

ILLINOIS POLLUTION CONTROL BOARD  
August 19, 2010

TERRI D. GREGORY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 10-106  
 ) (Citizens Enforcement – Air, Noise)  
 REGIONAL READY MIX, LLC, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by G.T. Girard):

On June 18, 2010, Terri D. Gregory (Gregory) filed a complaint (Comp.) against Regional Ready Mix, LLC (Regional). The complaint concerns alleged air and noise emissions from Regional’s cement mixing facility, which is located at 415 River Road in Rochelle, Ogle County. For the reasons below, the Board finds that the complaint is frivolous and otherwise insufficient. The Board therefore declines to accept the complaint for hearing. The Board grants Gregory leave to file an amended complaint within 30 days to cure the deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2008); 35 Ill. Adm. Code 103. In this case, Gregory alleges that Regional’s operation causes air and noise pollution in a residential neighborhood. Comp. at 2. Specifically, Gregory states that “cement dust is inside [her] house everywhere,” “[d]estroying [her] furnishings, furnace, [and air conditioning] unit,” and that the dust sticks to the outside of her house, causing damage to siding and gutters, and sticks to her car while parked in her garage. *Id.* Gregory further alleges that trucks, the cleaning out of mixers, and tractors emit noise. *Id.* According to Gregory, she “can’t even open [her] windows or doors in [the] summer to enjoy the fresh air.” *Id.* Gregory maintains that these operations, which have occurred since June 2006, start as early as 7 a.m. and continue to as late as 9:00 p.m., weekdays and Saturdays and some Sundays and holidays. *Id.* Gregory emphasizes that that she has had to live with “closed doors and windows.” *Id.* at 3.

Gregory alleges that Regional violated numerous provisions of the Act: Sections 3.115, 8, 23, 24, 25b-1, 25b-2, and 39.2 (415 ILCS 5/3.115, 8, 23, 24, 25b-1, 25b-2, 39.2 (2008)). Comp. at 2. As relief, Gregory seeks a Board order requiring Regional to shut down and relocate and to clean up the locations at which it has operated. *Id.* at 3.

Section 31(d)(1) of the Act provides that “[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2008); *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). Regional has filed no motion, though on July 16, 2010, Regional filed an answer denying the alleged violations.

The Board finds Gregory’s complaint frivolous because it “fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. Many of the sections of the Act allegedly violated by Regional are definitions or legislative findings. *See* 415 ILCS 5/3.115 (definition), 8 (legislative declaration), Section 23 (legislative declaration), 25b-1 (legislative finding) (2008). None of these provisions can be violated. Strunk v. Williamson Energy, LLC (Pond Creek Mine #1), PCB 07-135, slip op. at 8, 9 (Sept. 20, 2007); Patterman v. Boughton Trucking and Materials, Inc., PCB 99-187, slip op. at 2 (Sept. 23, 1999). Further, Section 39.2 of the Act (415 ILCS 5/39.2 (2008)) sets forth the local siting review procedures for proposed pollution control facilities and is not “properly the subject of an enforcement action.” Nelson v. Kane County Board, PCB 95-56, slip op. at 2 (May 18, 1995) (finding that alleged violation of Section 39.2 fails to state a claim upon which relief can be granted, rendering action frivolous).

The complaint does allege the violation of two sections of the Act that are capable of being violated: Section 24 and Section 25b-2 (415 ILCS 5/24, 25b-2 (2008)). However, “[t]he appellate court has previously stated that Section 24 is not a general statutory prohibition.” Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002), citing Shepard v. Northbrook Sports Club and the Village of Hainesville, 272 Ill. App 3rd 764, 768, 651 N.E.2d 555, 558 (2nd Dist. 1995). Section 24 prohibits the emission of noise “*so as to violate any regulation or standard adopted by the Board under this Act.*” Shepard, 272 Ill. App. 3rd at 768, 651 N.E.2d at 558, quoting 415 ILCS 5/24 (2008) (emphasis provided by court). Accordingly, “Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24.” Rulon, PCB 03-7, slip op. at 4, citing Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998). The complaint does not allege that Regional has violated any Board noise regulations or standards.

Section 25b-2 of the Act (415 ILCS 5/25b-2 (2008)) requires the filing of toxic chemical release forms. The complaint does not allege any facts related to the alleged violation of this provision. In this regard, the Board finds that the complaint does not meet the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204(c)(2).

For the reasons above, the Board finds that Gregory’s complaint “fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202 (definition of “frivolous”). Accordingly, the complaint is frivolous. Additionally, the request for relief in Gregory’s complaint is unduly vague. Gregory asks “for them to be shut down and to relocate” and that Regional be required to “complete clean-up of the locations they have operated on for the past 4 years.” *Id.* at 3. It is unclear from this request what Gregory seeks to have shut down, what Gregory seeks to have relocated, and which locations Gregory seeks to have remediated. The statement of the remedy requested requires greater specificity. *See* 35 Ill. Adm. Code 103.204(c)(3).

Under these circumstances, the Board cannot accept the complaint for hearing. To remedy the deficiencies described above, the Board allows Gregory until September 20, 2010, which is the first business day following the 30th day after the date of this order, to file an amended complaint with the Board. The amended complaint must comply with the content requirements of the Board's procedural rules. *See, e.g.*, 35 Ill. Adm. Code 103.204. Further, a copy of the amended complaint must be served upon Regional, and proof that Regional was so served must be filed with the Board. *See* 35 Ill. Adm. Code 101.302, 101.304. The time periods for Regional to file any motion attacking, or any answer to, the amended complaint will commence upon Regional's receipt of the amended complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b); *see also* 35 Ill. Adm. Code 103.204(e).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 19, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board