

ILLINOIS POLLUTION CONTROL BOARD  
April 4, 2024

PAUL CHRISTIAN PRATAPAS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 24-42  
 ) (Citizens Enforcement - Water)  
 LEXINGTON TRACE LLC AND )  
 LEXINGTON TRACE 2 LLC, )  
 )  
 Respondents. )

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

On December 14, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Lexington Trace LLC and Lexington Trace 2 LLC (Lexington). The complaint concerns alleged water pollution violations at two residential home construction sites located at 3S490 Barkley Avenue in Naperville, DuPage County and 30W221 Butterfield Road, Naperville, DuPage County.

The Board first corrects the caption of this matter to properly name the respondents, addresses the procedural background, then discusses Lexington’s motion to dismiss and for monetary sanctions. The Board stays its decision on Lexington’s motion to dismiss, its motion for monetary sanctions, and directs Mr. Pratapas to file an amended complaint, refrain from threatening parties to this action or face dismissal with prejudice.

**PROCEDURAL HISTORY**

**Named Respondents**

In the original complaint, Mr. Pratapas names the respondents as “Lexington Homes” and the two construction projects as “Lexington Trace 1” and “Lexington Trace 2”. In its motion to dismiss, Lexington reports that its correct names are “Lexington Trace LLC” and “Lexington Trace 2 LLC”. The Board directs the Clerk to change the caption of this matter to correctly reflect respondents’ proper names.

**Procedural Background**

This is Mr. Pratapas’ third citizen complaint against Lexington. He is a *pro se* litigant. Previously, in PCB 23-60, the Board found that the complaint failed to meet the pleading requirements and did not accept the complaint for hearing. Pratapas v. Lexington Trace LLC, PCB 23-60 slip op. at 5 (Aug. 3, 2023). The Board directed Mr. Pratapas to file an amended complaint. Mr. Pratapas failed to do so and the Board dismissed the case on December 7, 2023. In PCB 23-85, the Board directed Mr. Pratapas to file the required proof of service of the

complaint. Pratapas v. Lexington Homes and IEPA, PCB 23-85, slip op. at 1 (May 18, 2023). Mr. Pratapas failed to file a proof of service and the Board dismissed the case on July 6, 2023. The violations alleged in these previous two cases mirror those in the present case.

On January 22, 2024, Lexington filed a motion to dismiss and for monetary sanctions against Mr. Pratapas (Mot.). On January 24, 2024, Lexington filed a supplement to its motion to dismiss (Supp.). The supplement includes a copy of an email Mr. Pratapas sent counsel for Lexington on January 20, 2024 (Email 1). Three additional emails from Mr. Pratapas have been docketed in the record of this case. On January 24, 2024, Mr. Pratapas emailed the hearing officer in this matter and the Board's clerk (Email 2). Also on January 24, 2024, 2024, Mr. Pratapas emailed Lexington's attorney and a legal assistant at the attorney's firm (Email 3). On January 29, 2024, Mr. Pratapas again emailed the attorney and legal assistant (Email 4).

Mr. Pratapas did not file a response to either the motion to dismiss or the supplement to the motion to dismiss.

During the time period of July 12, 2022, to December 14, 2023, Mr. Pratapas has filed 28 complaints with the Board. All 28 complaints allege water pollution violations at various construction sites in DuPage County and Will County. The Board has accepted four of these cases, dismissed 21 cases, and three cases remain in various stages of litigation.

### **CITIZEN COMPLAINT**

The complaint alleges the following violations of the Environmental Protection Act (Act) at both of Lexington's construction sites: 415 ILCS 5/12(a), (d); 415 ILCS 5/44(j)(1)(G), (j)(2); and 35 Ill. Adm. Code 304.141(b). Comp. at 3.

Mr. Pratapas alleges that the Lexington site on Butterfield Road had "[s]ediment laden water freely entering streets and inlets. The retention pond which had not been completed was full of sediment laden water in the open where it was accessible by animals, including those from the adjacent wetlands." Comp. at 3. For the Lexington site on Barkley Avenue, Mr. Pratapas alleges the following:

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. Sediment and sediment laden water freely allowed to enter the street and inlets Failure to protect special management area (Wetland?). Contractor handling SWPPP [stormwater pollution prevention plan] began threatening Complainant after making a SWPPP request and asking if they were "minimizing pollutants from entering the street." Comp. at 3.

