

ILLINOIS POLLUTION CONTROL BOARD
March 21, 2024

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

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

On January 4, 2024, the Board found that a complaint filed by Anna Andrushko did not state any claim on which the Board could grant relief. The Board found that the complaint was frivolous under the Environmental Protection Act (Act) and Board rules and declined to accept it for hearing. However, to remedy the deficiencies it had identified, the Board allowed the complainant until February 5, 2024, to file an amended complaint. On January 29, 2024, the complainant filed an amended complaint alleging that Thomas Egan had committed various violations 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 amended complaint, as modified by this order to include only an alleged violation of Section 24 and requested relief of an abatement order, is neither frivolous nor duplicative and accepts the amended complaint for hearing.

PROCEDURAL HISTORY

On June 27, 2023, complainant filed the original complaint (Orig Comp.). On July 14, 2023, complainant filed U.S. Postal Service tracking information indicating that respondent received the original complaint on June 30, 2023. On November 1, 2023, complainant submitted to the Board information consisting of various articles, a 1974 U.S. Environmental Protection Agency press release, a petition for no contact order, a cease and desist letter on her behalf, and Evergreen Park Police Department event reports.

On January 4, 2024, the Board found that the original complaint failed to state a claim on which it can grant relief and that the alleged violations were frivolous (Board Order). The Board declined to accept the complaint but allowed complainant to file an amended complaint remedying identified deficiencies within 30 days or face dismissal.

On January 29, 2024, complainant timely filed an amended complaint (Comp.). On February 8, 2024, complainant filed documentation that the amended complaint had been served on the respondent by certified mail on January 29, 2024. Respondent has not filed a motion

alleging that the amended complaint is duplicative or frivolous. *See* 35 Ill. Adm. Code 103.212(b).

LEGAL BACKGROUND

Under the Act, any person may bring an action before the Board to enforce Illinois' environmental requirements. 415 ILCS 5/31(d)(1) (2022); *see* 415 ILCS 5/3.315 (defining "person"), 35 Ill. Adm. Code 103 (Enforcement).

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). 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. A complaint is "duplicative" if "the matter is identical or substantially similar to one brought before the Board or another forum." *Id.*

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). As noted above under "Procedural History," complainant filed documentation that the amended complaint had been served on the respondent by certified mail on January 29, 2024. Respondent has not filed a motion or otherwise responded to the amended complaint.

SUMMARY OF THE BOARD'S JANUARY 4, 2024 ORDER

In its January 4, 2024 order, the Board noted that the original complaint first alleged a violation of Section 23 of the Act. Board Order at 1-2; *see* 415 ILCS 5/23 (2022). Section 23 is a legislative declaration and cannot be violated. Board Order at 2, citing Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 2 (Feb. 14, 2019); Chvalovsky v. Commonwealth Edison, PCB 10-13, slip op. at 2 (Dec. 2, 2010). The Board found that this alleged violation failed to state a cause of action on which it can grant relief and dismissed the allegation as frivolous. Board Order at 2, citing Brisson v. Flood Bros. Disposal and Recycling, PCB 19-68, slip op. at 2 (Dec. 20, 2018).

Second, the Board's order noted that the original complaint alleged a violation of Section 24 of the Act. Board Order at 2, *see* 415 ILCS 5/24 (2022). Section 24 prohibits the emission of noise "so as to violate any regulation or standard adopted by the Board under this Act." Board Order at 2, citing 415 ILCS 5/24 (2022); Shepard v. Northbrook Sports Club and the Vill. of Hainesville, 272 Ill. App. 3d 764, 768, 651 N.E.2d 555, 558. Because the Board found that the original complaint did not allege a violation of any Board noise regulation or standard, it found that this alleged violation failed to state cause of action on which it can grant relief and dismissed the allegation as frivolous. Board Order at 2; *see* Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 2 (Feb. 14, 2019).

Third, the Board's order noted that the original complaint alleged a violation of Section 25 of the Act. Board Order at 2, citing 415 ILCS 5/25 (2022). "[B]ecause Section 25 merely authorizes the Board to promulgate noise regulations, Section 25 cannot be violated." Board

Order at 2, citing Fiser v. Meador, PCB 15-93, slip op. at 3 (Feb. 19, 2015); Gifford v. Am. Metal Fibers, PCB 08-13, slip op. at 3-4 (Sept. 20, 2007). The Board found that the alleged violation of Section 25 failed to state a cause of action on which it can grant relief and dismissed the allegation as frivolous. Board Order at 2, citing Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 3 (Feb. 14, 2019).

