

ILLINOIS POLLUTION CONTROL BOARD
June 20, 2024

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-67
) (Citizens Enforcement - Water)
LAKEWEST CUSTOM HOMES,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

On December 1, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Lakewest Custom Homes (Homes), Rathbun Cservenyak & Kozol LLC (Rathbun), and @properties (@properties). The complaint concerns a construction site in Naperville, DuPage County. Rathbun and @properties were dismissed as respondents.

On October 17, 2023, Homes filed a motion for summary judgement (Mot.). Mr. Pratapas did not file a formal response to the motion.

For the reasons discussed below, the Board grants the motion for summary judgment, dismisses the case, and closes the docket.

The Board will first give the procedural history of this case, then summarize the complaint. The Board next considers Homes’ motion for summary judgment. The Board then reaches its conclusion and issues its order.

PROCEDURAL HISTORY

Mr. Pratapas filed this complaint (Comp.) on December 1, 2022. On December 28, 2022, @properties filed a motion to dismiss the complaint. On June 1, 2023, the Board directed Mr. Pratapas to file the required proof of service of the complaint on respondents Homes, Rathbun and @properties, waiting to rule on the motion to dismiss until service was perfected. On June 13, 2023, Mr. Pratapas filed proof that the complaint was served on Homes on December 29, 2022. On June 15, 2023, Mr. Pratapas filed a motion to dismiss @properties as a respondent in this matter.

In its August 3, 2023 Order, the Board dismissed Rathbun and @properties as respondents in this matter for Mr. Pratapas’ failure to timely file the required proof of service on Rathbun or @properties, and denied the motions to dismiss @properties as moot. The Board in this Order also accepted the complaint as to Homes as to requests for relief numbered 1, 2, and 4, and struck the remaining requests for relief. See Paul Christian Pratapas v. Lakewest Custom

Homes, Rathbun Czervenyak & Kozol LLC, and @properties, PCB 23-67 (Aug. 3, 2023).

On September 27, 2023, Homes filed its answer to the complaint (Ans.).

A telephonic status conference was held on October 5, 2023, at which neither party appeared. *See* Hearing Officer Order, Oct. 5, 2023.

On October 17, 2023, Homes filed a motion for summary judgment in this matter (Mot.). Mr. Pratapas did not respond to the motion.

The hearing officer conducted a status conference on December 7, 2023, the report of which states that “[c]omplainant did not appear.” Hearing Officer Order, Dec. 7, 2023. The hearing officer conducted an additional status conference on February 22, 2024, and again noted that “[c]omplainant did not appear.” Hearing Officer Order, Feb. 22, 2024.

Also on February 22, 2024, the Board’s Clerk docketed an email from the complainant. *See* Complainant Email, Feb. 22, 2024. In this email, Mr. Pratapas stated that he agreed to summary judgment in this case (“I’m fine with a summary judgment in this case”). Complainant Email, Feb. 22, 2024.

Beginning April 8, 2024, Mr. Pratapas sent a series of emails containing harassing and inappropriate language directed at the hearing officer, Board staff, and other unknown individuals who are not parties to this case. On April 25, 2024, the hearing officers assigned to this matter cautioned Mr. Pratapas that “neither the Board Members nor the hearing officers will tolerate intemperate language and threats.” Hearing Officer Order, Apr. 25, 2024, citing Paul Christian Pratapas v. Lexington Trace LLC and Lexington Trace 2 LLC, PCB 24-42.

The Board electronically served Mr. Pratapas and counsel for Homes the hearing officer order on April 25, 2024. Later that day, Mr. Pratapas sent a series of emails to the hearing officers in several pending Board cases and counsel for Homes, culminating in an email to one of the hearing officers stating complainant would not participate in the Board’s “kangaroo kourt”. Those emails have been docketed in this matter.

On May 1, 2024, the hearing officer conducted a status conference, the report of which states that “complainant did not provide a telephone number and did not participate.” Hearing Officer Order, May 1, 2024.

CITIZEN COMPLAINT

The complaint alleges violations of Section 5/12(a) and (d) of the Environmental Protection Act (Act) at a construction site in Naperville, Illinois. 415 ILCS 5/12(a), (d) (2022); Comp. at 3. Mr. Pratapas alleges that these violations were caused by Homes’ construction of townhomes on a “very small patch of land adjacent to a tributary of a Water of the United States and/or the Naperville MS System”. Comp. at 3.

