

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-64
) (Citizen's Enforcement - Water)
 ARDEN OF WARRENVILLE,)
)
 Respondent.)
)

ORDER OF THE BOARD (by M. Gibson):

On November 29, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against "Arden of Warrenville" alleging violations of the Environmental Protection Act. On January 12, 2023, respondent filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint, as well as a motion to dismiss because the respondent is not a proper party.

The Board first addresses the proper name of the respondent, then addresses the issue of service, and finally discusses the motions to dismiss. The Board directs the Clerk to correct the respondent's name, grant the motion regarding service, allows Mr. Pratapas to attempt to perfect service, and will address the motions to dismiss the complaint at a later time.

NAMED RESPONDENT

As filed, Mr. Pratapas named "Arden of Warrenville" as the respondent in this complaint. In its January 12, 2022, motion, the attorney for respondent indicated that the proper name for the respondent is "Cantera Development Holdings, LLC." The Board corrects the caption in this order and directs the Clerk to correct the respondent's name in the docket of this case.

SERVICE OF COMPLAINT

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103. Under the Board's rules, an enforcement proceeding begins by serving a notice and the complaint on a respondent. *See* 35 Ill. Adm. Code 103.204(a), (b). Specifically, service must be "by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service." *Id.* Notably, enforcement complaints may not be served by e-mail. *See* 35 Ill. Adm. Code 101.1000(e).

If service is not timely initiated or completed, then the “proceeding is subject to dismissal, and the filing party is subject to sanctions.” 35 Ill. Adm. Code 101.304(b)(4). In this case, Mr. Pratapas used a sample complaint form available from the Board’s website that is directed at citizen complaints. The Board’s form includes a sample affidavit of service that lists appropriate methods of service. Mr. Pratapas reported to the Board that the complaint would be served on the respondent by “[p]ersonal service and [Mr. Pratapas] will make the personal delivery. However, the affidavit of service is not available to me currently.” Comp. at 8. Illinois law requires that a private corporation be served by, “(1) leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law.” 735 ILCS 5/2-204 (2020).

Here, the registered agent for respondent is Alina Sandal, and Cantera Development Holdings, LLC's registered office address is: 2 Northfield Plaza, Suite 320, Northfield, Illinois 60093. However, Mr. Pratapas left a copy of the complaint with Arden Staff, by leaving a copy at 28294 Gerry Road in Warrenville, Illinois. Therefore, because Mr. Pratapas left the complaint at an office and did not personally serve respondent’s registered agent in Illinois, service was not proper on respondent.

The Board grants respondent’s motion to not accept the complaint for failure to serve; however, the Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondents no later than Monday, July 3, 2023, which is the first business day following the 30th day after the date of this order (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint for failure to properly serve the complaint.

MOTION TO DISMISS

The Board cannot accept a complaint until the complaint has been properly served on the respondents. Therefore, the Board will delay its ruling on the motions to dismiss until such date, or after July 3, 2023.

ORDER

1. The Board directs the Clerk to correct the name of the respondent in the docket.
2. The Board grants respondent’s motion to not accept the complaint for failure to serve.
3. The Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondents no later than Monday, July 3, 2023.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 1, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above the printed name and title.

Don A. Brown, Clerk
Illinois Pollution Control Board