The complaint requests the following relief:

1. Find that the Respondent has violated their permit(s)
2. Assess a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation

3. Assess a civil penalty against Respondent for each day violating 415 ILCS (j)(2) of Twenty Five Thousand Dollars (\$25,000)
4. An order stating SWPPP plan(s) for phasing and concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual
5. The Board to issue a statement on permit holders intentionally and knowingly using “No Trespassing” signs alongside signs welcoming the public to view the site and available lots for the sole purpose of interfering with citizen enforcement actions, the primary enforcement mechanism for the NPDES [National Pollutant Discharge Elimination System] SWPPP Permit Program and a violation of rights guaranteed by the US Constitution
6. Find Respondent has committed felonious criminal offense(s) as defined by 415 ILCS 5/44.J(1) and 415 ILCS 5/44.J(2)
7. Order the forfeiture to the State an amount equal to the value of all profits earned, savings realized, and benefits incurred as a direct or indirect result of violations, and (2) any vehicle or conveyance used in the perpetuation of violations as defined by 415 ILCS 5/44(a)(1) and 415 ILCS 5/44(a)(2).

Comp. at 5.

### **Motion to Dismiss**

Lexington asks the Board to dismiss this case with prejudice and to issue monetary sanctions against Mr. Pratapas. Mot. at 1. Lexington argues that the complaint is frivolous because it fails to state sufficient facts to support the alleged water pollution violations. *Id.* Further, Lexington argues that this case, “repeats two prior cases” and should be dismissed as it is duplicative. *Id.* at 2. “Respondents seek an award of monetary sanction against Complainant due to his pattern of filing bad faith complaints against Respondents.” *Id.*

In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 438, 546 N.E.2d 580, 584 (1989). “To determine whether a cause of action has been stated, the entire pleading must be considered.” *LaSalle National Trust N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557, 616 N.E.2d 1297, 1303 (2nd Dist. 1993), *citing A, C & S*, 131 Ill. 2d at 438 (“the whole complaint must be considered, rather than taking a myopic view of a disconnected part[.]” *A, C & S*, quoting *People ex rel. William J. Scott v. College Hills Corp.*, 91 Ill. 2d 138, 145, 435 N.E.2d 463, 466-67 (1982)).

### **Frivolous**

Mr. Pratapas has alleged two violations of the criminal portion of the Act – 415 ILCS 5/44(j)(1)(G) and 44(j)(1). Violations under this portion of the Act can only be brought by the Attorney General or the State’s Attorney and cannot be brought by citizens. “Any action brought under this Section shall be brought by the State’s Attorney of the county in which the violation

occurred, or by the Attorney General, and shall be conducted in accordance with the applicable provisions of the Code of Criminal Procedure...” 415 ILCS 5/44(m) (2022). The Board therefore dismisses these two alleged violations from the complaint.

As to the requested relief, the Board cannot issue remedies as they relate to the criminal violations. Therefore, the Board dismisses Mr. Pratapas’ requested reliefs numbered 3, 6, and 7. Additionally, the Board cannot issue the relief requested in numbers 4 and 5 as the Board cannot order changes to SWPPPs, nor can the Board issue declaratory statements regarding the presence or absence of “no trespassing” signs on properties under construction. Therefore, the Board also dismisses requested relief numbered 4 and 5. The Board can find violations of a permit or term or condition of a permit, but those violations have not been pled with specificity here, therefore requested relief numbered 1 is dismissed as well. The remaining relief requested is the statutory penalty for violations of the Act and Board regulations found at 415 ILCS 5/42(a) (2022).

Mr. Pratapas alleges violations of the water pollution section of the Act – 415 ILCS 5/12(a) and 12(d) as well as a violation of the Board’s water pollution regulations at 35 Ill. Adm. Code 304.141(b). The Board finds that these alleged violations have not been pled with specificity. The Board directs Mr. Pratapas to file an amended complaint by May 6, 2024, to plead these three remaining violations with specificity. If the amended complaint is not filed by May 6, 2024, or if it is filed but does not plead the violations with adequate specificity, the Board will dismiss this matter with prejudice. Therefore, the Board stays its ruling on Lexington’s motion to dismiss with prejudice for frivolousness until that time.

