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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,)	
)	
Complainant,)	
)	
v.)	No: PCB 2023-059
)	
Carillon at Cambridge Lake, DR Horton;)	(Enforcement – Water)
and Earthworks Environmental, LLC,)	
)	
Respondents.)	

Notice of Electronic Filing

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the attached **RESPONDENT EARTHWORKS ENVIRONMENTAL, LLC’S MOTION TO DISMISS THE ENTIRE PROCEEDING BASED ON INSUFFICIENCY OF SERVICE OF PROCESS OR, IN THE ALTERNATIVE, THAT THE BOARD DETERMINE THAT THE FORMAL COMPLAINT IS FRIVOLOUS** with Exhibit 1, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

By: */s/ David J. Scriven-Young*
David J. Scriven-Young

Date: December 28, 2022

David J. Scriven-Young
Counsel for Respondent
Peckar & Abramson, P.C.
30 North LaSalle Street, #4126
Chicago, Illinois 60602
Tel: 312-881-6309
Email: dscriven-young@pecklaw.com

Anne E. Viner
Counsel for Respondent
Corporate Law Partners, PLLC
140 South Dearborn Street, 7th Floor
Chicago, Illinois 60603
Tel: 312-470-2266
Email: aviner@corporatelawpartners.com

Certificate of Service

The undersigned, an attorney, hereby certifies that the above Notice and any attached documents were served via email transmission to the Clerk and all other parties listed below at the addresses indicated on December 28, 2022.

Illinois Pollution Control Board
Don Brown – Clerk of the Board
100 W. Randolph St., #11-500
Chicago, IL 60601
Email: don.brown@illinois.gov

Paul Christian Pratapas
(Complainant)
1330 E. Chicago Avenue, #110
Naperville, IL 60540
Email: paulpratapas@gmail.com

Michael J. Maher, J. A. Koehler and Gregory M. Emry
Swanson, Martin & Bell, LLP
(For Respondent D.R. Horton)
330 N. Wabash Ave., Suite 3300
Chicago, IL 60611
Tel: (312) 321-9100/Fax: (312) 321-0990
Email: mmaher@smbtrials.com
Email: jkoehler@smbtrials.com
Email: gemry@smbtrials.com

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)	
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RESPONDENT EARTHWORKS ENVIRONMENTAL, LLC’S MOTION TO DISMISS THE ENTIRE PROCEEDING BASED ON INSUFFICIENCY OF SERVICE OF PROCESS OR, IN THE ALTERNATIVE, THAT THE BOARD DETERMINE THAT THE FORMAL COMPLAINT IS FRIVOLOUS

NOW COMES the Respondent, EARTHWORKS ENVIRONMENTAL, LLC (“Earthworks”), by and through its attorneys, Corporate Law Partners, PLLC and Peckar & Abramson, P.C., and for their Motion to Dismiss the Entire Proceeding Based on Insufficiency of Service of Process pursuant to 35 Ill. Admin. Code § 101.500 and 735 ILCS 5/2-301(a) or, in the Alternative, That the Board Determine that the Formal Complaint (“Complaint”) of the Complainant, PAUL CHRISTIAN PRATAPAS (“Pratapas”), is Frivolous pursuant to 35 Ill. Admin. Code § 103.212(a), does hereby state as follows:

INTRODUCTION

1. Since July 2022, Pratapas has filed 23 boilerplate complaints against various respondents, who are primarily developers and municipal entities, alleging water pollution violations at construction sites near his home in Naperville.

2. Recently, Pratapas expanded the category of potential targets when he filed two actions against Earthworks, an environmental compliance consulting company. (See PCB Case

Nos. 2023-058 and 2023-059.) However, he served Earthworks with the complaints by sending them via email, which is clearly not sufficient service of process under the Board's rules.

3. Furthermore, the Complaint in this case alleges that violations of 415 ILCS 5/12(a) and (d) and 35 Ill. Admin. Code § 304.141(b)¹ occurred at a construction site where homes were being built and developed by D.R. Horton, Inc.² However, the Complaint fails to allege any facts concerning Earthworks' role at the site or what Earthworks purportedly did (or did not do) to have caused violations of the law.

4. The Complaint instead resorts to *ad hominem* attacks against someone named "Matthew Trygg", which perhaps is meant to refer to Earthworks' employee Matthew Trygg. Even if the Complaint is attempting to refer to one of Earthworks' employees, the allegations are conclusory, factually unsupported, and fail to meet the relevant pleading standard under the Code of Civil Procedure or the Board's rules.