Fourth, the Board's order noted that the original complaint alleged that the respondent "violates Private Nuisance laws that protect a person's right to use and enjoy his or her property." Board Order at 3. The Board stated that it 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 . . ." Board Order at 3, citing 415 ILCS 5/5(d), 31(d)(1), 33(b) (2022). Because this authority does not extend to unspecified authorities governing private nuisance, the Board found that this alleged violation failed to state a claim on which it can grant relief and dismissed the allegation as frivolous.

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

Although the Board found that the original complaint alleged only violations that were frivolous, its January 4, 2024 order continued by considering complainant's requests for relief. Board Order at 3.

The original complaint requested 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." Board Order at 3. If the Board finds that an alleged violation has occurred, it has authority to order a respondent to cease and desist from any violation of the Act and Board regulations and to implement specific abatement measures to remedy noise violations. *Id.*, citing 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); Leesman v. Cimco Recycling, PCB 11-1, slip op. at 3 (Oct. 7, 2010).

The original complaint also requested 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." Board Order at 3. 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 complainant as requested. The Board found that this requested relief that the Board does not have authority to grant, and the Board dismissed this request as frivolous.

Because it found that the original complaint did not state any claim on which it could grant relief, the Board found that it was frivolous and declined to accept it for hearing. The Board's order noted that, after filing the original complaint, complainant on November 1, 2023,

filed 45 pages of various articles and reports. Board Order at 3, n.1. The Board stated that, although it had reviewed those articles and reports, they did not remedy any of the identified deficiencies and did not persuade the Board to accept the original complaint. *Id.*

However, the Board allowed complainant until Monday, February 5, 2024, to file an amended complaint addressing the deficiencies identified in the Board’s January 4, 2024 order. Board Order at 3-4. The Board stressed that, if complainant filed an amended complaint, she must serve a copy on the respondent and also file documentation of service with the Board. Board Order at 3-4, citing 35 Ill. Adm. Code 101.304. The Board also stressed that, in addition to identifying 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.” Board Order at 4, citing 35 Ill. Adm. Code 103.204.

AMENDED COMPLAINT

Information on the Board’s website includes a sample complaint form that a person may use to initiate an enforcement action (pcb.illinois.gov/Resources/Complaintforms). *See* 415 ILCS 5/31(d) (2022); 35 Ill. Adm. Code 103.200. The sample complaint includes twelve items of information and states that “[a]ll items must be completed.” *See* Comp. at 2. Both the original and amended complaint are based upon this sample form.

Under Sections 1-4 of the sample complaint, complainant provides requested contact information for herself, provides the name and address of the respondent, and alleges that the respondent is causing or allowing noise violations from his adjacent property at 9311 South Spaulding Avenue in Evergreen Park, Cook County. Comp. at 3, 4.

Alleged Violations

Section 5 of the sample complaint requires that a complainant “[I]st specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.”

In the following subsections, the Board reviews the violation alleged by complainant and determines whether they are frivolous under the Act and Board rules.

Air Act (noise)

The amended complaint first alleges that the respondent “violates the Air Act (noise).” Comp. at 4.

Under the Board’s procedural rules, a complaint must refer to “the provision of the Act and regulations that the respondents are alleged to be violating.” 35 Ill. Adm. Code 103.204(c)(1). This allegation does not refer to such a provision. If this allegation refers to noise provisions of the federal Clean Air Act (*see, e.g.*, 42 USC 7641), the Board emphasizes that it “lacks authority to enforce provisions of federal law that have not been incorporated into

the Act or the Board’s regulations.” Sierra Club, et al. v. Midwest Generation, PCB 13-15, slip op. at 23 (Oct. 3, 2013), citing Arendovich v. Ill. State Toll Highway Auth., PCB 09-102, slip op. at 2 (Dec. 17, 2009); Rulon v. Double D Gun Clun, PCB 03-7, slip op. at 4 (Aug. 22, 2002). Without the required reference to the Act or Board regulations, this allegation does not state a claim on which the Board can grant relief, and the Board dismisses this allegation as frivolous.

Section 23, 24, and 25 of the Environmental Protection Act.

Next, the amended complaint alleges that the respondent “violates the Environmental Protection Act: 415 ILCS 5/23, 5/24, 5/25.” Comp. at 4.