### **Duplicative**

Lexington asks the Board to find the complaint is duplicative and to dismiss it with prejudice. Mot. at 2. “There is no doubt that the instant case is a repeat of two prior cases, and the Board should accordingly determine the Complaint is duplicative and dismiss the Complaint with prejudice pursuant to 415 ILCS 5/31(d) and 35 Ill. Admin. Code § 103.212(a).” *Id.* Section 31(d)(1) says, in part: “Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein...” 415 ILCS 5/31(d)(1) (2022). Section 103.212(a) of the Board’s procedural rules says, in part: “When the Board receives a citizen’s complaint, *unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.*” 35 Ill. Adm. Code 35 103.212. The term “duplicative” is defined as, “the matter is identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202.

A complaint is duplicative if it is identical or substantially similar to a matter that is currently before the Board or in another forum. *See, James Fiser v. James L. Meador and Henry’s Double K, LLC*, PCB 18-84, slip op. at 8-9 (Sept. 6, 2018). In *Fiser v. Meador*, the Board noted that it had previously dismissed a noise complaint filed by Mr. Fiser, but that there were no current noise violation complaints pending before the Board, so the Board found the present case not duplicative. *Id.*

Similarly, though Mr. Pratapas filed two previous complaints against Lexington and those complaints were dismissed by the Board, there is not currently an identical case before the

Board. Nor has Lexington alleged that a similar case is pending in another forum. Therefore, the Board finds that this case is not duplicative.

### **Motion for Sanctions**

The Board's procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board's procedural rules. *See* 35 Ill. Adm. Code 101.800.

In its supplement to the motion to dismiss, Lexington provides an email it received from Mr. Pratapas that contains threats to Lexington. Mr. Pratapas' email said, in part, "I would start thinking of a number to offer me. I will probably be joining The Legendary Chicago Band Smashing Pumpkins. In which case, I won't be the one pursuing the case. You will most likely instead be dealing with the offices of Mark Geragos by way of my relationship with Podcaster Adam Carolla. So, I would think fast before he completely drains your client and they end up with felony charges and maximum prison time." Email 1. In its motion to supplement, Lexington argues, "[h]ere, there is no doubt that Complainant's threats crossed the line. His threats of criminal prosecution unless Respondents yield to him and offer up money is unacceptable, inappropriate, and outside the bounds of morality and good behavior." Supp. at 2.

Mr. Pratapas continued to send emails to counsel for Lexington. On January 24, 2024, Mr. Pratapas said, "I am formally objecting to the boards continued allowance of my being called a 'serial filer' and requests for sanctions against me for proving with incontestable photographic evidence which included incontestable proof of myself and family being harassed. All due to the board's and ILEPAs total failure to implement federal law." Email 2. In a separate email on January 24, 2024, Mr. Pratapas said, "You know there is a picture of the Sheriffs office posting a vehicle because your client tried to intimidate me? And they sent deputies when it rained? Because your client was incompetent and breaking the law. And recorded video of themselves threatening to call police to make a false report. And threatened to call the county, who is who gave me all their information. Every time you file a meaningless attack, I will seek greater sanctions." Email 3. On January 29, 2024, Mr. Pratapas said, "Imagine if you put this much effort into complying with your legal obligations. How does it usually work out when criminals attack the victim rather than admit their obvious guilt?" Email 4.

Lexington argues that "Complainant's attempted coercion is unethical, and regrettably in line with his pattern of harassing Respondents through serial filings of formal complaints." Supp. at 1.

A *pro se* litigant is held to the same standards and duties of an attorney when litigating a case. Lexington cites to three cases to illustrate this holding – Kim v. Alvey, Amadeo v. Gaynor and First Federal Savings Bank of Proviso Township v. Drovers National Bank of Chicago. In Kim, the appellate court found an appeal was frivolous and not taken in good faith, which would warrant sanctions. Kim v. Alvey, Inc., 322 Ill. App. 3d 657, 673 (Mar. 30, 2001). In Amadeo, the appellate court found the attorney for the defendant filed a frivolous and bad-faith appeal and imposed monetary sanctions against the attorney. Amadeo v. Gaynor, 299 Ill. App. 3d 696, 705 (Sept. 8 1998). In First Federal, the appellate court found an appeal frivolous as it was

undertaken in bad faith, for an improper purpose and to cause unnecessary delay or harassment. First Federal Savings Bank v. Drovers National Bank, 237 Ill. App. 3d 340, 356 (July 1, 1992). These three cases all involved deciding whether the party violated Supreme Court Rule 375(b), which governs frivolous appeals and the sanctions that can follow those filings.