5. Therefore, the Board should dismiss Earthworks from this proceeding based on insufficiency of service of process or, in the alternative, determine that the Complaint is frivolous.

ARGUMENT

I. The Board Should Dismiss the Entire Proceeding Based on Insufficiency of Service

6. Earthworks moves to dismiss the entire proceeding pursuant to 735 ILCS 5/2-301(a) because Pratapas has failed to properly serve Earthworks with the Complaint. Pursuant to 35 Ill. Admin. Code 101.500, the Pollution Control Board "may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, this Part, or the Code of Civil

¹ The Complaint also suggests that Pratapas may have an "ADA" retaliation claim and/or a claim concerning a paycheck that someone tried to "steal" from him. Because these claims are far outside the jurisdiction of the Board, and because Pratapas does not list them as claims in Paragraph 4 of the Complaint, Earthworks will not address them in this motion.

² D.R. Horton, Inc. filed a motion to dismiss the Complaint on December 19, 2022 based on insufficiency of process and on the basis that the Complaint is frivolous.

Procedure.” Thus, the Board may entertain a motion to dismiss pursuant to 735 ILCS 5/2-301(a). *See also* 35 Ill. Admin. Code 101.400(a)(5) (“Any person seeking to contest personal jurisdiction must do so by filing a motion with the Board consistent with Section 2-301 of the Code of Civil Procedure”).

7. Under the Board’s rules, enforcement complaints may only be served via three methods: (a) U.S. Mail with a recipient’s signature recorded, (b) a third-party commercial carrier with a recipient’s signature recorded, or (c) personal service. 35 Ill. Admin. Code 103.204(a) & 35 Ill. Adm. Code 101.304(c)(2).³

8. Pratapas has not served Earthworks with the complaint by any of those three approved methods; instead, according to the two “Proof of Service” documents filed in this matter regarding Earthworks, Pratapas served the complaint via email only. (*See* Proof of Service documents filed on 11/28/22 and 12/2/22, attached hereto as Ex. 1.) It should be noted that Pratapas, in the “Affidavit of Service” that he attached to the Complaint, swore under oath that the service method to be used was “[p]ersonal service and I will make the personal delivery. However, the affidavit of service is not available to me currently.” Contrary to this sworn statement, Pratapas did not make personal service or otherwise make personal delivery of the Complaint to Earthworks.

³ 35 Ill. Admin. Code 103.204(a) provides that “an enforcement proceeding will be commenced” only after proper service of the complaint. Moreover, under 35 Ill. Admin. Code 103.204(d) and 35 Ill. Admin. Code 101.506, the timeline for a respondent’s response to the complaint does not begin until after proper service. Because Earthworks has not been properly served with the Complaint, this enforcement proceeding has not yet commenced and the timeline for Earthworks’ response to the Complaint has not begun. However, Earthworks is filing this motion now out of an abundance of caution and to assist with orderly proceedings before the Board.

9. Because Pratapas (by his own admission) failed to properly serve Earthworks with the Complaint under the Board's rules, this proceeding should be dismissed pursuant to 735 ILCS 5/2-301(a).

II. In the Alternative, the Board Should Determine that the Complaint is Frivolous

10. In the alternative, the Board should determine that the Complaint is frivolous pursuant to 35 Ill. Admin. Code § 103.212(a).

Legal Standard

11. The Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (the "Act") authorizes citizens to bring enforcement actions before the Board, alleging violations of the Act or Board regulations. Section 31(d) of the Act provides:

Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder Unless the Board determines that such complaint is duplicative or *frivolous*, it shall schedule a hearing....

415 ILCS 5/31(d) (emphasis supplied).

12. Section 31(c), referred to in the above-quoted passage, in turn 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). The Board's procedural rules require that a complaint must include the "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations" and a "concise statement of the relief that the complainant seeks." 35 Ill. Adm. Code 103.204(c). Thus, 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).

13. In assessing the adequacy of pleadings in a complaint, the Board has accordingly stated that “Illinois is a fact-pleading state which requires the pleader to set out the ultimate facts which support his cause of action.” *People v. Blick’s Constr. Co.*, PCB No. 13-43, 2013 Ill. ENV LEXIS 151 *18 (May 16, 2013). “[L]egal conclusions unsupported by allegations of specific facts are insufficient.” *La Salle Nat’l Trust, N.A. v. Vill. of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993). *See also Foxfield Realty v. Kubala*, 287 Ill. App. 3d 519, 522 (2d Dist. 1997) (“a motion to dismiss does not admit conclusions of law or of fact that are not supported by allegations of specific facts which form the basis for such conclusions”).

