

ILLINOIS POLLUTION CONTROL BOARD
November 18, 2010

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

ORDER OF THE BOARD (by G.L. Blankenship):

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.

On August 19, 2010, the Board declined to accept the complaint for hearing but gave Gregory 30 days to file an amended complaint. Gregory filed an amended complaint (Am. Compl.) on September 16, 2010. On October 7, 2010, the Board declined to accept the amended complaint for hearing and gave Gregory 30 days to file a second amended complaint. The Board also directed the Board clerk to provide Gregory with a copy of its air and noise regulations. On November 8, 2010, Gregory filed a second amended complaint (Sec. Am. Compl.).

For the reasons below, the Board finds the second amended complaint frivolous and declines to accept it for hearing. The Board dismisses this case and closes the docket.

Statutory Background

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. 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 filed no motion to either the complaint, the amended complaint, or the second amended complaint, though on July 16, 2010, Regional filed an answer denying the alleged violations in the original complaint. No answer was filed to the amended complaint or the second amended complaint.

Original Complaint

In Gregory's original complaint, 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 sought a Board order requiring Regional to shut down and relocate and to clean up the locations at which it has operated. *Id.* at 3.

On July 16, 2010, Regional filed its answer in which it denied the alleged violations of the complaint.

Summary of Board Ruling on Original Complaint

On August 19, 2010, the Board found 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 which cannot be violated (415 ILCS 5/3.115 (definition), 8 (legislative declaration), Section 23 (legislative declaration), 25b-1 (legislative finding) (2008)) or are not properly the subject of an enforcement action (415 ILCS 5/39.2 (2008)).

The complaint did 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, Section 24 is not a general statutory prohibition. *See 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 found 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 these reasons, the Board found the original complaint frivolous and the request for relief to be unduly vague.¹ The Board granted Gregory until September 20, 2010 to file an amended complaint to remedy the deficiencies described above.

Amended Complaint

Gregory filed an amended complaint on September 16, 2010. Gregory states that "Regional is violating Section 24 and Section 25-b (415 ILCS 5/24, 25-b (2008)) for noise and Title II: Air Pollution (415 ILCS 5/8 [(2008)])." Am. Compl. at 2. Gregory argues that "Regional[]s cement dust is blowing in the wind and settling on our home – inside and out." *Id.* Gregory states that this dust is emitted from both the "concrete batching plant and from the trucks." *Id.* Gregory is also concerned over the effects of the dust on her mother (who lives with Gregory, is 72 years old and has been diagnosed with Chronic Obstructive Pulmonary Disease and Congestive Heart Failure) and grandson (born July 9, 2010, with Congenital Adrenal Hyperplasia which recommends he stay away from dusty areas). *Id.* Gregory finds that the Regional location is too close to her home and that "the noise from Regional's cement trucks, tractors, loading [and] unloading, back-up beepers, air-gun (air compressor) plant operation, washing out the mixer, the whole operation is too noisy." *Id.* Gregory notes that she has to keep her windows and doors shut "for the noise will drive you crazy." *Id.* Gregory points out that she has lived in her home since January, 1999, but has no longer been able to enjoy her home since Regional started operation. *Id.*

Gregory states that the dust and noise has been occurring on a weekly basis from July, 2006 (the month that Gregory notes Regional began operating) to the present. *Id.* Gregory claims that Regional operates from Monday to Saturday as early as six a.m. and as late as dusk. *Id.* According to Gregory, the "dust, noise [and] eye-sore" of the Regional facility has made her depressed and her doctor has had to put her on anti-depressants and sleep-aid. *Id.* at 3. Gregory feels that her household has been "dramatically effected" since Regional moved into the location. *Id.*

Gregory seeks for Regional to be in full compliance with air and noise regulations. *Id.* Gregory also wishes to ensure that they have the legal right to be operating so close to her property, especially since no written or verbal notice was provided to her before the facility moved into the location. *Id.* Gregory states that, if Regional is there legally, she wishes for "some trees to be planted to stop some of the noise and dust" or that Regional "at least speak to [Gregory] to see how [they] can fix this together." *Id.*

¹ 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.

Summary of Board Ruling on Amended Complaint

On October 7, 2010, the Board found the amended complaint frivolous for failing “to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. The complaint claims that Regional has violated Section 24 and Section 25-b of the Act (415 ILCS 5/24, 25-b (2008)) and Title II: Air Pollution (415 ILCS 5/8 (2008)). The Board again noted that, for a claim to exist under Section 24 of the Act, Gregory must indicate specific violations of the Board’s regulations or standards, located under Title 35 of the Illinois Administrative Code. Gregory did not indicate any Board noise regulations that have been violated.