The Board has found that *pro se* litigants are held to the same standards as attorneys. In Jay Aguilar v. Venus Laboratories, Inc., the *pro se* complainant failed to respond to the motion to dismiss. The Board put forth the responsibilities of a complainant as follows, “[b]y filing a formal complaint, the complainant assumes the responsibility to actively proceed with the case. That responsibility includes the obligation to respond to the written motions filed by Venus Laboratories and to otherwise follow the Board’s procedural rules regarding practice before the Board.” Aguilar v. Venus Laboratories, PCB 93-2, slip op. at 4-5 (Feb. 25, 1993).

In order for Mr. Pratapas to prevail at hearing, he must present facts and arguments as to why a violation should be found. The burden is upon Mr. Pratapas to establish at a formal hearing, by oral testimony under oath, that a violation did occur under the terms of the Act and applicable regulations. “The Board hearing is not an informal informational hearing at which the Board or the respondent must explain its actions. The hearing is more in the nature of a court proceeding with testimony under oath and questions of the witnesses... The initial burden at hearing to explain why a violation should be found is not upon the Board or respondent.” Aguilar v. Venus Laboratories at 5.

The Board is concerned with Mr. Pratapas’ failure to file a response to the motion to dismiss. By filing a formal complaint, the complainant assumes the responsibility to actively proceed with the case. That responsibility includes the obligation to respond to the written motions filed by Lexington and to otherwise follow the Board’s procedural rules regarding practice before the Board.

The Board is deeply concerned with the content of Mr. Pratapas’ emails to Lexington’s counsel and staff. The Board’s procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board’s procedural rules. See 35 Ill. Adm. Code 101.800. Sanctions may include dismissing a proceeding with prejudice, or barring a party from maintaining a claim or defense. The Board has on rare occasions issued sanctions. For repeated failure to timely file an initial brief, the Board granted an Illinois Environmental Protection Agency motion for sanctions that requested to dismiss the proceeding with prejudice. Modine Manufacturing Company v. IEPA, PCB 87-124, slip op. at 3 (November 17, 1988) aff’d, 192 Ill. App. 3d 511. On remand from the Fourth District Appellate Court, the Court directed the Board to issue sanctions in the form of awarding attorney fees in an air permit appeal. The Grigoleit Company v. IEPA, PCB 89-184, slip op. at 4 (March 17, 1994).

The Board has broad discretion in determining the imposition of sanctions. See IEPA v. Celotex Corp., 168 Ill. App. 3d 592, 597 (3d Dist. 1988); Modine Manufacturing Co. v. PCB, 192 Ill. App. 3d 511, 519 (2d Dist. 1989). In exercising this discretion, the Board considers such factors as “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the

existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c).

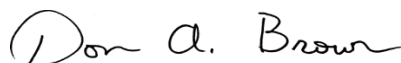
Harassment, name-calling, and threats have no place in Board proceedings. The Board agrees with Lexington that Mr. Pratapas’ emailed statements are unacceptable and inappropriate. Therefore, any further inappropriate comments from Mr. Pratapas will result in the Board dismissing this matter with prejudice.

### **ORDER**

1. Lexington’s motion to dismiss is granted as to violations of 415 ILCS 5/44(j)(1)(G) and (j)(2) (2022).
2. Lexington’s motion to dismiss is granted as to requested relief numbered 1, 3, 4, 5, 6 and 7.
3. Mr. Pratapas is directed to file an amended complaint by May 6, 2024. If the amended complaint is not filed by May 6, 2024, or if the amended complaint does not plead the violations with specificity, the Board will dismiss the case with prejudice.
4. Lexington’s motion for sanctions is stayed until May 6, 2024, or if Mr. Pratapas makes any further inappropriate comments to Lexington, the matter will be dismissed with prejudice.

IT IS SO ORDERED.

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



Don A. Brown, Clerk  
Illinois Pollution Control Board