14. Within 30 days after being properly served with a complaint, a respondent may file a motion with the Board to dismiss the complaint on the grounds that the complaint is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). “Frivolous” means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief. 35 Ill. Admin. Code 101.202. When ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all inferences from them in favor of the non-movant. *Maracic v. TNT Logistics N. Am. Inc.*, PCB No. 05-212, 2007 Ill. ENV LEXIS 106, *6 (Mar. 15, 2007). Dismissal is proper only if it is clear that no set of facts could be proven that would entitle complainant to relief. *Id.* To determine whether a cause of action has been stated, the entire pleading must be considered. *Mahomet Valley Water Auth. v. Clinton Landfill, Inc.*, PCB No. 13-22, 2013 Ill. ENV LEXIS 283, *55 (Sept. 19, 2013).

The Complaint is Frivolous

15. The Board should determine that the Complaint is frivolous because it fails to state a cause of action upon which the Board can grant relief against Earthworks. Specifically, the

Complaint does not contain any facts whatsoever of any acts by Earthworks that contributed to the alleged violations.

16. Instead of making factual allegations against Earthworks, Pratapas resorts to pejorative, personal attacks against (presumably) Earthworks' employee Matthew Trygg, calling him "not qualified" and "incompetent" and accusing him of "falsifying credentials to obtain the ability to inspect in some areas." However, these assertions are simply conclusions and are not well-pled allegations; thus, the Board need not take them as true nor draw any inferences from them. *La Salle Nat'l Trust, N.A. v. Vill. of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993). Indeed, the Board may strike such conclusions entirely. *Tarkowski v. Belli*, PCB No. 76-55, 1976 Ill. ENV LEXIS 621, *1-2 (Apr. 8, 1976) (striking legal conclusions on its own motion).

17. Moreover, Illinois law requires that complaints must allege fraud with particularity and specificity, and Pratapas does not come close to meeting this standard. *See 1st Mercury Ins. Co. v. Ciolino*, 2018 IL App (1st) 171532, ¶ 39 ("There is a high standard of specificity for pleading claims of fraud and the pleadings must contain specific allegations from which fraud is the necessary or probable inference, including what representations were made, when they were made, who made the representations, and to whom they were made"). The Board should disregard Pratapas' outrageous, conclusory assertions.

18. At most, the Complaint alleges that there were environmental violations at this site because "Matthew Trygg thought was fine [*sic*] since was [*sic*] a "sediment basin". This statement is unintelligible and, among things, does not explain how Trygg's "thought" caused water pollution to occur. Under Illinois law, a pleading is defective if it does not contain facts which reasonably inform the opposite party of the nature of the charge to be answered. *Disc Jockey Referral Network v. Ameritech Publ'g*, 230 Ill. App. 3d 908, 913 (1st Dist. 1992). Earthworks does not understand

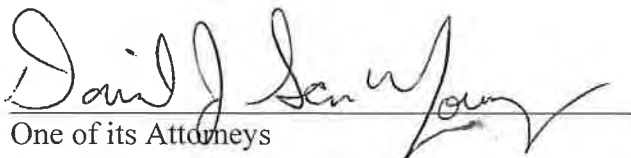
what this allegation is meant to say or how it is connected to the environmental violations alleged in the Complaint. Because the Complaint does not contain facts that would reasonably inform Earthworks of the nature of the charges against Trygg, Earthworks cannot properly answer the Complaint.

19. The Complaint does not provide any facts concerning Earthworks or Trygg's role at the site or what Earthworks is alleged to have done (or not done) to have caused violations of the law. Therefore, the Complaint is frivolous.

WHEREFORE, Respondent EARTHWORKS ENVIRONMENTAL, LLC respectfully requests that the Board enter an order (a) dismissing the entire proceeding pursuant to 735 ILCS 5/2-301(a) or, (b) in the alternative, determining that Complainant Paul Christian Pratapas' Formal Complaint is frivolous, and (c) providing any other relief that this Board deems just.

