron Warren “refused amended complaint” and attaching Mr. Polchow’s mailing receipt. On October 1, 2014, Mr. Polchow filed a one-page document that included three photos.

For the reasons below, the Board allows Mr. Polchow until November 3, 2014, to file an amended complaint.

**Summary of Original Complaint**

Under the Environmental Protection Act (Act), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/31(d)(1) (2012); 35 Ill. Adm. Code 103. Mr. Polchow contends that the Village of Rankin public works property is burning unwanted items beyond yard waste, resulting in odor, hazardous waste, and chemicals entering the soil and a neighboring creek. Comp. at 2-3. The odor is also entering nearby homes. *Id.* at 4. Mr. Polchow alleges that this operation is causing air and water pollution. *Id.* at 3.

Mr. Polchow states that the items being burned include items that are not yard waste, and that the smoke is touching the ground. Comp. at 3. Mr. Polchow requests that the respondents change the operation and its location, which Mr. Polchow contends create a fire risk due to proximity to a neighboring building. *Id.* at 4.

### **Summary of July 24, 2014 Board Order**

On July 24, 2014, the Board found Mr. Polchow's original complaint frivolous because it did not "state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202. Mr. Polchow did not cite to a section of the Act that was allegedly being violated. The Board further noted that Mr. Polchow was not clear if the respondents were responsible for the alleged conduct in their individual capacity or if the Village of Rankin was responsible. The Board therefore dismissed the complaint but granted Mr. Polchow until August 25, 2014, to file an amended complaint addressing these deficiencies.

### **August and October Filings**

The documents filed on August 22, 2014, and August 25, 2014, are similar except that the August 25, 2014 letter attaches a letter to Mr. Polchow signed by Todd Bennett. Mr. Polchow states that the respondents violated Sections 3.115, 3.270, 9(a), 9(c), and 9(f) of the Act (415 ILCS 5/3.115, 3.270, 9(a), 9(c), 9(f) (2012)). Mr. Polchow states that Mr. McAllister violated these sections in the course of his employment, and that Mr. Warren violated these sections "as a individual mayor." Mr. Polchow includes three photos in his October 1, 2014, filing and states "possible site at 101 North Groove and Railroad Property! (North East) outside of town."

### **Board Finding**

The documents filed by Mr. Polchow on August 22, 2014, and August 25, 2014 list the sections of the Act allegedly violated but do not describe how these sections were violated. The document filed by Mr. Polchow on October 1, 2014, includes three photos but does not describe what it is that the photos depict. The Board notes that Mr. Polchow previously described the alleged illegal activities in his original complaint. However, Mr. Polchow has not filed these items as one complete document. Further, Mr. Polchow states in the August 22, 2014, and August 25, 2014, documents that Mr. McAllister was "acting in the course of his employment" but does not state who he was employed by or what his job was. Mr. Polchow also states that Mr. Warren acted "as a individual mayor" but does not clarify of which municipality Mr. Warren is mayor.

A complaint must cite specific sections of the Act that Mr. Polchow contends the respondents are violating. 415 ILCS 5/31(c)(1) (2012). Further, a complaint must contain "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). These elements are necessary to advise respondents of the extent and nature of the alleged violations so that respondents may prepare a defense. *See, id.*

Mr. Polchow's complaint filed on February 28, 2014, did not cite a section of the Act that Mr. Polchow alleged to be violated. The documents filed on August 22, 2014, and August 25, 2014 provide a list of sections of the Act allegedly violated but do not meet the remaining requirements of 35 Ill. Adm. Code 103.204(c), which require a thorough description of the

alleged violations. The document filed on October 1, 2014, contains an address and photos but is vague in that it does not describe what that address is, it does not describe what the photos depict, and it does not address the remaining requirements of 35 Ill. Adm. Code 103.204(c).

Mr. Polchow is required to file a complete complaint document meeting all of the requirements in 35 Ill. Adm. Code 103.204(c), as described above. Mr. Polchow may use the "Formal Complaint" form that he originally filed. The complaint must include the sections of the Act that he alleges have been violated (under question five of the "Formal Complaint" form), describe the employment positions of Mr. McAllister and Mr. Warren, and describe the alleged illegal activities performed by Mr. McAllister and Mr. Warren.

The Board grants Mr. Polchow until Monday, November 3, 2014, to file an amended complaint that properly combines the information submitted in Mr. Polchow's previous filings, and that addresses the employment questions raised above. If Mr. Polchow does not file an amended complaint, the Board will dismiss this case.

Once again, Mr. Polchow must serve a copy of any amended complaint on the named respondents. Mr. Polchow then must file with the Board proof that each respondent was served. *See* 35 Ill. Adm. Code 101.302, 101.304. Any respondent may then file any motion attacking the amended complaint within 30 days of receiving the complaint, or any answer to the amended complaint within 60 days of receiving the complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b), 103.204(d).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 2, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board