

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

PAUL CHRISTIAN PRATAPAS,)
)
Complainant,)
)
v.) PCB 23-76
) (Citizen's Enforcement - Water)
WILLE BROTHERS COMPANY, an Illinois)
Corporation, AND DUPAGE COUNTY)
SHERIFF,)
)
Respondents.)

ORDER OF THE BOARD (by M. Gibson):

On December 12, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against Wille Brothers Company (Wille Bros.) and the DuPage County Sheriff alleging violations of the Environmental Protection Act. On January 25, 2023, Wille Bros. filed a motion to dismiss on the grounds that the complaint is frivolous and alleges a wholly past violation (Mot.).

The Board first addresses the proper name of the respondent. The Board then summarizes the complaint and discusses Wille Bros.'s motion to dismiss the complaint on the grounds of frivolousness. The Board denies Wille Bros.'s motion to dismiss for frivolousness, strikes three of Mr. Pratapas' requests for relief, and accepts the complaint as modified by the order for hearing.

NAMED RESPONDENT

As filed, Mr. Pratapas named "Wille Brothers Company" as the respondent in this complaint. In its January 25, 2023, motion, the attorney for respondent indicated that the proper name for the respondent is "Wille Bros. Company." The Board corrects the caption in this order and directs the Clerk to correct the respondent's name in the docket of this case.

SUMMARY OF COMPLAINT

Mr. Pratapas filed a complaint using a sample form supplied by the Board alleging that Wille Bros. is causing or allowing pollution at 25W351 Plank Road in Naperville. Comp. at 2. Mr. Pratapas described that Wille Bros. "was providing concrete services for the foundation of a single-family home in Unincorporated Naperville." *Id.*

The Board's form complaint requests that the complainant "[d]escribe the type of pollution that you allege and the location of the alleged pollution." *Id.* The complaint states that:

Water: Complainant was driving on Plank Road near his family's Naperville Residence since 1984 when I noticed a skid steer with the scoop full of concrete washout, concrete washout on the side of the Plank Rd and a concrete truck on site. *Id.* at 3.

The Board's form complaint also asks the complainant to "[l]ist specific sections of the Environmental Protection Act [Act], Board regulations, Board order, or permit that you allege have been or are being violated." Comp. at 2. The complaint alleges that the respondents are violating 415 ILCS 5.12(a) and (d). *Id.*

The Board's form complaint also asks the complainant to "[d]escribe the duration and frequency of the alleged pollution" as specifically as they reasonably can. *Id.* at 4. The complaint states:

Occurred on or around July, 27, 2020 and the same industry standards are occurring today resulting in widespread pollution around The State and the violation of civil liberties by law enforcement. As The Board is aware of from other Open Formal Complaints. *Id.*

The Board's form complaint also asks the complainant to "[d]escribe any bad effects that you believe the alleged pollution has or has had. . . ." *Id.*

The effects of concrete washout water on plant and animal life are widely known and accepted. Leaving it onsite inside foundation footprints poses immediate risks to communities it occurs in every time. *Id.*

The form complaint asks the complainant to "describe the relief that you seek from the Board." *Id.* The complaint requests:

1. Find that Respondent has violated The Act and their permit(s)
2. Assess a maximum civil penalty
3. Recommendation(s) for criminal charges against Respondent(s)
4. Independent investigation into the officers for the purposes of protecting civil liberties of Americans
5. Complainant requests the Sheriff resign in the interest of the public
6. A Board order prohibiting Wille Brothers Company from pouring/contracting any concrete/concrete services in Illinois until the conclusion of this case, due to the severe nature of the offenses and inability to rely on law enforcement to preserve fundamental constitutional rights
7. A board order explaining the role law enforcement has in enforcing environmental laws alongside Americans exercising their civil liberties
8. An investigation into any State of IL contracts held by Wille Brothers Co. and their immediate termination. *Id.*

Finally, the complaint states that complainant is not aware that any "identical or substantially similar cases have been brought to the Board." *Id.* at 5.

MOTION TO DISMISS: FRIVOLOUS

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. “Frivolous” is defined in the Board’s rules as, “any 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. Adm. Code 101.202(b). Wille Bros. argues that the complaint is frivolous because it fails to state a cause of action and requests relief that the Board does not have the authority to grant. Mot. at 1-2. The Board has broad statutory authority to grant relief; however, it does not have the authority to: request resignation of the Sheriff; investigate sheriff officers; or investigate Wille Bros.’s contracts and terminate them. *See* 35 Ill. Adm. Code 101.106(b). Therefore, the Board strikes these requests for relief.

The Board’s procedural rules require complaints to include “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations.” 35 Ill. Adm. Code 103.204(c)(2). The Board finds that the complaint as modified by this order is not frivolous and meets the content requirements of the Board’s procedural rules. The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d)(1) (2020); 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 a respondent 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 that respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

PROCEDURAL DIRECTION

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) (2020). 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) (2020). 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.*

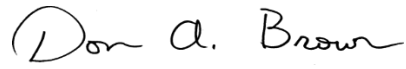
Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position 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.

ORDER

1. The Board directs the Clerk to correct the name of the respondent in the docket.
2. The Board denies Wille Bros.'s motion to dismiss for frivolousness and accepts the complaint as modified by this order for hearing.
3. The Board strikes Mr. Pratapas' requests to request resignation of the Sheriff, investigate sheriff officers, or investigate Wille Bros.'s contracts.

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 black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board