Section 23. In its January 4, 2024 order, the Board stated that Section 23 of the Environmental Protection Act “is a legislative declaration and cannot be violated.” Board Order at 2, citing Tapia and Edwards v. Miller Container Corp., PCB 19-71 (Feb. 14, 2019), Chvalovsky v. Commonwealth Edison, PCB 10-13 (Dec. 2, 2010). Once again, 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 Brisson v. Flood Bros. Disposal and Recycling, PCB 19-68, slip op. at 2 (Dec. 20, 2018).

Section 24. The amended complaint cites Section 24 of the Act in its entirety: “[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) (emphasis added); see Comp. at 5.

In its January 4, 2024 order, the Board found that the alleged violation of Section 24 in the original complaint did not allege a violation of any Board noise regulation or standard. The Board found that the alleged violation failed to state cause of action on which it can grant relief and dismissed the allegation as frivolous. Board Order at 2; see Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 2 (Feb. 14, 2019).

However, the amended complaint cites Section 900.102 of the Board’s noise regulations: “[a] person must not cause or allow the emission of sound beyond the boundaries of that person's property, as defined in Section 25 of the Environmental Protection Act [415 ILCS 5/25], that causes noise pollution in Illinois or violates any provision of this Chapter.”¹ 35 Ill. Adm. Code 900.102; see Comp. at 5.

¹ The amended complaint cites language the Board revised in 2018. The revision intended to “clarify language, reduce wordiness, and remove obsolete provisions,” and the Board does not consider the differences between the current and previous rules to be substantive. See Noise Rule Update: Amendment to 35 Ill. Adm. Code Parts 900, 901, 902, and 910, R 18-19, slip op. at 1 (Nov. 1, 2018); see 42 Ill Reg. 20432 (Nov. 16, 2018).

This Board finds that this alleged violation states a cause of action on which it can grant relief, and it addresses the substance of that alleged violation below at pages 9-10 under “Pollution Alleged.”

Section 25. In its January 4, 2024 order, the Board stated that Section 25 of the Environmental Protection Act authorizes the Board to adopt noise rules, but it “cannot be violated.” Board Order at 2, citing Fiser v. Meador, PCB 15-93, slip op. at 3 (Feb. 19, 2015); Gifford v. Am. Metal Fibers, PCB 08-13, slip op. at 3-4 (Sept. 20, 2007). Once again, 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. Board Order at 2, citing Tapia and Edwards v. Miller Container Corp., PCB 19-71, slip op. at 3 (Feb. 14, 2019).

Other Provisions of the Act.

Next, the amended complaint lists alleged violations of other provisions of the Act.

Section 3.115. The amended complaint lists the definition of “air pollution” at Section 3.115 of the Act: “the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.” 415 ILCS 5/3.115 (2022); *see Comp.* at 4.

While it lists the statutory definition, the amended complaint makes no factual allegation that there is an injurious presence of a contaminant or unreasonable interference that would constitute air pollution under a substantive provision of the Act. The Board finds that this allegation fails to state a cause of action on which it can grant relief and dismisses the alleged violation of Section 3.115 as frivolous.

Section 33(c). The amended complaint next lists Section 33(c) of the Act. Section 33(c) provides that, “[i]n making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved,” including five listed factors. 415 ILCS 5/33(c) (2022); *see Comp.* at 4.

In Section 33(c), the Illinois General Assembly “has outlined several factors to be considered by the Board when making decisions and entering orders to effect those decisions.” The Section 33(c) factors provide protection for respondents against which the Board may issue an order. Freeport v. PCB, 187 Ill. App. 3d 745, 750, 544 N.E.2d 1, 4 (2nd Dist. 1989). The factors address only hearings before the Board and have no bearing on the complaint. *See People ex rel. Ryan v. IBP*, 309 Ill. App. 3d 631, 639, 723 N.E.2d 370, 376 (3rd Dist. 1999), citing EPA v. Fitz-Mar, 178 Ill. App. 3d 555, 563, 533 N.E.2d 524, 529 (1st Dist. 1988). Section 33(c) does not provide a standard or requirement that respondent may violate. The Board finds that this allegation fails to state a cause of action on which it can grant relief and dismisses the alleged violation of Section 33(c) as frivolous.

