

ILLINOIS POLLUTION CONTROL BOARD
May 20, 1993

JOSEPH GUTESHA and)
MILDRED SAMARDZIJA,)
)
Complainants,)
)
v.) PCB 93-75
) (Enforcement)
JOHNSON CONCRETE CO. and)
ELMER LARSON, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on Joseph Gutesha and Mildred Samardzija's (collectively, complainants) April 19, 1993 formal complaint against Johnson Concrete Co. and Elmer Larson, Inc. (collectively, respondents). On May 4, 1993, respondents filed a motion to dismiss the complaint as frivolous, and a motion for leave to file that motion to dismiss. The motion for leave to file is granted. Complainants have not responded to the motion to dismiss.

Respondents ask that the Board dismiss the complaint as frivolous. In support of their motion, respondents contend that the complaint fails to list any specific sections of the Environmental Protection Act (Act) (415 ILCS 5/1001 et seq. (1992)) which have been violated, and fails to list any acts which may constitute a violation. Respondents also maintain that the complaint requests relief that the Board does not have the authority to give, because the complaint asks for "compensation to maintain property for respect." Respondents contend that the Board cannot grant compensation to individuals in disputes with their neighbors. Thus, respondents argue that the complaint should be dismissed as frivolous.

Section 31(b) of the Act provides that when a citizen files a complaint with the Board, the Board shall schedule a hearing on that complaint, unless the Board finds that the complaint is "duplicitous or frivolous." A complaint is duplicitous if it contains allegations identical or substantially similar to matters previously brought before the Board, or is identical or substantially similar to one brought in another forum. (Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board (1st Dist. 1977), 55 Ill.App.3d 375, 370 N.E.2d 1176, 13 Ill.Dec. 149; Brandle v. Ropp (June 13, 1985), PCB 85-68, 64 PCB 263.) A complaint is frivolous if it is either legally or factually deficient, or fails to state a cause of action upon which relief can be granted. (WIPE, 370 N.E.2d at 1180; Rocke v. Illinois Pollution Control Board (1st Dist. 1979),

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78 Ill.App.3d 476, 397 N.E.2d 51, 33 Ill.Dec. 718; City of Des Plaines v. Metropolitan Sanitary District of Greater Chicago (1st Dist. 1978), 60 Ill.App.3d 514, 377 N.E.2d 114, 17 Ill.Dec. 924; see also In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2, 100 PCB 53.) Thus, we must determine if this complaint is legally or factually deficient, or fails to state a claim upon which relief can be granted.

In the section of the complaint form which directs complainants to list specific sections of the Act or regulations which complainants allege are being violated, complainants state:

Destroying will to be, Life, Maintenance of Property to respect [sic], peace of at mind [sic], mopping of Floors to dusting of same wind carrying particles of same shielding Eyes, General Health etc.

(Complaint at paragraph 5.)

The Board cannot find that this response states a cause of action. It does not refer to specific sections of the Act or the regulations, as is directed by the complaint form, nor does it even mention the Act or the regulations. Moreover, we do not believe that respondents are on sufficient notice to be able to clarify the scope of the complaint through discovery. There is simply no way for respondents or the Board to determine what provisions of the Act or the regulations are at issue. Thus, we find that the complaint is legally deficient, and thus frivolous.

Additionally, in the section of the complaint form which asks what relief is sought, complainants state "We wish compensation to maintain property for respect and healthy living quarters for the future." (Complaint at paragraph 9.) As the instructions on the form itself state, the Board cannot order a respondent to pay money damages to a complainant. Thus, this portion of the requested relief fails to ask for relief which the Board can grant. The Board does construe the complaint broadly, and thus interprets the second portion of the sentence ("healthy living quarters for the future") as a request that respondents cease and desist from any violations of the Act. The Board can grant that type of relief.

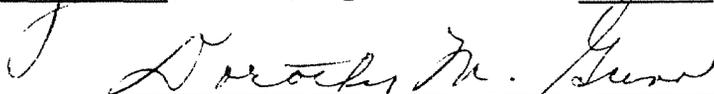
However, because the complaint fails to state a cause of action and is thus legally deficient, the Board must dismiss the complaint. We note that this dismissal does not bar complainants from refiling a properly pleaded complaint. Respondents' motion to dismiss is granted.

IT IS SO ORDERED.

R. Flemal abstains.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 20th day of May, 1993, by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board