

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSANNE M. KIRKHAM and STEVEN C.
KIRKHAM,

Complainants,

v.

VILLAGE OF POPLAR GROVE, IL,

Respondent.

Court No. PCB # 2019-070

(Citizens - Water
Enforcement)

RESPONDENT'S MOTION TO DISMISS

Respondent VILLAGE OF POPLAR GROVE, by and through its attorneys BEST, VANDERLAAN & HARRINGTON, respectfully moves the Illinois Pollution Control Board to dismiss the Complaint for failure to comply with the Board's Procedural Rules and to dismiss in part for being frivolous, pursuant to Procedural Rules 101.500(a), 101.506, and 103.212 (35 Ill. Adm. Cod 101.500(a), 101.506 and 103.212). In support thereof, VILLAGE OF POPLAR GROVE states as follows:

1. Complainants Susan M. Kirkham and Steven C. Kirkham filed their Formal Complaint ("Complaint") with the Illinois Pollution Control Board ("Board") on November 7, 2018.

2. Board Procedural Rule 103.204(c)(2) (35 Ill. Adm. Cod 103.204(c)(2)) requires that a complaint "must contain":

The dates, locations, 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;

I. The Complaint Fails to Allege Specific Date(s) of the Alleged Discharge(s)

3. The Complaint alleges in Paragraph 6, 7 and 8 that there was a discharge of raw sewage into the basement of the Complainants' home. The Complaint fails to allege any specific date(s) of the alleged discharge(s).

4. By failing to specify the dates on which there were sewage backup(s) were alleged to have occurred, the Complaint has failed to comply with 35 Ill. Adm. Code 103.204(c)(2) and further has failed to inform the Village of Poplar Grove of the extent and nature of the alleged sewer discharge(s) with sufficient specificity to enable Respondent to prepare a defense to the violations alleged to have occurred in those time periods.

5. Accordingly the allegations should be stricken for failure to comply with 35 Ill. Adm. Code 103.204(c)(2).

II. The Complaint Fails to Allege the Nature, Extent and Duration of the Discharge(s)

6. The Complaint alleges in Paragraph 8 that there was a discharge of raw sewage into the Complainants' home. The Complaint fails to allege the nature, extent and duration of the alleged discharge.

7. By failing to state the nature, extent and duration of the alleged occurrence, the Complaint has failed to comply with 35 Ill. Adm. Code 103.204(c)(2) and further has failed to inform the Village of Poplar Grove of the extent and nature of the alleged sewer discharge(s) with sufficient specificity to enable Respondent to prepare a defense to the violations alleged to have occurred in those time periods.

8. Accordingly the allegations should be stricken for failure to comply with 35 Ill. Adm. Code 103.204(c)(2).

III. The Complaint Fails to Allege Violations of the Act or Regulations

9. Pursuant to 415 ILCS 5/5(b), the Complaint must allege violations of the Act or Regulations.

10. The Plaintiff has alleged the Respondent has violated “Title 35 of the Illinois Administrative Code: Environment Protection; Part 370: Illinois Recommended Standards for Sewage Works; Subpart D: Sewage Pumping Stations; Section 370.450: Emergency Operations.” The Plaintiff alleges a violation of a recommended standard. The Plaintiff does not allege any further violations. As a result, the Plaintiff fails to allege any violation of the Act or Regulation.

11. According the allegations should be stricken for failure to comply with 415 ILCS 5/5(b).

WHEREFORE, Respondent prays that the Complaint be dismissed with prejudice, that no hearing be scheduled, and for any further relief deemed appropriate by this Honorable Court.

Respectfully submitted,

VILLAGE OF POPLAR GROVE



By: _____

One of its attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, state that I caused copies of the foregoing to be served, with enclosures referred to thereon, if any, by **U.S. Mail** to the attorney(s) of record at the address(es) of record from 25 E. Washington St., Suite 800, Chicago, IL prior to 5:00 p.m. on December 18, 2018.

A handwritten signature in black ink, appearing to read "Derk", is written above a horizontal line.

Re: Kirkham v. Village of Poplar Grove
Court No.:
BVH File: IML.18721

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