

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS,

Complainant,

v.

LISLE TOWNSHIP ROAD DISTRICT,

Respondent.

Case No. PCB 2023-013

(Citizens Enforcement - Water)

Hearing Officer: Bradley P. Halloran

**RESPONDENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS  
FOR WANT OF PROSECUTION**

**INTRODUCTION**

In Respondent's Motion to Dismiss, LISLE TOWNSHIP ROAD DISTRICT ("Respondent") clearly established that Complainant has not actively prosecuted this case, Complainant failed to comply with court orders, and Complainant failed to appear at the last two court ordered status conferences. Complainant's Response fails to address those issues. Additionally, Complainant fails to meet its burden to prove that it is entitled to the relief requested in the Complaint. Moreover, Complainant's Response contains unsubstantiated and irrelevant assertions that the Board cannot accept while ruling on Respondent's Motion to Dismiss for Want of Prosecution. Complainant inaccurately states that Respondent filed prior motions in this case. As a result of Complainant's inexcusable delay and lack of diligence, this matter should be dismissed for want of prosecution.

**ARGUMENT**

**A. Complainant Fails To Address Or Dispute The Substance Of The Motion To Dismiss For Want Of Prosecution**

In the Response, Complainant does not provide any explanation for his failure to actively prosecute the case, failure to comply with orders, and failure to appear at scheduled status

conferences. Further, Complainant does not provide any explanation for the failure to meet his burden to prove the allegations in compliance with the discovery deadlines. Instead, the Complainant's Response contains immaterial allegations directed at the alleged actions and alleged violations of the Respondent that are completely irrelevant to the present issues in the pending Motion. As outlined in the Motion to Dismiss and based on the Complainant's failure to address or dispute the substance of the Motion, the Board should dismiss this case for want of prosecution.

**B. The Board Should Not Consider The Complainant's Argument Alleging Actions Or Violations By The Respondent**

Complainant's Response contains irrelevant assertions related to the allegations in the Formal Complaint and alleged violations of "The Act" by Respondent. The Respondent filed an Answer that denied all material allegations, including any violations of "The Act" and filed Affirmative Defenses in response to the allegations of the Formal Complaint. The pending Motion to Dismiss is based on Complainant's inexcusable delay and lack of diligence in prosecuting this case. Orders were entered on December 12, 2022 and February 28, 2023 for the Complainant to issue subpoenas for any necessary documents or information, to disclose witnesses that support the allegations in the Formal Complaint, to propound written discovery, and to complete fact witness depositions in this case. The Complainant has not complied with those orders and specifically did not issue any subpoenas, did not disclose witnesses that support the allegations, did not propound discovery, and did not depose any fact witnesses.

**C. Complainant's Allegations Are Based On Wholly Past Actions For Which No Claim For Relief Is Available**

The Formal Complaint alleges violations of 415 ILCS 5.12(a) IL Admin Code Title 35, § 304.141(b). Section 5.12(a) addresses water pollution in the same manner as provisions of the Federal Clean Water Act, 33 U.S.C. 1251, *et seq.* The U.S. Supreme Court clearly held there is no

standing for citizen suits where the relief addresses wholly past violations of the Clean Water Act. *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987).

In Illinois, citizens only possess the authority to enforce statutes as specifically allowed and authorized by statute. *Glisson v. City of Marion*, 188 Ill. 2d 211, 222-23 (1999). Additionally, 35 Ill. Adm. Code §103.204(c)(1) requires that the complainant identify “[T]he provisions of the Act that Respondents are alleged to be *violating*.” (Emphasis added.) 35 Ill. Adm. Code §103.204(c)(1) unambiguously addresses current violations that are alleged to be ongoing or “violating” at the time the complaint is filed. The only plain language interpretation of “to violate” and “violating” is the present tense. Therefore, consistent with the U.S. Supreme Court’s holding in *Gwaltney*, 35 Ill. Adm. Code § 103.204(c)(1) does not authorize private citizen actions alleging wholly past violations, as done in both the Formal Complaint, Amended Complaint, and Complainant’s Response to the Motion to Dismiss for Want of Prosecution.