USEPA

Next, the amended complaint alleges that “**EPA Identifies Noise Levels Affecting Health and Welfare, [EPA press release – April 2, 1974]² levels of 55 decibels outdoors and 45 decibels indoors are identified as preventing activity interference and annoyance. An average size dog barks at “120 db and 500 Hz.” Damage to the human ear can occur at 85 db. Therefore, a continually barking dog can cause stress.”** Comp. at 6 (emphasis in original).

As noted above, the Board’s procedural rules provide that a complaint must refer to “the provision of the Act and regulations that the respondents are alleged to be violating.” 35 Ill. Adm. Code 103.204(c)(1). This allegation cites a 1974 press release and does not refer to such a provision. Without the required reference to the Act or Board regulations, this allegation does not state a claim on which the Board can grant relief, and the Board dismisses this allegation as frivolous.

Nuisance

Next, the amended complaint alleges that the respondent “violates Private Nuisance laws that protect a person’s right to use and enjoy his or her property” and that respondent “interferes with that right.” Comp. at 6. The original complaint included an identical allegation. Orig. Comp. at 3.

The amended complaint also alleges that the respondent “violates Temporary private Nuisance laws that protect a person’s right to use and enjoy his or her property.” Comp. at 6. It further alleges that the respondent “interferes with that right.” *Id.*

In addressing relief requested, the amended complaint includes language defining a public nuisance and listing elements of a public nuisance without citing sources for that language. Comp. at 15.

In addressing whether complainant is aware of an identical or substantially similar case, the amended complaint cites and appears to quote from a number of cases addressing issues related to nuisance. Comp. at 20-21, citing, *e.g.*, In re: Chicago Flood Litigation, 176 Ill. 2d 179, 680 N.E.2d 265 (1997); Schwiehs v. Chase Home Fin., 397 Ill. Dec. 360, 41 N.E.3d 1011 (1st Dist. 2015); Dobbs v. Wiggins, 401 Ill. App. 3d 367, 929 N.E.2d 30 (5th Dist. 2010); Tamalunis v. Georgetown, 185 Ill. App. 3d 173, 542 N.E.2d 402 (4th Dist. 1989).

In its January 4, 2024 order, the Board stressed that, “[u]nder 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 . . .” Board Order at 3, citing 415 ILCS 5/5(d), 31(d)(1), 33(b) (2022). This authority does not extend to unspecified authorities governing private nuisance. As it did in its earlier order, the

² The Board notes that information complainant submitted to the Board on November 1, 2023, includes a United States Environmental Protection Agency press release with this heading and date.

Board finds that these alleged violations fail to state a claim on which it can grant relief and dismisses the allegations as frivolous.

Municipal Authorities

Municipal Codes or Ordinances. Next, the amended complaint alleges that the respondent “violated the **Evergreen Park Municipal Codes: Sec. 12-188.**” Comp. at 6 (emphasis in original).³

The amended complaint also alleges that the respondent “violates the Noise disturbance ordinance in **Evergreen Park: 6-1-A11: Disturbing the Peace.** No person shall keep any animal shut up or tied in a yard, house, shed, barn, or other place, which by barking, meowing or by other noises shall constantly disturb the peace and quiet of any family, individual or neighborhood.”⁴ Comp. at 6 (emphasis in original).

In addressing relief requested, the amended complaint also appears to cite a noise disturbance ordinance and a noise ordinance without citing their sources. Comp. at 16.

In its January 4, 2024 order, the Board stressed that it “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). As it did in its earlier order, the Board finds that these alleged violations fail to state a claim on which it can grant relief and dismisses the allegations as frivolous.

Additional Municipal Authorities. The amended complaint also alleges that “[t]he Village of Evergreen Park does not have a dog barking noise ordinance. The police nor animal control warden have animal training or certifications.” Comp. at 6.

The amended complaint further alleges that the respondent “has never been given a citation nor warning.” Comp. at 6. It also alleges that the respondent “does not answer the door when the Village of Evergreen Park Police have attempted to contact him with noise complaints.” *Id.*

³ The Board notes that Section 12-188 addresses permits for loudspeakers amplifying sound. The amended complaint cites the language of subsection (b), which established standards to issue a permit for “parades authorized by the board of trustees, political speeches, public gatherings and matters of public issue.” https://codelibrary.amlegal.com/codes/evergreenpark/latest/evergreenpark_il/0-0-0-2927 (viewed Feb. 9, 2024).

