

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2007

RANDY GRANT, DONALD GRANT, and)
PATRICIA WALLACE,)
)
Complainants,)
)
v.) PCB 07-145
) (Citizens Enforcement - Noise)
CLINE RESOURCE AND DEVELOPMENT)
COMPANY and MACH MINING LLC,)
)
Respondents.)

ORDER OF THE BOARD (by A.S. Moore):

On June 20, 2007, Randy Grant, Donald Grant, and Patricia Wallace (collectively, petitioners) filed a complaint (Comp.) against Cline Resource and Development Company (Cline) and Mach Mining LLC (Mach Mining) (collectively, respondents). See 415 ILCS 5/31(d) (2006); 35 Ill. Adm. Code 103.204. Petitioners allege that respondents violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2006)) and Sections 900.102, 901.102(a), 901.102(b), and 901.106 of the Board's regulations (35 Ill. Adm. Code 900.102, 901.102(a), 901.102(b), and 901.106). Petitioners further allege that respondents violated these provisions in the operation of a coal mine, coal mine ventilation fan, and heavy equipment at Liberty School Road in Johnston City, Williamson County.

Section 31(d) of the Act allows any person to file a complaint with the Board. 415 ILCS 5/31(d) (2006). 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 either of the two respondents. However, for the reasons stated below, the Board today reserves ruling on whether petitioners' 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, petitioners filed a form certificate indicating that petitioners served Cline and Mach Mining by certified mail on an unspecified date. That form certificate directed petitioners to attach a copy of the certified mail

receipt, if available, or to file that receipt later with the Board's clerk. To date, the Board has not received proof that petitioners have served either respondent with a copy of the complaint.

Accordingly, the Board directs petitioners to file a certified mail receipt or other proof of service of the complaint on the respondents by Monday, September 10, 2007, which is the first business day after the 30th day from the date of this order. If petitioners fail 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 August 9, 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 extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board