Mr. Pratapas describes the alleged water pollution as “a large, corrugated pipe sat on top

of the snow at an angle leading from the build area into what [he] would guess is a tributary of a Water of the United States or the Naperville MS3/4.” *Id.*

The Board’s form complaint also asks the complainant to “[d]escribe the duration and frequency of the alleged pollution” as specifically as he or she reasonably can. Comp. at 3. Here, the complaint states only “[s]ee included photographs” but does not include any photographs. The complaint does include a copy of an email exchange between Homes and Mr. Pratapas regarding a storm sewer pipe and correspondence between Homes and Mr. Pratapas. *Id.* at 11. The emails are dated February 26, 2021 and March 9, 2021.

The original complaint listed 10 different requests for relief. The Board’s August 3, 2023 Order struck seven of these requests because it lacks authority to grant them, or they were moot. *See Paul Christian Pratapas v. Lakewest Custom Homes, Rathbun Czervenyak & Kozol LLC, and @properties*, PCB 23-67, slip op. at 5-6 (Aug. 3, 2023).

The complaint proceeded to hearing as to Homes on the following requests for relief that the Board has authority to grant:

1. Find that the Respondent has violated their permits;
 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; and
- * * *
4. An order stating SWPPP plan(s) for phasing, curbside protection, concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual.

Comp. at 7; *see also Pratapas v. Lakewest Custom Homes*, PCB 23-67, slip op. at 7.

MOTION FOR SUMMARY JUDGMENT

Homes seeks summary judgment against Mr. Pratapas. Homes argues that the undisputed facts of the case demonstrate that Homes did not cause, threaten, allow, or threaten the discharge of any contaminants into the environment to cause water pollution in Illinois or deposit any contaminants upon the land. Mot. at 4. Homes argues that the mere presence of a corrugated pipe on a construction site that is not connected to anything, with no contaminants in the pipe, flowing through the pipe, or deposited by the pipe, is not a violation of Section 5/12(a) or (d) of the Act. *Id.* Homes supports its motion with the affidavit of Daniel Jurjovec, its President, attesting that his personal inspection of the site found no contamination as alleged in the complaint. *See id.*, Exh. 4 (Jurjovec Aff.). Accompanying the affidavit were photographs of a corrugated pipe in the snow taken by Mr. Pratapas (Exhibit A), and photographs of the same corrugated pipe in the snow taken by Mr. Jurjovec (Exhibit B).

A party has 14 days from receipt of the motion for summary judgment to respond. 35 Ill. Adm. Code 101.516(a). If no response is filed, “the party waives objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d); see People v. Env’tl Health and Safety Svcs., Inc., PCB 05-51, slip op. at 13 (July 23, 2009). Mr. Pratapas did not respond to Homes’ motion or file a motion to extend the time to respond within 14 days of October 17, 2023, the date that Homes filed the motion. The Board finds that by failing to timely respond to the People’s motion for summary judgment, Mr. Pratapas waived any objection to the Board granting the motion for summary judgment.

The Board notes that in his February 22, 2024 email, Mr. Pratapas indicated he consented to summary judgment in this case. The Board further notes that in this same email, Mr. Pratapas asked that “Respondent [be required] to produce and provide the board [sic] with a copy of the threatening letter sent certified mail to my Parents’ house so the board [sic] can properly assess the need for sanctions and/or referral to the Illinois Bar Association.” Complainant Email, Feb. 22, 2024. However, Mr. Pratapas did not provide a copy of this alleged threatening letter sent to his parents or indicate how it is relevant to this matter before the Board. See 35 Ill. Adm. Code 101.614. The Board therefore has no authority to address this request.

Statutory and Regulatory Provisions Allegedly Violated

Section 12(a) of the Act provides that no person shall:

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. 415 ILCS 5/12(a) (2022).

Section 12(d) of the Act provides that no person shall “[d]eposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.” 415 ILCS 5/12(d) (2022).

Standards for Summary Judgement

Under its procedural rules, the Board grants summary judgment when “the record, including pleadings, depositions, and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.” 35 Ill. Adm. Code 101.516(b). As this standard mirrors the standard that applies in Illinois trial courts, cases interpreting Illinois’ summary judgment standard can inform how the Board interprets its own standard.