⁴ This citation does not appear to match an Evergreen Park ordinance now in effect, and the Board did not locate the cited language in any provision of the Evergreen Park Code of Ordinances. See https://codelibrary.amlegal.com/codes/evergreenpark/latest/evergreenpark_il/0-0-0-1 (viewed Feb. 9, 2024)

Neither of these allegations refers to a violation of the Act or Board regulations or any other authority. The Board finds that these alleged violations fail to state a claim on which it can grant relief and dismisses the allegations as frivolous.

Summary

For the reasons described above, the Board finds that the amended complaint alleges a violation of Section 24 of the Act on which it has authority to grant relief. The Board finds that every other allegation in the amended complaint is frivolous because it fails to state a claim on which the Board can grant relief. *See* 35 Ill. Adm. Code 101.202.

Pollution Alleged

Under 35 Ill. Adm. Code 103.204 of the Board's rules, a 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. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense."

Section 6 of the sample complaint requests that the complainant "[d]escribe the type of pollution you allege (*e.g.*, air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution."

The amended complaint describes the alleged pollution as "**Noise and Vibrations from stereo and honking car horn**" and "**Noise from barking dog.**" Comp. at 6 (emphasis in original).

Section 7 of the amended complaint requests that the complainant "[d]escribe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first notice the alleged pollution, how frequently it occurs, and whether it is still continuing (includes seasons of the year, dates, and times of day if known).

The amended complaint refers to "[d]aily noise activity" and states that, "[o]ver the last 10 years, Mr. Egan has entered into a pattern of behavior to force me to move from my home starting with annoying and loud stereo. . . ." Comp. at 7; *see id.* at 15. It further alleges that respondent later acquired a dog and reports "[d]aily; loud, piercing, and excessive dog barking." *Id.* It states that, "[f]or years on a daily basis, the dog barks as early as 6:00 a.m. when the cats are roaming, resting, or moving about my property." *Id.* at 8. The amended complaint that complainant "was constantly calling the police" and refers by number to event reports, police case reports, and a police report case "showing a pattern of noise violations over 10 years" between 2014 and 2023. *Id.* at 8-9.

The Board has reviewed the entire amended complaint under the headings addressing the pollution alleged, and it notes that it includes other allegations and information. As two examples, it addresses the handling of noise complaints by Evergreen Park Police, and it alleges

that respondent makes false statements to police. Comp. at 7-8. These other allegations and statements do not address the type of the alleged pollution or its duration and frequency, and the Board has not considered them to determine whether the allegations meet the requirements of the procedural rules.

Effects of Alleged Pollution

Section 8 of the sample complaint requests that the complainant “[d]escribe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity.” See Comp. at 9.

Under Section 9 of the amended complaint, complainant states that “[n]oise and air pollution, are substantial, continuing, and unreasonable invasions of plaintiffs’ interest, use, and enjoyment of their property.” Comp. at 15. The amended complaint adds that complainant has “also suffered inconvenience, health issues, annoyance, discomfort, disruptions to their peace and quiet, invasions of privacy, and inability to fully use and enjoy their property.” *Id.*; *see id.* at 14.

The Board has reviewed the entire amended complaint under the heading addressing the effects of the alleged pollution and notes that it includes other information. As examples, it addresses why dogs may bark, methods that may reduce barking, and general information on noise and its effects. Comp. at 9-14. This other information does not describe bad effects that complainant believes the alleged pollution has had, and the Board has not considered it in determining whether the allegations meet the requirements of the procedural rules.

Relief Requested

Section 9 of the sample complaint requests that the complainant “[d]escribe the relief that you seek from the Board (*e.g.*, an order requiring that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)).

Request # 1

Abatement Order. The amended complaint includes an “Updated Request” that the Board issue “a **Noise Abatement Order against Mr. Egan to stop offensive noise and prevent it from occurring.**” Comp. at 16 (emphasis in original). As the Board noted in its January 4, 2024 order, if it finds that a violation of the Act or Board regulations has occurred, “[t]he 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* Board Order at 3.

Other Requested Relief. Request #1 also seeks relief for which the Board lacks authority to grant, cites authority that the Board does not clearly have authority to enforce, and appears to propose elements that might conceivably be part of an abatement order if the Board finds that respondent has violated the Act or Board regulations. The Board finds that these requests are frivolous and declines to consider the relief they request. The Board addresses these requests below.