In addition to *Gwaltny*, the Illinois Pollution Control Board has specifically held that a private citizen cannot maintain actions for wholly past violations. *Environmental Law and Policy Center v. Freeman United Coal Mining Co. and Springfield Coal Co., LLC*, PCB 2011-002 (July 15, 2010). In *Environmental Law and Policy Center*, the Board held that a failed permit transfer left the named respondent in (then) current violation of NPDES permit requirements. In *Shelton v. Crown*, PCB 96-53 (Oct. 2, 1997), the Board denied a motion to dismiss; instead, finding continued operation of equipment gave rise to the alleged violation.

Both of these cases acknowledge that citizens may only pursue complaints for current and ongoing violations, which is the opposite of what the Complaint alleges here. The Formal Complaint states specifically the following dates and times of the duration and frequency of the alleged pollution: “Photographed: June 30, 2022 at 12:56 pm, Photographed: July 1, 2022 at 10:15

am, Photographed: July 7, 2022 at 2:40 pm,” and “sometime in 2019.” Although the Complainant attempts to say that it is an ongoing program, the work being complained of has clearly been completed on the dates and times referenced above. Further, Complainant has not introduced any evidence of any current or ongoing violations, other than to simply state that it is “ongoing.”

**D. Complainant’s Actions In This Case Demonstrate A Failure to Prosecute His Claims**

Although Complainant’s Response states that Complainant has been ready to proceed since filing the Formal Complaint, Complainant has not proceeded with any discovery to meet his burden of proof. Specifically, Complainant has not disclosed any witnesses that support his allegations, failed to provide any documents that he would offer at a hearing to support his allegations, and failed to appear at two mandatory telephonic status conferences. As Complainant cannot possibly meet his burden of proof, and due to Complainant’s inexcusable delay and lack of diligence, this matter should be dismissed for want of prosecution.

**E. Complainant’s Response Inaccurately Details Prior Motions Filed By Respondent**

The Response also erroneously states Respondent filed motions to delay the process on August 10, 2023 and September 9, 2023. However, Respondent did not file any motions on August 10, 2023 or September 9, 2023. Respondent filed a Motion for Extension of Time to File a Motion that the Formal Complaint was Frivolous on August 10, 2022 and filed a Motion to Declare the Formal Complaint Frivolous on September 9, 2022. These Motions were filed about a year ago and are irrelevant to the present Motion to Dismiss and the Complainant’s failure to comply with court orders and failure to appear at the last two court ordered status conferences.

**F. Complainant Did Not Properly Serve All Parties Of Record With The Response**

Additionally, Complainant did not serve all parties of record in this case via email as the previously agreed to method of service. Complainant only served the Respondent by sending and a hard copy via U.S. Mail to David Silverman. Complainant also allegedly served his Response on the same date the Motion to Dismiss was filed, but Respondent did not receive it until it received it in the U.S. Mail. Although a briefing schedule has not been entered on the Motion to Dismiss, Respondent wanted to file its Reply Brief in support of its Motion for the Board's review and determination.

**CONCLUSION**

WHEREFORE, the Respondent, LISLE TOWNSHIP ROAD DISTRICT, for the foregoing reasons, respectfully requests that this Court dismiss this matter for want of prosecution.

Dated: September 1, 2023

Respectfully Submitted,

**LISLE TOWNSHIP ROAD DISTRICT**

/s/ David S. Silverman

One of the Attorneys for Respondent,  
Lisle Township Road District

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Hearing Officer: Bradley P. Halloran

**CERTIFICATE OF SERVICE**

TO: Don A. Brown  
Clerk of the Board  
**Illinois Pollution Control Board**  
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Bradley P. Halloran  
Hearing Officer  
**Illinois Pollution Control Board**  
60 E. Van Buren Street, Ste. 630  
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The undersigned, an attorney, certify that I served **RESPONDENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS FOR WANT OF PROSECUTION**, by emailing a copy of same to the parties listed above on the 1st day of September, 2023, before 5:00 p.m.

**ANCEL GLINK, P.C.**

By: /s/ David S. Silverman  
One of the Attorneys for Respondent

[x] Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes same to be true.

David S. Silverman ([dsilverman@ancelglink.com](mailto:dsilverman@ancelglink.com))

Megan A. Mack ([mmack@ancelglink.com](mailto:mmack@ancelglink.com))

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