

ILLINOIS POLLUTION CONTROL BOARD
July 20, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-82
) (Citizens Enforcement – Water)
 MIDWEST CONSTRUCTION PARTNERS)
 AND CITY OF NAPERVILLE: MAYOR)
 STEVE CHIRICO,)
)
 Respondents.)

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

On December 27, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Midwest Construction Partners (Midwest) and City of Naperville: Mayor Steve Chirico (Mayor) (together, respondents).

On June 1, 2023, the Board directed Mr. Pratapas to file the required proof of service of the complaint on respondents no later than July 3, 2023, or face dismissal of the complaint for failure to properly serve. *See* 35 Ill. Adm. Code 101.304(c), (d); *see also* 35 Ill. Adm. Code 103.204(a). On June 21, 2023, Mr. Pratapas filed an altered version of a proof of service form to indicate that he was “unable to determine the proper name of the responsible legal entitie(s) and/or registered agent due to missing required permit signage” for Midwest. On the second page of the form, Mr. Pratapas indicated that on December 29, 2022, he personally served “[t]wo staff members [who] refused to answer any questions regarding permitted site listed in the complaint”. Also on June 21, 2023, Mr. Pratapas filed the same altered proof of service form to indicate that on December 29, 2022, he personally served Julie Dumler for the Mayor. The June 21, 2023 filings did not include a notary’s seal. Here, since Mr. Pratapas claims he personally served the respondents, each affidavit of service requires his notarized signature attesting to service on the respondents. *See Diana Leindl and Kevin Leindl v. Hartsburg Grain Co.*, PCB 19-59 (Dec. 20, 2018) (rejecting affidavit of personal service for lack of notarization); 35 Ill. Adm. Code 101.304(d).

“A party serving a document upon another party must also file documentation of that service.” For each method of service, the Board’s procedural rules provide requirements for documenting service and then filing the documentation. 35 Ill. Adm. Code 101.304(d).

A total of 212 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 for this original complaint, Mr. Pratapas used a sample citizen complaint form, available on the Board’s website, to file his complaint on December 27, 2022. The instructions accompanying that form include detailed steps on how to

serve complaints on respondents in accordance with the Board's rules.¹ Mr. Pratapas checked on the form that the complaint would be served on the respondents by "[p]ersonal service and [Mr. Pratapas] will make the personal delivery. However, the affidavit of service is not available to me currently." Comp. at 9. On January 3, 2023, Mr. Pratapas filed a "Notice of Service" indicating that he personally served something on Midwest and the Mayor at the addresses listed on the "Notice of Service" on December 29, 2022. Though Mr. Pratapas signed these forms, he did not get his signature notarized.

Additionally, the Board's sample complaint form instructions inform potential filers of how to document service of a formal complaint. For personal service:

Documentation of Service is either an affidavit of service (for a non-attorney's use & must be notarized) or a certificate of service (for an attorney's use) signed by the person who made the personal delivery. Either of these constitutes documentation of completed service.

However, if this signed affidavit or certificate is not available to you when you file the complaint, you must first provide—with the Formal Complaint filed with the Clerk—another form of Documentation of Service to prove that service had at least been initiated: an affidavit of service or a certificate of service describing how service had been initiated, but not yet completed. Then, when it becomes available to you, you must file the affidavit or certificate of service containing the signature of the person who made the personal delivery and identify the Formal Complaint to which the affidavit or certificate corresponds. *See* 35 Ill. Adm. Code 101.300(c)(1), 101.304(c)(2), (d)(1), 101.Appendix E (emphasis added)²; *see also* 35 Ill. Adm. Code 101.304(d)(5).

The documents Mr. Pratapas filed on June 21, 2023 describe the same personal service attempts he made on December 29, 2022. In its June 1, 2023 order, the Board found the December 29, 2022 "Notices of Service" insufficient and directed Mr. Pratapas to correct service on the respondents. Since then, Mr. Pratapas has not filed a notarized affidavit of personal service of the complaint on the respondents in accordance with the Board's rules. 35 Ill. Adm. Code 101.304(d). The record in this case lacks the required documentation of service on the respondents. Under these circumstances, 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.

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

¹ Illinois Pollution Control Board, *Formal Complaint Package*, PCB.ILLINOIS.GOV, <https://pcb.illinois.gov/documents/dsweb/Get/Document-87676/> (last visited July 13, 2023).

² *Id.*

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.

| Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court | |
|---|--|
| Parties | Board |
| 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 E. Van Buren St., Suite 630 Chicago, Illinois 60605 |
| Midwest Construction Partners 1300 Woodfield Road, Suite 150 Schaumburg, Illinois 60173 | |
| City of Naperville Mayor: Steve Chirico 400 S. Eagle Street Naperville, Illinois 60540 | |

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.



Don A. Brown, Clerk
 Illinois Pollution Control Board