

ILLINOIS POLLUTION CONTROL BOARD
January 4, 2024

ANNA ANDRUSHKO,)
)
 Complainant,)
)
 v.) PCB 23-133
) (Enforcement - Noise
 THOMAS EGAN,)
)
 Respondent.)

ORDER OF THE BOARD (by M.D. Mankowski):

On June 27, 2024, Anna Andrushko filed a complaint (Comp.) alleging that Thomas Egan violated Section 23, 24, and 25 of the Environmental Protection Act (Act); unspecified “private nuisance laws;” and “Municipal Codes: Sec. 1 188” by emitting noise from his home at 9311 South Spaulding Avenue in Evergreen Park, Cook County. For the reasons below, the Board finds that the alleged violations are frivolous and declines to accept the complaint for hearing. The complainant may file an amended complaint within 30 days by Monday, February 5, 2024, or face dismissal of this case.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2022)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315 (defining “person”), 31(d)(1) (2022); 35 Ill. Adm. Code 103. The complaint alleges that the respondent has caused noise pollution through “excessive noise and vibrations from stereo inside his house, car, and garage.” Comp. at 2. It also alleges that he has caused noise pollution from a barking dog. *Id.*

Section 31(d)(1) of the Act provides that, unless the Board determines that a complaint is duplicative or frivolous, it will schedule a hearing. 415 ILCS 5/31(d)(1) (2022). Within 30 days after being served with the complaint, a respondent may file a motion alleging that the complaint is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). On July 14, 2023, the complainant filed documentation of service on June 30, 2023, at respondent’s address. Respondent has not filed a motion or otherwise responded to the complaint.

A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202.

The complaint first alleges a violation of Section 23 of the Act, which provides in its entirety that “[t]he General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public

nuisances, and in other respects reduces the quality of our environment. It is the purpose of this Title to prevent noise which creates a public nuisance.” 415 ILCS 5/23 (2022).

The Board has found that Section 23 is a legislative declaration and cannot be violated. Tapia and Edwards v. Miller Container Corp., PCB 19-71 (Feb. 14, 2019), citing Chvalovsky v. Commonwealth Edison, PCB 10-13 (Dec. 2, 2010). The Board finds that this alleged violation fails to state a cause of action on which it can grant relief and dismisses the allegation as frivolous. See Brison v. Flood Bros. Disposal and Recycling, PCB 19-68 (Dec. 20, 2018).

Second, the complaint alleges a violation of Section 24 of the Act, which provides in its entirety that “[n]o person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.” 415 ILCS 5/24 (2022).

In Chvalovsky, the Board stated that

Section 24 is capable of being violated, but ‘[t]he appellate court has previously stated that Section 24 is not a general statutory prohibition.’ Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002), citing Shepard v. Northbrook Sports Club and the Vill. of Hainesville, 272 Ill. App 3d 764, 768, 651 N.E.2d 555, 558 (2nd Dist. 1995). Instead, Section 24 prohibits the emission of noise ‘so as to violate any regulation or standard adopted by the Board under this Act.’ Shepard, 272 Ill. App. 3d at 768, 651 N.E.2d at 558, citing 415 ILCS 5/24 (emphasis provided by court). Accordingly, ‘Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24.’ Rulon, PCB 03-7, slip op. at 4, citing Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998).

The complaint does not allege a violation of any Board noise regulation or standard. The Board finds that the alleged violation of Section 24 fails to state cause of action on which it can grant relief and dismisses the allegation as frivolous. See Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 2 (Feb. 14, 2019).

Third, the complaint alleges a violation of Section 25 of the Act, which authorizes the Board to “adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.” 415 ILCS 5/25 (2022).

The Board has found that, “because Section 25 merely authorizes the Board to promulgate noise regulations, Section 25 cannot be violated.” Fiser v. Meador, PCB 15-93, slip op. at 3 (Feb. 19, 2015), citing Gifford v. Am. Metal Fibers, PCB 08-13, slip op. at 304 (Sept. 20, 2007). The Board finds that the alleged violation of Section 25 fails to state a cause of action on which it can grant relief and dismisses the allegation as frivolous. See Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 3 (Feb. 14, 2019).

Fourth, the complaint alleges that the respondent “violates Private Nuisance laws that protect a person’s right to use and enjoy his or her property.” Comp. at 3. Under the Act, the Board has authority to conduct hearings “on complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order . . .” 415 ILCS 5/5(d), 31(d)(1), 33(b) (2022). This authority does not extend to unspecified authorities governing private nuisance. The Board finds that this alleged violation fails to state a claim on which it can grant relief and dismisses the allegation as frivolous.

Finally, the complaint alleges violation of “Municipal Codes: 1 188.” Comp. at 3. The Board does not have authority to hear alleged violations of local rules. Boyer v. MRD Dev. d/b/a Copper Fire, Renae Eichholz, and Mark Eichholz, PCB 22-09, slip op. at 2 (Mar. 2, 2022), citing Flagg Creek Water Reclamation Dist. v. Vill. of Hinsdale, PCB 06-141, slip op. at 8 (June 1, 2006). The Board finds that this alleged violation fails to state a claim on which it can grant relief and dismiss the allegations as frivolous.

Although the Board finds that the complaint alleges only violations that are frivolous, it also considers complainant’s requests for relief. *See* Comp. at 9.

The complaint requests relief in the form of an order “to stop polluting, to take any and all necessary measures to stop dog from barking and alleviate the reasons for the barking situation.” *Id.* at 8. The Board has authority to order a respondent to cease and desist from violation the Act and Board regulations and to implement specific abatement measures to remedy noise violations. 415 ILCS 5/33(b) (2022); Boyer v. MRD Dev. d/b/a Copper Fire, Renae Eichholz, and Mark Eichholz, PCB 22-09, slip op. at 2 (Mar. 2, 2022), citing Leesman v. Cimco Recycling, PCB 11-1, slip op. at 3 (Oct. 7, 2010); *see* Comp. at 9.

The complaint also requests that the Board order respondent to pay a civil penalty “to compensate for loss of the use and enjoyment of property, adverse health effects, and a decrease in property value.” Comp. at 8. While the Board has authority to assess civil penalties payable to the Environmental Protection Trust Fund (415 ILCS 5/33(b), 42 (2022)), it lacks authority to order the respondent to compensate the complainant as requested. The Board finds that this requests relief that the Board does not have authority to grant, and the Board dismisses this request as frivolous.

Because it finds that the complaint does not state any claim on which it can grant relief, the Board finds that it is frivolous under the Act and Board regulations and declines to accept it for hearing.¹

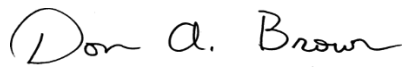
However, to remedy the deficiencies identified in this order, the Board allows the complainant until Monday, February 5, 2024, the first business day following the 30th day after

¹ The Board notes that the complainant on November 1, 2023, filed 45 pages of articles and reports. While the Board has reviewed them, these materials do not remedy any of the deficiencies identified in this order and do not persuade the Board to accept the complaint for hearing.

the date of this order, to file an amended complaint. *See* 35 Ill. Adm. Code 101.302. If the complainant files an amended complaint, she must serve a copy of the amended complaint upon respondent and also file documentation of service with the Board. *See* 35 Ill. Adm. Code 101.304. In addition to the provision of the Act and regulations alleged to have been violated, an amended complaint must contain “[t]he dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations.” 35 Ill. Adm. Code 103.204.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 4, 2024, by a vote of 4-0.

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

Don A. Brown, Clerk
Illinois Pollution Control Board