Request # 1 cites the “**Protection of the Environment Administration Act of 1991.**” Comp. at 16 (emphasis in original). It appears to cite that act as the basis for a noise abatement order and indicates that “[f]ailing to comply with a compliance notice is a maximum penalty of \$55,000 for an individual.” Comp. at 16. The Board does not recognize this act as Illinois law providing it authority to conduct a hearing or order a remedy. Also, the cited penalty does not align with those in the Environmental Protection Act. *See* 415 ILCS 5/42 (2022) (Civil penalties).

Request #1 states “Respondent to pay a civil penalty; money to compensate for loss of the use of property, adverse health effects and a decrease in property value. Comp. at 16. In its January 4, 2024 order, the Board noted that the complainant made the same request in the original complaint. Board Order at 3. That order emphasized that, “[w]hile 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.” *Id.*

The amended complaint appears to suggest elements that might conceivably be included in an order abating noise from a barking dog. *See* Comp. at 16-17. The Board would consider proposed terms of an abatement order only after finding that the respondent has committed a violation alleged in the amended complaint, and it does not address those issues in this order.

Request # 2

The amended complaint next requests that the Board “adopt a state wide Noise and Vibrations Control, similar to that of City of Chicago Rules.” Comp. at 17. It states that, “[w]here Chicago uses the ‘A-Weighting scale, we need to be using the ‘C-weighting scale . . . C-Weighting is usually used for Peak measurements and also in some entertainment noise measurement, where the transmission of bass noise can be a problem, that would include **vibrations** in addition to noise.” *Id.* at 17-18 (emphasis in original).

The Act and Board rules prescribe procedures for adopting statewide regulations, which may include noise rules. *See* 415 ILCS 5/27, 28 (2022); 35 Ill. Adm. Code 102. This enforcement action adjudicating a complaint against a single individual does not give the Board authority enter an order adopting rules with statewide applicability. The Board finds that this request is frivolous because it requests relief that the Board does not have authority to grant in this proceeding.

Request # 3

The amended complaint next requests that the Board issue a

state wide Noise Abatement Order, Noise and Decibel Levels that are set forth by the Centers for Disease control and Prevention (CDC). The US Environmental Protection Agency (EPA) and World Health Organization (WHO) recommend maintaining environmental noises below 70 dBA over 24-hours (75 dBA over 8-hours) to prevent noise-induced hearing loss. The EPA also specified limits for speech interference and annoyance at 55 dBA for outdoors activities and 45 dBA for indoor activities. Comp. at 18.

While the Board under Request #1 determined that it has authority to issue an order requiring the respondent to abate a noise violation if it finds that he has committed one, it would not have authority to expand the scope of that order to the entire state in this proceeding. To the extent that this request seeks promulgation of statewide noise rules in this proceeding, the Board addressed that issue under Request # 2. The Board finds that this request is frivolous because it requests relief that the Board does not have authority to grant in this proceeding.

Request # 4

The amended complaint asks “the Board to force the Village of Evergreen Park to adhere to the Sec. 12-188.” Comp. at 18. As the Board noted above in reviewing the alleged violations, “Section 12-188 addresses permits for loudspeakers amplifying sound. The amended complaint cites language of subsection (a):

Loudspeakers; sound trucks. (a) Permit for amplification of sound. It shall be unlawful for any person to maintain, operate, use or employ any loudspeaker, electronically or mechanically operated, producing sound, which sound is amplified and heard over any public street, public place or private property other than the property of the person so maintaining, operating, using or employing the same, without first having obtained a permit. Noise emanating from private property shall not cause distress to persons on neighboring property. Comp. at 18; *see*

https://codelibrary.amlegal.com/codes/evergreenpark/latest/evergreenpark_il/0-0-0-2927 (viewed Feb. 9, 2024).

The amended complaint requests specifically that the Board “clarify and make the citation enforceable on the basis of the statement that “Noise emanating from private property shall not cause distress to person on neighboring property, regardless of the type of noise, is a violation in itself.”⁵ Comp. at 18.

The Board above cited its authority to issue final orders. *See* 415 ILCS 5/33(b) (2022). This Board does not consider this authority to include issuing a unilateral order to a municipal government that is not a party to this proceeding. This request in the amended complaint cites no

⁵ The Board notes that this statement differs from the language of the ordinance above, and the amended complaint does not provide a citation or source for the different language.

authority and includes no argument that the Board may “force” a village to take specific action through this adjudication. The Board finds that this request is frivolous because it request relief that the Board does not have authority to grant in this proceeding.

