

ILLINOIS POLLUTION CONTROL BOARD  
October 7, 2010

WILLIAM H. LEESMAN, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 11-1  
 ) (Citizens Enforcement - Air)  
 CIMCO RECYCLING, STERLING, and )  
 CIMCO RESOURCES, INC., )  
 )  
 Respondents. )

ORDER OF THE BOARD (by A.S. Moore):

On July 9, 2010, William H. Leesman (complainant) filed a complaint (Comp.) *pro se* against Cimco Recycling, Sterling, and Cimco Resources, Inc. (collectively, respondents). The complaint concerns noise and odor allegedly emitted from respondents' metal recycling facility located in Sterling, Whiteside County. In an order dated September 2, 2010, the Board stated that the record lacked the required proof that complainant had served the complaint on all respondents. Leesman v. Cimco Recycling, Sterling, and Cimco Resources, Inc., PCB 11-1, slip op. at 1 (Sept. 2, 2010), citing 35 Ill. Adm. Code 101.300(c), 101.304(b), (c), (d), 103.204(a), Thigpen v. Morton Mobile Home Park, LLC, d/b/a Edgewood Terrace Mobile Home Park, PCB 08-12, slip op. at 2 (Sept. 6, 2007) (requiring "proof that service has been completed"); Trepanier v. Board of Trustees of the University of Illinois at Chicago, PCB 97-50, slip op. at 4 (Nov. 21, 1996) (service of complaint by certified mail requires return receipt signed by respondent or authorized agent). The order directed complainant to file proper proof that he had served the complaint on respondents or their authorized agent or agents. Specifically, the order directed complainant to file proof by Monday, October 4, 2010, or face dismissal of the complaint. Leesman v. Cimco Recycling, Sterling, and Cimco Resources, Inc., PCB 11-1, slip op. at 1-2 (Sept. 2, 2010). Finally, the Board reserved ruling on whether the complaint is duplicative, frivolous, or otherwise deficient. *Id.*; citing 415 ILCS 5/31(d)(1) (2006); 35 Ill. Adm. Code 103.212.

On September 14, 2010, the complainant responded to the Board's order by filing receipts dated July 7, 2010, for payment of postage for certified mail delivery to the two respondents. On September 30, 2004, complainant further responded to the Board's order by filing return receipts signed by the respondent or an authorized agent. Specifically, the receipts show that complainant served the complaint on Cimco Resources, Sterling, on July 19, 2010, and on Cimco Resources, Inc., on July 8, 2010. The Board finds that complainant has timely provided the required proof of service on all respondents.

### **SUMMARY OF COMPLAINT**

In this case, complainant alleges that respondents violated the nuisance noise provisions of Section 24 of the Environmental Protection Act (Act). 415 ILCS 5/24 (2008). Complainant further alleges that respondents violated this provision by operating a metal facility since 2008 “primarily as an auto salvage yard.” Comp. at 1. The complaint alleges that the “facility causes daily noise disruptions . . . so loud that people living in Galt cannot be outside of their homes for even short periods of time.” *Id.* The complaint lists a number of dates on which this noise is alleged to have occurred. *See id.* at 2-3.

The complaint also refers to “an acrid odor that comes from CIMCO on occasion,” although it alleges no provision of the Act or regulations violated by such an odor. Comp. at 3; *see* 35 Ill. Adm. Code 103.204(c)(1). The complaint also refers to being informed that, “due to a massive explosion and a resulting fire in 2009 that the concrete base beneath the shredder has been cracked allowing contaminants into the soil and water table.” Comp. at 3. The complaint does not allege any provision of the Act or regulations violated by an explosion or by any ensuing soil or water contamination. *Id.* at 2; *see* 35 Ill. Adm. 103.204(c)(1).

The complainant requests the Board first “enjoin the Respondents from conducting further business operations.” Comp. at 4. In addition, the complainant requests that the Board then “hold an informal hearing on this matter and, if necessary, conduct an informal investigation into the Complaint.” *Id.*

### **STATUTORY BACKGROUND**

Under the Environmental Protection Act (Act), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315 (definition of “person”), 31(d)(1) (2008); 35 Ill. Adm. Code Part 103 (Enforcement). Section 31(d)(1) of the Act provides that “[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing. . . .” 415 ILCS 5/31(d)(1) (2008); *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). Neither respondent has filed such a motion.

