

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

WILLIAM SPENCER, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 15-63  
 ) (Enforcement - Land)  
 CLINTON LANDFILL, INC. AND )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondents. )

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that on the 3<sup>rd</sup> day of October 2014, I have filed with the Office of the Clerk of the Pollution Control Board the Respondent IEPA's Motion to Dismiss. Copies of the documents are attached hereto and served upon the persons listed in the attached Service List.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By LISA MADIGAN  
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State of Illinois



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Date: October 3, 2014

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**RESPONDENT ILLINOIS EPA'S MOTION TO DISMISS**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA"), by and through the Attorney General of the State of Illinois, *ex rel.* LISA MADIGAN and pursuant to 35 Ill. Adm. Code 101.506 and 103.212(b), hereby moves the Illinois Pollution Control Board ("Board") to dismiss the complaint as it is directed to the IEPA. In support of this motion, the IEPA states as follows:

**I. INTRODUCTION**

Mr. Spencer's Complaint in this matter was filed naming Clinton Landfill, Inc. and the IEPA as Respondents. It appears that, in part, Mr. Spencer is attempting to intervene in the landfill permit appeal case currently pending before the Board and styled *Clinton Landfill, Inc. v. IEPA*, PCB 15-60. Since part of the relief Mr. Spencer seeks in his Complaint is tantamount to being granted intervenor status in PCB 15-60, he should make a separate and specific request to that end to the Board and address all necessary issues related to such a request. However, no ruling with respect to intervenor status in PCB 15-60 should be made in the context of this proceeding.

To the extent that Mr. Spencer is seeking any other relief, directed to the IEPA, he has failed to state a cause of action upon which relief could be granted, and therefore the Complaint is “frivolous” and should be dismissed.

## **II. ARGUMENT**

### **A. Legal framework for citizen’s enforcement actions before the Board.**

Section 31(d)(1) of the Environmental Protection Act (“Act”) authorizes any person to file a complaint with the Board against any person in violation of the Act or Board Regulations. 415 ILCS 5/31(d)(1) (2012); *see also* 35 Ill. Adm. Code 103.212(a). Under this Section, the Board is required to schedule a hearing unless it finds the complaint to be “duplicative or frivolous.” *Id.*

The type of enforcement action purportedly at issue here is referred to as a “citizen’s enforcement proceeding,” which the Board defines as “an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois” (i.e. the Attorney General or a State’s Attorney). *BNSF Railway Co., v. Indian Creek Development Co.*, PCB 14-81, Slip Op. at 8, (March 20, 2014); 35 Ill. Adm. Code 101.202.

Section 31(c) states that the 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 ....” 415 ILCS 5/31(c) (2012). Even though “[c]harges in an administrative proceeding need not be drawn with the same refinements as pleadings in the court of law,” (*Lloyd A. Fry Roofing Co. v. PCB*, 20 Ill. App. 3d 301, 305 (1st Dist. 1974)), the Act and the Board’s

procedural rules “provide for specificity in pleadings” (*Rocke v. PCB*, 78 Ill. App. 3d 476, 481 (1st Dist. 1979)), and “the charges must be sufficiently clear and specific to allow preparation of a defense” (*Lloyd A. Fry Roofing*, 20 Ill. App. 3d at 305). *BNSF Railway Co.* at 8.

In *BNSF Railway Co. v. Indian Creek Development Co.*, the Board set forth the requirements for the contents of a citizen enforcement complaint, which included the following:

- 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating.
- 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense.
- 3) A concise statement of the relief that the complainant seeks. 35 Ill. Adm. Code 103.204(c).

*BNSF Railway Co.* at 8.

**B. Mr. Spencer’s Complaint, as it is directed to the IEPA, fails to state a cause of action for which the Board can grant relief, and it is therefore “frivolous” and should be dismissed.**

Within 30 days after being served with a complaint, a respondent may file a motion to strike or dismiss a complaint, which may include a challenge that the complaint is “duplicative” or “frivolous.” *BNSF Railway Co.* at 9 citing 35 Ill. Adm. Code 101.506 and 103.212(b). 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.* citing 35 Ill. Adm. Code 101.202. In addition, Section 101.500(a) of the Board Regulations provides that “[t]he Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.” 35 Ill. Admin. Code 101.500(a). “In deciding a motion to dismiss, the Board considers all well-pled facts contained in

the pleading as true, and draws all inferences from the facts in favor of the non-movant.” *BNSF Railway Co.* at 9. “Dismissal of the complaint is proper only if it is clear that no set of facts could be proven that would entitle complainant to relief.” *Id.*

With respect to the pleading requirements for a citizen’s enforcement case, Mr. Spencer appears to allege that CLI failed to comply with the local siting requirements of Section 39.2 of the Act when it sought Permit Modification No. 9 to Permit No. 2005-070-LF. Complaint, p. 2, ¶2. However, Mr. Spencer fails to allege that the IEPA violated any Section of the Act or Board Regulations. Therefore, Mr. Spencer has failed meet the pleading requirements for a citizen enforcement case set forth in Section 31(c) of the Act. 415 ILCS 5/31(c)(2012). Accordingly, Mr. Spencer’s Complaint, as it is directed to the IEPA, is “frivolous,” because the Complaint “fails to state a cause of action upon which the Board can grant relief.” *See BNSF Railway Co.* at 9 citing 35 Ill. Adm. Code 101.202. Therefore, Mr. Spencer’s Complaint, as it is directed to the IEPA, should be dismissed.

However, even if Mr. Spencer had adequately alleged that the IEPA violated the Act and/or Board Regulations, the Complaint should be dismissed with prejudice, because the Illinois Supreme Court has held that enforcement actions under Section 31 of the Act do not apply to the IEPA, but only to polluters. *Landfill, Inc. v. Pollution Control Bd.*, 74 Ill. 2d 541, 556 (1978); *see also Envirite Corp. v. Pollution Control Bd.*, 239 Ill. App. 3d 1004, 1009 (3rd Dist. 1993) reversed on other grounds *Envirite Corp. v. Illinois E.P.A.*, 158 Ill. 2d 210 (1994).

### III. CONCLUSION

For all the reasons set forth above in this Motion to Dismiss, the IEPA respectfully requests that the Board enter an order dismissing Mr. Spencer’s Complaint as it is directed to the

IEPA.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECION AGENCY

By LISA MADIGAN  
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DATE: October 3, 2014

**CERTIFICATE OF SERVICE**

I, JENNIFER A. VAN WIE, an attorney, do certify that I caused the Respondent IEPA's Motion to Dismiss in this matter to be served upon the persons listed in the Service List by electronic mail and/or placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago, Illinois.

  
JENNIFER A. VAN WIE

Date: October 3, 2014