“The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine question of material fact exists.” Illinois Environmental Protection Agency v. Illinois Pollution Control Bd., 386 Ill. App. 3d 375, 391 (3rd Dist. 2008). “In determining whether a genuine issue of material fact exists, the pleadings, depositions,

admissions and affidavits must be construed strictly against the movant and liberally in favor of the opponent.” Adames v. Sheahan, 233 Ill. 2d 276, 295-96 (2009). A genuine issue of material fact precluding summary judgment exists when “the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts.” *Id.* at 296. Summary judgment “is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt.” *Id.*

“In a summary judgment proceeding, the burden of persuasion is always on the moving party to establish that there are no genuine issues of material fact and that moving party is entitled to judgment as a matter of law.” Performance Food Group Co., LLC v. ARBA Care Center of Bloomington, LLC, 2017 IL App (3d) 160348, ¶ 18. “The burden of production, however, may shift during the course of the proceedings.” *Id.* “Initially, the burden of production is on the moving party.” *Id.*

The party moving for summary judgment may meet its initial burden of production by “presenting facts which, if uncontradicted, would entitle it to judgment as a matter of law.” Estate of Sewart, 236 Ill. App. 3d 1, 8 (1st Dist. 1992). Once the party moving for summary judgment “produces such evidence, the burden of production shifts to the party opposing the motion, who . . . is required to come forth with some facts which create a material issue of fact.” *Id.* Although the party opposing the motion “need not prove her case at this point, she must provide some factual basis which would arguably entitle her to a judgment under the applicable law.” *Id.* If the party opposing the motion “fails to produce such evidence, summary judgment is properly granted.” *Id.*

DISCUSSION

On summary judgment, to determine whether a genuine issue of material fact exists, the Board must construe the record strictly against Homes as movant and liberally in favor of Mr. Pratapas as non-movant. Doing so, the Board finds no genuine issue of material fact. The only evidence in the record is the affidavit of Daniel Jurjovec, Homes’ President. Mr. Jurjovec’s affidavit states that on February 26, 2021, he investigated the area and the corrugated pipe described by Mr. Pratapas and shown in the photos that Mr. Pratapas emailed to Homes on that day. Jurjovec Aff. at 1; *see also id.*, Exh. A. Mr. Jurjovec’s affidavit further states that Mr. Jurjovec personally inspected the site, pulled the corrugated pipe off the snow, and discovered that the pipe in question was a portion of unused storm sewer pipe that the sewer contractor left onsite inside the construction silt fence. *Id.*; *see also id.*, Exh. B. Mr. Jurjovec attested that this corrugated pipe was a section of unused storm sewer pipe that was not and never had been connected or used in construction. *Id.* at 1-2. Mr. Jurjovec further attested that he determined the unused section of sewer pipe did not contain any contaminants, and that it was not discharging or depositing contaminants into the environment and had not discharged or deposited contaminants into the environment. *Id.* at 2.

The sole piece of evidence in the record, the affidavit of Mr. Jurjovec, attests that the section of pipe left on the site was not causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution, nor was it

discharging or depositing contaminants into the environment, nor had it done so. Jurjovec Aff. at 2; 415 ILCS 5/12(a), (d) (2022). Mr. Pratapas did not contest this evidence. Therefore, the Board finds that the evidence in the record supports a finding of no violation of Section 12(a) and (d) of the Act by Homes.

CONCLUSION

Given the undisputed evidence in this matter, the Board finds that there is no genuine issue of material fact and that Homes is entitled to judgment as a matter of law. The Board accordingly grants Homes' motion for summary judgment against Mr. Pratapas. The Board finds that no violation of the Act or Board's rules was committed by Homes as alleged in Mr. Pratapas' complaint.

The Board further finds that by failing to appear at status conferences and for continuing to send highly inappropriate emails, Mr. Pratapas has unreasonably failed to comply with the directives of the Board's hearing officers' February 22, 2024 and April 25, 2024 orders. Under that order and the Board's authority to impose sanctions (35 Ill. Adm. Code 101.800), the Board dismisses this complaint with prejudice and closes the docket.

This opinion constitutes the Board's findings of fact and conclusions of law.

IT IS SO ORDERED.

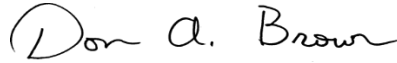
Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 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 opinion and order on June 20, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board