Request #5.

The amended complaint asks “**the Board for a state wide Noise Abatement on Animal Noises.**” Comp. at 18 (emphasis in original). In requesting this order, the amended complaint states:

Highlight Animal noise that is unreasonable and plainly audible from within nearby residential property may call for enforcement action if the noise occurs:

After 7:00 am and before 10:00 pm for a continuous period of 10 minutes or more.

After 10:00 pm and before 7:00 am for a continuous period of five minutes or more.

You would think that the kids are being murdered or abducted, that then alerts a person to run to see what is happening. There are seniors and family member that are battling an illness and require reasonable sound tolerance. Comp. at 18.

For the reasons above under Request # 2 and Request # 3, the Board finds that this request for an order applicable statewide is frivolous because it request relief that the Board does not have authority to grant in this proceeding.

Similar Case or Cases

Section 10 of the sample complaint requests that the complainant “[i]dentify any identical or substantially similar case you know of brought before the Board or in another forum against this respondent for the same alleged pollution.” The Board’s procedural rules define as “duplicative” a matter that “is identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202.

The amended complaint cites Avery v. GRI Fox Run, LLC, 2020 IL App (2d) 190382. In that case, the plaintiffs sought to enjoin a strip mall’s alleged violations of the City of Naperville’s land-use and noise ordinances. *Id.* (¶¶9, 14, 15). As the Board stated in its January 4, 2024 order, it does not have the authority to hear alleged violations of local rules. Board Order at 3. The plaintiffs also alleged a private nuisance and sought damages for loss of property value; for inconvenience, discomfort, and loss of use of their property; and punitive damages for any willful and wanton acts. *Id.* (¶¶ 16, 19-20). As the Board stated in its January 4, 2024 order, its authority does not include hearing claims of this nature or awarding damages of this kind. Board Order at 3.

The Board is not persuaded that the single case cited in the amended complaint is identical or substantially similar to the pollution alleged in this case. The Board’s record to date

does not indicate that any other case is identical or substantially similar to it. With the record before it at this stage of the proceeding, the Board finds that the complaint is not duplicative of any matter before it or another forum. *See* 35 Ill. Adm. Code 101.202 (defining “duplicative”).

Board Summary and Findings

The Board finds that the amended complaint alleges a violation of Section 24 of the Act through a violation of Section 900.102 of the Board’s noise rules. The Board also finds that every other violation alleged in the amended complaint is frivolous because it fails to state a cause of action on which the Board can grant relief.

The Board also finds that the alleged violation of Section 24 in the amended complaint meets the requirement in the Board’s procedural rules that it include “[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. The Board also finds that the alleged violation of Section 24 sufficiently describes “any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity.”

In addition, the Board finds that the amended complaint requests relief in the form of a noise abatement order that the Board has authority to grant if it finds that respondent violated Section 24 of the Act. The Board finds that every other request for relief is frivolous because the Board does not have authority to grant it. *See* 35 Ill. Adm. Code 101.202

The Board also finds that nothing in record – including the case cited in Section 10 of the amended complaint – indicates that this case is identical or substantially similar to any case now before the Board or another forum.

The Board finds that, as modified by this order to include only an alleged violation of Section 24 of the Act and requested relief of an abatement order, the amended complaint is neither frivolous nor duplicative, and it accepts the amended complaint as modified for hearing. *See* 415 ILCS 5/31(d)(1) (2022); 35 Ill. Adm. Code 103.212(a).

Respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if 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 on the amended complaint as modified by this order. 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) (2022). 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) (2022). 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.*

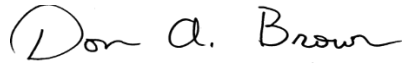
Accordingly, the Board further directs the hearing officer to advise the parties that, in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position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

CONCLUSION

For the reasons above, the Board finds that, as modified by this order to include only an alleged violation of Section 24 of the Act and requested relief of an abatement order, the amended complaint is neither frivolous nor duplicative, and it accepts the amended complaint as modified for hearing. *See* 415 ILCS 5/31(d)(1) (2022); 35 Ill. Adm. Code 103.212(a).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 21, 2024, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above the printed name and title.

Don A. Brown, Clerk
Illinois Pollution Control Board