Similarly, the Board found Gregory’s complaint frivolous where it stated that Regional is violating “Title II: Air Pollution.” Am. Compl. at 2, citing 415 ILCS 5/8 (2008). The Board noted that while a complaint can “be heard by the Board without having to identify the name of the chemical emitted, the specific operation in a plant that emitted the chemical on a specific day, and the precise quantity of the chemical emitted” (*Finley, et al. v. IFCO ICS-Chicago, Inc.*, PCB 02-208, slip op. at 4 (Aug. 8, 2002)), the complaint “shall specify the provision of the Act or the rule or regulation ... under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation.” *Id.*, citing 415 ILCS 5/31(c) (2000). The Board explained that it is not enough for Gregory to simply cite to Title II and expect Regional to prepare a defense for Title II in its entirety. Gregory must cite to the specific “provision [or provisions if more than one violation exists] of the Act or the rule or regulation ... under which [Regional] is said to be in violation[.]”

The Board noted in its discussion that Gregory again claimed that Regional violated Section 25b-2 of the Act (415 ILCS 5/25b-2 (2008)) but did not allege any facts related to the alleged violation of this provision. The Board found that this claim frivolous and unable to meet the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204(c)(2).

Second Amended Complaint

Gregory filed a second amended complaint on November 8, 2010. Gregory again states that Regional has violated Sections 24 and 25-b of the Act. Sec. Am. Compl. at 2, citing 415 ILCS 5/24, 25-b (2008). Gregory further explains that “Regional[’]s operation is causing air (cement dust) Title 35 Subtitle B and Noise Title 35 Subtitle H pollution . . . to our property . . . which we are just 80 feet from Regional[’]s plant. Cement dust and the noise from Regional[’]s equipment is a health factor.” Sec. Am. Compl. at 2.

Gregory notes that Regional has been in operation since July 2006 and that the dust and noise its operation causes began immediately upon starting and has been ongoing to the present. *Id.* Gregory states that Regional operates Monday to Saturday as a fully operational ready mix plant in Spring, Summer, Fall and some Winter days. *Id.*

Gregory alleges that Regional is violating Section 23 of the Act and that “[t]he Gregory residence has been severely affected by Regional[’]s presence.” *Id.* at 3. Gregory believes that “Regional needs (the Board) to take pollution abatement measures – Title VI Noise Sec[ti]on] 25 .

...”² Gregory also refers to Section 103.212(d) of the Board’s procedural rules as further relief that she seeks.³

Board Discussion on Second Amended Complaint

The second amended complaint is frivolous because it fails “to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. The Board once again points out that, for a claim to exist under Section 24 of the Act, Gregory must indicate specific violations of the Board’s regulations or standards, located under Title 35 of the Illinois Administrative Code. Gregory indicates in her complaint that Regional is causing air (35 ILCS Subtitle B) and noise (35 ILCS Subtitle H) pollution but does not indicate which provisions under these subtitles are being violated. As noted in the Board’s previous order, a complaint “shall specify the provision of the Act or the rule or regulation . . . under which such person is said to be in violation . . .” 415 ILCS 5/31(c) (2008); *see also* 35 Ill. Adm. Code § 103.204(c)(1). It is not enough that Gregory cited to entire subtitles under the Act. Rather, Gregory must indicated specific provisions under these subtitles that have been violated. Gregory has not done so and Regional should not be expected to prepare a defense of these subtitles in their entirety. Gregory’s only other citation is to Section 23 of the Act (415 ILCS 5/23) which is a legislative declaration and is not properly the subject of an enforcement action (415 ILCS 5/39.2 (2008)).

The Board again notes that Gregory claims Regional has violated Section 25b-2 of the Act (415 ILCS 5/25b-2 (2008)) but again does not allege any facts related to the alleged violation of this provision. The Board finds this claim frivolous and not meeting the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204(c)(2).

The Board finds the second amended complaint frivolous and dismisses this case. Gregory may file a new complaint at which time that complaint would be treated as a new case and assigned a new docket number.

Conclusion

For the reasons above, the Board finds that Gregory’s second amended complaint “fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. Accordingly, the complaint is frivolous and the Board cannot accept the complaint for hearing. The Board dismisses this case. If Gregory so chooses, a new complaint may be filed which will be treated as a new case.

IT IS SO ORDERED.

² Gregory cites to the portion of Section 25 of the Act which states “[t]he Board shall, by regulations under this section, categorize the types and sources of noise emissions that unreasonably interfere with enjoyment of life and shall prescribe for each such category the maximum permissible limits on such noise emissions.” 415 ILCS 5/25.

³ 35 Ill. Adm. Code § 103.212(d) states “[t]he Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.”

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 18, 2010, 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 Therriault, Assistant Clerk
Illinois Pollution Control Board