### **BOARD DISCUSSION AND CONCLUSION**

The complaint alleges that respondents have violated Section 24 of the Act. Comp. at 1. However, Section 24 is not a general statutory prohibition. *See Rulon v. Double D Gun Club*, PCB 03-7, slip op. at 4 (Aug. 22, 2002), citing *Shepard v. Northbrook Sports Club and the Village of Hainesville*, 272 Ill. App 3rd 764, 768, 651 N.E.2d 555, 558 (2nd Dist. 1995). Section 24 prohibits the emission of noise “so as to violate any regulation or standard adopted by the Board under this Act.” *Shepard*, 272 Ill. App. 3rd at 768, 651 N.E.2d at 558 (emphasis in original). Accordingly, “Section 24 is not a stand-alone provision, but a violation of certain

Board noise regulations could result in a violation of Section 24.” Rulon, PCB 03-7, slip op. at 4, citing Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998). The complaint does not allege that respondents have violated any Board noise regulations or standards. *See* Comp.

The Board finds the complaint frivolous for failing “to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. The complaint specifically claims that respondents have violated only Section 24 of the Act. *See* 415 ILCS 5/24 (2008). For a claim to exist under Section 24 of the Act, the complainant must indicate specific provisions of the Board’s regulations or standards alleged to have been violated. The Board will provide a copy of its noise regulations to the complainant for this purpose.

The complaint is more clearly frivolous in making only general allegations related to odor, soil, and water. *See* Comp. at 3. A complaint “shall specify the provision of the Act or the rule or regulation . . . under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation.” Finley, et al. v. IFCO ICS-Chicago, Inc., PCB 02-208, slip op. at 4 (Aug. 8, 2002), citing 415 ILCS 5/31(c) (2000). It is insufficient for complainant simply to refer to “an acrid odor” and a crack “allowing contaminants into the soil and water table” (Comp. at 3) and expect respondents to prepare a defense. The complainant must, among other allegations, “specify the provision [or provisions if more than one violation exists] of the Act or the rule or regulation . . . under which [respondents are] said to be in violation. . . .” *See* 415 ILCS 5/31(c) (2010).

In addition, the Board notes that complainant requests the Board first “enjoin the Respondents from conducting further business operations.” Comp. at 4. Under Section 33 of the Act, the Board can grant relief including an order to cease and desist from violations of the Act and Board regulations and the imposition of civil penalties. *See* 415 ILCS 5/33(b) (2008). Section 33 does not grant the Board broad authority to enjoin the operation of respondents’ facility, and the complaint is also frivolous because it requests relief that the Board does not have the authority to grant. *Id.*; *see* 35 Ill. Adm. Code 101.202.

For the reasons above, the Board finds that the complaint is frivolous, as it “fails to state a cause of action upon which the Board can grant relief” and requests “relief that the Board does not have the authority to grant.” 35 Ill. Adm. Code 101.202. Accordingly, the Board cannot accept the complaint for hearing.

However, the Board allows the complainant until Monday, November 8, 2010, which is the first business day following the 30th day after the date of this order, to file an amended complaint with the Board. The amended complaint must comply with the content requirements of the Board’s procedural rules. *See, e.g.*, 35 Ill. Adm. Code 103.204. Further, a copy of the amended complaint must be served upon respondents, and proof of service on respondents must be filed with the Board. *See* 35 Ill. Adm. Code 101.302, 101.304. The time periods for respondents to file any motion attacking, or any answer to, the amended complaint will commence upon respondents’ receipt of the amended complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b); *see also* 35 Ill. Adm. Code 103.204(e). The Board directs the Clerk to provide complainant with a hard copy of the Board’s procedural rules, located under 35 Ill. Adm. Code Subtitle A, and a hard copy of the Board’s noise regulations. If the complainant fails to file an

amended complaint remedying the deficiencies identified above with regard to the allegations and the requested relief, the Board may dismiss the case and close the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 7, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board