

ILLINOIS POLLUTION CONTROL BOARD
August 3, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-75
) (Citizens Enforcement - Water)
 WILLOW RUN HOMES by M/I HOMES,)
)
 Respondent.)

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

On December 12, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint against Willow Run Homes by M/I Homes (M/I). The complaint concerns a residential home construction site located at South Drauden Road and Lockport Street in Plainfield, Will County.

On January 10, 2023, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and fails to state a claim, and a motion to dismiss the complaint by other affirmative matter. On June 1, 2023, the Board directed Mr. Pratapas to file an amended complaint that pled the violations with specificity by July 3, 2023 (Order). On July 5, 2023, Mr. Pratapas filed a document entitled, “Complainants Motion to Amend Formal Complaint” (Mot. to Amend). On July 17, 2023, M/I filed a response in opposition to the motion to amend the complaint (Resp.). Mr. Pratapas has not filed a reply.

The Board first addresses the motion to file an amended complaint and M/I’s objection to the motion. The Board denies Mr. Pratapas’ motion to amend the complaint as it does not plead the violations alleged with specificity, and additionally, it was not timely filed. Therefore, the Board dismisses the case and closes the docket.

MOTION TO AMEND COMPLAINT

On June 1, 2023, the Board issued an order which found that Mr. Pratapas’ original complaint, “lacks any details describing the extent, duration, or strength of the alleged violation and only cites general violations.” Order at 2. The Board directed Mr. Pratapas to file an amended complaint that specified the violations no later than July 3, 2023. Order at 3.

The motion to amend the complaint contains a photo Mr. Pratapas previously included in the original complaint. Mot. to Amend at 1. Mr. Pratapas says the photo shows a portion of the residential construction site operated by M/I. *Id.* In the motion to amend the complaint, Mr. Pratapas argues that the, “designated concrete washout area demonstrates a total disregard for permit requirements and is representative of M/I practices as demonstrated in photographic evidence provided to the Board, as well as is an industry standard as demonstrated by the photographs submitted with other Formal Complaints filed by Complainant.” *Id.*

In addition, Mr. Pratapas argues that the concrete washout area is, “missing any and all adequate curbside and ground protection. The area should have a plastic type barrier against the soil with 3 inch stone on top with no area of soil left exposed.” *Id.* at 1-2 The motion to amend the complaint further describes Mr. Pratapas’ experience, in general, with concrete washout areas and his argument as to how they are used incorrectly throughout Illinois. *Id.* at 2. The amended complaint concludes by suggesting solutions to fix inadequately protected concrete washout areas. *Id.*

In its objection to the motion to file the amended complaint, M/I argues that Mr. Pratapas’ July 5th motion did not include an amended complaint. Resp. at 1. “Pratapas’ motion requests that the Complaint be amended to include eight paragraphs that criticize M/I’s compliance with its permit requirements and state what Pratapas believes should be the standards related to concrete washout areas and containers.” *Id.* at 1-2.

In its response, M/I analyzes each of the eight paragraphs of the motion. First, M/I argues that the photo included in the July 5th motion had previously been included in the original complaint. “Because the Board already rejected this photograph as being evidence of extent, duration, or strength, the Board should do so again here.” *Id.* at 5. In addressing the motion’s claim that the washout container is oriented incorrectly, M/I argues, “[t]he statements concerning how the storage of items and the orientation of the container are conjecture and are not statements of fact because Pratapas never witnessed the washing out of trucks at the Willow Run site.” *Id.* at 7. In general, M/I argues that the additional information provided in the motion to amend, “do not add anything with respect to the extent, duration, or strength of the alleged violation.” *Id.* at 6.

Further, M/I notes that the motion to amend the complaint was untimely filed and Mr. Pratapas had not filed a motion requesting additional time to file. *Id.* at 2. Additionally, M/I asks the Board to deny the motion to file the amended complaint as the statements contained therein were not set forth in an affidavit or certification, per 35 Ill. Adm. Code 101.504. *Id.* at 4.

DISCUSSION

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’s rules also require that “[f]acts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification consistent with Section 1-109 of the Code of Civil Procedure.” 35. Ill. Adm. Code 101.504.

In the initial complaint, Mr. Pratapas alleges that M/I violated:

1. 415 ILCS 5.12(a)
2. 415 ILCS 5/12(d)
3. IL Admin Code Title 35, 304.141(b)
Comp. at 2.

The Board interprets the first alleged violation to be 415 ILCS 5/12(a) (2022).

Sections 12(a) and (d) of the Illinois Environmental Protection Act (Act) provides as follows:

Sec. 12. Actions prohibited. No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.
- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

Section 304.141(b) says:

- b) No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the [Clean Water Act] or the Act, unless limitations for such a pollutant has been set forth in an applicable [National Pollutant Discharge Elimination System] permit. However, the Agency may, by permit condition, provide that the permittee may discharge pollutants present in its water supply intake sources in concentrations not greater than the concentrations in the intake sources, or which are added in trace amounts by normal domestic water usage.
35 Ill. Adm. Code 304.141

Mr. Pratapas used a form provided on the Board's website for citizen complaints to file his initial complaint. The form asks the complainant to "[d]escribe the type of pollution that you allege... and the location of the alleged pollution. In that section, Mr. Pratapas says, "Water. Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Across the site, pollutants are not controlled and minimized from entering the street and or stormwater system." Comp. at 2.

Four photographs were included in the initial complaint. Comp. at 10-12. The photographs are in black and white. The first photograph, on page 10, is uncaptioned. The second photograph is captioned, but does not describe the content of the photo or the location where it was taken. Comp. at 11. The third photograph appears to be an advertisement of the residential complex. *Id.* The fourth photograph is of a graph, however, the details of the graph are not decipherable. Comp. at 12.

The Board agrees with M/I that the eight additional paragraphs in the motion to amend the complaint fail to cure the issues from the original complaint. Mr. Pratapas' additional filing

still fails to provide specificity regarding the violations alleged, sufficient for M/I to respond. Rather, Mr. Pratapas provides his opinion on proper protections and conjecture that what M/I has in place is inadequate. Therefore, the Board finds that the information provided in the initial complaint as well as the motion to amend the complaint do not provide adequate information as to the nature, extent, duration and strength of the discharges alleged to constitute violations. Additionally, the Board denies the motion as untimely filed.

ORDER

1. The motion to amend the complaint is denied.
2. The case is dismissed and the docket is closed.

IT IS SO ORDERED.

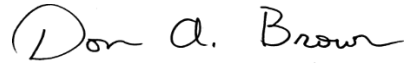
Member M. D. Mankowski abstained.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 3, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board