

ILLINOIS POLLUTION CONTROL BOARD
December 2, 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 October 7, 2010, the Board found 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 Board noted that the complaint alleged that respondents had violated only Section 24 of the Act. *See* 415 ILCS 5/24 (2008). 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). The complaint did not allege that respondents have violated any Board noise regulations or standards. *See* Comp.

In the same order, the Board also found the complaint frivolous because it made only general allegations related to odor, soil, and water. *See* Comp. at 3. The Board stated that it was 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 Board further stated that 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 noted complainant's request that the Board first "enjoin the Respondents from conducting further business operations." Comp. at 4. The Board stated that, under Section 33 of the Act, it 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). However, Section 33 does not grant the Board broad authority to enjoin the operation of respondents' facility. The Board thus also found the complaint frivolous because it requested relief that the Board does not have the authority to grant. *Id.*; *see* 35 Ill. Adm. Code 101.202.

Although the Board found the complaint frivolous because 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), the Board allowed the complainant until Monday, November 8, 2010, to file with the Board an amended complaint complying with various requirements. However, the Board stated that, if the complainant failed to file an amended complaint remedying the deficiencies described above, the Board may dismiss the case and close the docket.

To date, complainant has not filed an amended complaint. Accordingly, the Board dismisses this case and closes the docket. If he so wishes, complainant may file a new complaint, which would be treated as a new case and assigned a new docket number.

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 December 2, 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 flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board