

ILLINOIS POLLUTION CONTROL BOARD  
June 1, 2023

PAUL CHRISTIAN PRATAPAS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 23-83  
 ) (Citizen’s Enforcement - Water)  
 STEEPLE RUN ELEMENTARY SCHOOL; )  
 and OZINGA READY MIX CONCRETE, )  
 INC., )  
 )  
 Respondents. )

ORDER OF THE BOARD (by B. F. Currie):

On December 29, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Steeple Run Elementary School (Steeple Run), and Ozynga Concrete Yard #281 (Ozinga) alleging violations of the Environmental Protection Act at a school construction site located at 6S151 Steeple Run Drive in Naperville, DuPage County. On January 27, 2023, Ozinga filed a motion arguing the complaint was not properly served and that the complaint is frivolous. On March 13, 2023, Steeple Run Elementary School (Elementary School) filed a motion for extension of time to respond to the complaint.

The Board first addresses the proper spelling of the name of the respondent, “Ozynga”, then addresses the issue of service, and finally discusses the motions to dismiss. The Board directs the Clerk to correct the respondent “Ozynga” name, denies the motion to dismiss for failure to properly serve at this time, allows Mr. Pratapas to attempt to perfect service, and will address the motions to dismiss the complaint at a later time. The Board then addresses respondent Steeple Run Elementary School’s motion for extension of time.

**NAMED RESPONDENT**

As filed, Mr. Pratapas named “Ozynga Concrete Yard #281” as one respondent in this complaint. In its January 12, 2022, motion, the attorney for respondent indicated that the proper spelling for the respondent is “Ozinga Ready Mix Concrete, Inc.”. 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 ON OZINGA**

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 10. 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). Mr. Pratapas indicated that he personally served the complaints on respondents at addresses in DuPage County.

In its motion challenging service, Ozinga notes that the Board’s rules are silent on how personal service may be effectuated, thus, the Board can look to the Code of Civil Procedure for guidance. Mot. at 2, *see also* 35 Ill. Adm. Code 101.100, 101.304. Ozinga argues that under the Code of Civil Procedure, personnel service cannot be effectuated by a party to the action. Mot. at 3, citing Gocheff v. Breeding, 53 Ill. App. 3d 608, 609 (5th Dist 1977); 735 ILCS 5/2-202. Ozinga argues that the record is clear that Mr. Pratapas himself attempted service; therefore, the service was improper. Ozinga argues that the Board should dismiss the complaint, as the Board has no jurisdiction.

The Board’s procedural rules do not state that a complainant may not be the party to personally serve the complaint on a respondent. *See* 35 Ill. Adm. Code 101.304, 103.204. In the Board’s sample complaint form, the Documentation of Service page includes an Affidavit of Service section listing appropriate methods of service. Under the Affidavit of Service section, a complainant may mark Subsection C to indicate that the complainant personally served the complaint themselves. The Board’s rules and sample forms therefore allow personal service of a complaint by a complainant. The Code of Civil procedure similarly allows for service of process on a private corporation to be made in any manner permitted by law. *See* 735 ILCS 5/2-204 (2020).

Here, Mr. Pratapas used an altered version of the Board’s sample Documentation of Service page to indicate that he personally served Ozinga, as well as a copy of a certified mail receipt for a filing to Steeple Run. For Ozinga, Mr. Pratapas wrote that the person served was, “Ron at Ozynga Concrete Yard #281.” For Steeple Run, Mr. Pratapas filed a certified mail receipt for a mailing to “Principal” at 65151 Steeple Run Dr., Naperville, IL 60540. Mr. Pratapas did not provide the full names or signatures of any persons served. There is no indication that the persons “served” were registered agents, officers, or other agents of the two entities. Therefore, there is no proper proof of service of the complaint on the respondents.

The Board will allow Mr. Pratapas to file proper 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 BY OZINGA**

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.

### **STEEPLE RUN ELEMENTARY SCHOOL**


The record includes a receipt showing that the complaint was mailed by certified mail to the Steeple Run, however no green card with the recipient's signature has been filed with the Board. The Elementary School does not challenge service. Rather, the Elementary School seeks additional time to respond to the complaint. That request is granted.

### **ORDER**

1. The Board directs the Clerk to correct the spelling of Ozinga in the docket.
2. The Board denies Ozinga's motion to dismiss 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.
4. The Board grants Steeple Run's motion for extension of time to answer the complaint.

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.



Don A. Brown, Clerk  
Illinois Pollution Control Board