Respectfully submitted,

EARTHWORKS ENVIRONMENTAL, LLC


One of its Attorneys

Anne E. Viner
CORPORATE LAW PARTNERS, PLLC
140 South Dearborn
Chicago, IL 60603
(847) 421-4933
Aviner@CorporateLawPartners.com

David J. Scriven-Young
PECKAR & ABRAMSON, P.C.
30 North LaSalle Street, Suite 4126
Chicago, IL 60602
(312) 881-6309
Email: Dscriven-young@pecklaw.com

Attorneys for Respondent Earthworks Environmental, LLC

COMPLAINANT:

PAUL CHRISTIAN PRATAPAS

RESPONDANT:

CARILLON AT CAMBRIDGE LAKES BY DR HORTON;
and
EARTHWORKS ENVIRONMENTAL

PROOF OF SERVICE

Concerning: PAUL CHRISTIAN PRATAPAS V CARILLON AT CAMBRIDGE LAKES BY DR HORTON AND EARRTHWORKS ENVIRONMENTAL. LLC.

Case Name: _____ Case # IPCB 2023 059

Name of Paper(s) Served: FORMAL COMPLAINT, IPCB

Method of Service:

First-Class Mail

Registered Mail (Copy of Receipt Attached)

Certified Mail (Copy of Receipt Attached)

Electronic Service

Personal Service

After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: FRONT DESK CLERK CHICAGO HQ

Email Served: _____

City: SCHAUMBURG State: IL Zip: _____

Phone No. : _____ Time of Service: 11:50AM

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and I served the papers on the date of 11/23/2022

Name of Server: Paul Christian Pratapas Miles Traveled: _____

Fee: _____ Service Fee: _____

Incorrect Address Fee: _____ Total Fee: _____

Paul Christian Pratapas
Signature

11/23/2022
Date

EXHIBIT
- 1 -

COMPLAINANT,

PAUL CHRISTIAN PRATAPAS

RESPONDANT,

CARRILON AT CAMBRIDGE LAKES BY DR HORTON;
and
EARTHWORKS ENVIRONMENTAL, LLC.

PROOF OF SERVICE

Concerning: PAUL CHRISTIAN PRATAPAS V CARRILON AT CAMBRIDGE LAKES BY DR HORTON AND EARRTHWORKS ENVIRONMENTAL. LLC.

Case Name: _____ Case No.: PCB 20023-059

Name of Paper(s) Served: FORMAL COMPLAINT, IPCB

Method of Service:

- First-Class Mail
- Registered Mail (Copy of Receipt Attached)
- Certified Mail (Copy of Receipt Attached)
- Electronic Service
- Personal Service
- After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: EARTHWORKS ENVIRONMENTAL, CHERIE JOURDAN & DICK HOWE

Email Served: Cherie.Koester@EarthworksEnv.com Richard.Howe@EarthworksEnv.com

City: Mesa State: AZ Zip: 65206

Phone No. : 480.436.0041 Time of Service: 2:26 pm 11/18/2022

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and that I served the papers on the date of November 18, 2022 and that I am not a party to the aforementioned legal proceedings.

Name of Server: Paul Christian Pratapas Miles Traveled: _____

Fee: _____ Service Fee: _____

Incorrect Address Fee: _____ Total Fee: _____

Paul Christian Pratapas
Signature

11/18/2022
Date

COMPLAINANT:

PAUL CHRISTIAN PRATAPAS

RESPONDANT:

CARILLON AT CAMBRIDGE LAKES
AND
EARTHWORKS ENVIRONMENTAL

PROOF OF SERVICE

Concerning: Federal Law

Case Name: PCP v LV DRH, EE Case# IPCB 2023 059

Name of Paper(s) Served: CIVIL LIBERTIES VIOLATION

Method of Service:

- First-Class Mail
- Registered Mail (Copy of Receipt Attached)
- Certified Mail (Copy of Receipt Attached)
- Fax
- Electronic Service
- Personal Service
- After all due diligence, I was unable to locate and serve the targeted person(s).

Person Served: paulpratapas@gmail.com; don.brown@illinois.gov;
Cherie.Koester@EarthworksEnv.com; Richard.Howe@EarthworksEnv.com;

Address Served: _____

City: _____ State: _____ Zip: _____

Fax No. Served: _____ Time of Service: 11:28PM

I, the messenger, swear and affirm, under the penalty of perjury, that I was 18 years of age or older at the time of delivery and that I served the papers on the date of 12.01.2022

Name of Server: PAUL CHRISTIAN PRATAPAS Miles Traveled: _____

Fee: 0 Service Fee: 0

Incorrect Address Fee: ????????? Total Fee: 0

Paul Christian Pratapas
Signature

12/02/2022
Date