

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-77
) (Citizen's Enforcement - Water)
 DEJAMES BUILDERS and CITY OF)
 NAPERVILLE: MAYOR STEVE CHIRICO,)
)
 Respondents.)
)

ORDER OF THE BOARD (by M. Gibson):

On December 13, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against DeJames Builders and the Mayor of Naperville, Steve Chirico. On January 19, 2023, Mayor Chirico filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint and dismiss the complaint on the grounds that it is frivolous (Mayor Chirico Mot.).

The Board first addresses the issue of service and then the motion to dismiss. The Board grants Mayor Chirico's motion regarding service, allows Mr. Pratapas to attempt to perfect service, and will address the motion to dismiss the complaint at a later time.

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 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).

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 first filed a “Proof of Service” indicating that he served something on DeJames Builders and Mayor Chirico by email. Email is not a valid form of service in Illinois, and therefore service of the complaint by email was not proper. Then, Mr. Pratapas filed two “Notice of Service” documents indicating that he personally served something on DeJames Builders and the Mayor at the addresses listed on the “Notice of Service”. However, the “Notice of Service” documents do not indicate what Mr. Pratapas served on the parties at these addresses, so there is no proof of service of the complaint on the respondents.

The Board grants Mayor Chirico’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

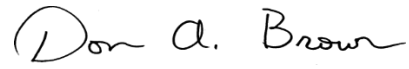
The Board cannot accept a complaint until the complaint has been properly served on respondents. Therefore, the Board will delay its ruling on the motion to dismiss until such date, or after July 3, 2023.

ORDER

1. The Board grants Mayor Chirico’s motion to not accept the complaint for failure to serve.
2. 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 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