

ILLINOIS POLLUTION CONTROL BOARD
June 7, 2007

KYLE NASH,)
)
Complainant,)
)
v.) PCB 07-97
) (Citizens Enforcement - Noise)
LOUIS JIMENEZ,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On March 26, 2007, Kyle Nash filed a complaint (Comp.) against Louis Jimenez. *See* 415 ILCS 5/31(d) (2004); 35 Ill. Adm. Code 103.204. Nash alleges that Jimenez violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2004)). Nash further alleges that Jimenez violated these provisions by placing wind chimes on his front porch and in the back yard. The complaint concerns Nash's property located at 1630 W. 33rd Place, Chicago, Cook County. The Jimenez property is located at 1628 W. 33rd Place, Chicago, Cook County.

Section 31(d)(1) of the Act allows any person to file a complaint with the Board. 415 ILCS 5/31(d)(1) (2004). Section 31(d) further provides that "[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing." *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. 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." *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). The Board has not received such a motion from Jimenez. However, for the reasons stated below, the Board today reserves ruling on whether Nash's complaint is frivolous or duplicative.

The Board's procedural rules provide that "[p]roof of service of initial filings must be filed with the Board upon completion of service." 35 Ill. Adm. Code 101.304(b). The rules further provide that "[p]roof of proper service is the responsibility of the party filing and serving the document." 35 Ill. Adm. Code 101.304(d). With the complaint, Nash filed a form certificate indicating that Nash served Jimenez by personal service on March 25, 2007. That form certificate directed Nash to either attach an affidavit or file it later with the Board's clerk. To date, the Board has not received proof that Nash has served Jimenez with a copy of the complaint.

Accordingly, the Board directs Nash to file proof of service by July 9, 2007, which is the first business day after the 30th day from the date of this order. If Nash fails to file proof of

service on or before that date, the Board may dismiss this proceeding. *See* 35 Ill. Adm. Code 101.304(d).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board