

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2018

LAWRENCE REED,)
)
Complainant,)
)
v.) PCB 19-1
) (Citizens Enforcement - Noise)
MARTIN PASILLAS,)
)
Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On October 26, 2018, Lawrence Reed filed an amended *pro se* citizens complaint (Comp.) against Martin Pasillas. On October 4, 2018, the Board dismissed Reed’s original complaint as frivolous because it failed to state a cause of action on which the Board can grant relief. However, the Board allowed Reed until November 5, 2018 to file an amended complaint. The amended complaint concerns noise allegedly emitted from vehicles operated by Martin Pasillas, whose address is 164 North Winston Drive in Palatine, Cook County. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2016); 35 Ill. Adm. Code 103. Reed alleges that Pasillas violated Section 902.101 of the Board’s noise regulations (35 Ill. Adm. Code 901.101)¹ by emitting noise from two vehicles with muffler modifications, particularly when the vehicles are started, as many as twelve times each day between 5:30 AM and 11:30 PM for four years. Reed states that the alleged noise pollution has affected his enjoyment of life by causing annoyance and depression. Reed asks the Board to order Pasillas to cease and desist from noise pollution and pay an unspecified civil penalty. The Board finds that the complaint meets the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204(c), (f).

Section 31(d)(1) of the Act provides that “[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2016); *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

¹ Since Reed filed his amended complaint on October 26, 2018, the Board adopted amendments to its noise rules, including Section 902.101. Noise Rule Update: Amendments to 35 Ill. Adm. Code 900.901.902, and 910, R 18-19 (Nov. 1, 2018). In Part 902, the Board clarified provisions and removed obsolete language and for provisions based on federal rules replaced them with reference to the Code of Federal Regulations. Noise Rule Update: Amendments to 35 Ill. Adm. Code 900.901.902, and 910, R 18-19, slip op. at 1 (Oct. 5, 2017).

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).

On November 5, 2018, Reed filed a signed confirmation of delivery to Pasillas. Although the handwritten date of delivery is not clear and may be read as different dates, the Board considers that Reed’s filing confirms delivery no later than November 5, 2018, the date on which Reed submitted it. Accordingly, any motion to dismiss as frivolous or duplicative was due no later than December 5, 2018. Pasillas has filed no motion. No evidence now before the Board indicates that Reed’s complaint is duplicative or frivolous.

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d)(1) (2016); 35 Ill. Adm. Code 103.212(a). A respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Pasillas fails by that deadline to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider Pasillas to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties’ preferences, and the proceeding’s complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

Among the hearing officer’s responsibilities is the “duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board.” 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2016). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act’s Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based

upon the “lowest cost alternative for achieving compliance”; the need to deter further violations by the respondent and others similarly situated; and whether the respondent “voluntarily self-disclosed” the violation. 415 ILCS 5/42(h) (2016). Section 42(h) requires the Board to ensure that the penalty is “at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship.” *Id.* Such penalty, however, “may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.” *Id.*

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent’s economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Clerk
Illinois Pollution Control Board