

ILLINOIS POLLUTION CONTROL BOARD
December 2, 2010

JON CHVALOVSKY,)
)
 Complainant,)
)
 v.) PCB 10-13
) (Citizens Enforcement - Noise)
 COMMONWEALTH EDISON, FRANK)
 CLARK, and TIM JOHNSON,)
)
 Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

This is a citizen's enforcement action. Jon Chvalovsky, who resides at 9251 Latrobe Avenue in Skokie, Cook County, filed a complaint against Commonwealth Edison, Frank Clark, and Tim Johnson (respondents). The complaint concerns alleged noise emissions from a transformer behind Mr. Chvalovsky's house and transmission lines in the vicinity of Church Street and Laramie Avenue in Skokie, Cook County.

For the reasons below, the Board finds that the complaint is frivolous. The Board therefore declines to accept the complaint for hearing. The Board grants Mr. Chvalovsky leave, however, until January 3, 2011, to file an amended complaint to cure the deficiencies identified in this order. The Board will briefly describe the procedural history of this case before discussing Mr. Chvalovsky's complaint and the Board's ruling.

PROCEDURAL HISTORY

On August 8, 2009, Mr. Chvalovsky filed the complaint (Comp.) *pro se*. On September 4, 2009, respondents filed the first of their motions for extension of time to answer or otherwise respond to the complaint.¹ Mr. Chvalovsky filed no response to the motion, which the hearing officer granted on September 29, 2009, extending the deadlines for respondents to answer or otherwise respond to November 6, 2009.

Over the course of the next year, respondents filed four more extension motions, none of which were objected to by Mr. Chvalovsky. The last such motion was granted by hearing officer order of October 20, 2010, extending the deadlines for respondents to answer or otherwise respond to November 19, 2010. On November 19, 2010, respondents filed an answer to the complaint.

¹ The motion was accompanied by an appearance of counsel on behalf of all respondents.

DISCUSSION

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, Mr. Chvalovsky complains of a power station "transformer buzzing . . . in back of [his] house in transmission lines on Church & Laramie, Skokie, IL." Comp. at 2; *see also id.* at 3. According to the complaint, the alleged pollution has persisted "since installed" and occurs "7 days a week 24 hours a day." *Id.* at 3; *see also id.* at 2. Mr. Chvalovsky maintains that the buzzing noise "keeps [him] from going to sleep" at night. *Id.* at 4; *see also id.* at 1. The complaint alleges the violation of Sections 23, 24, and 25 of the Act (415 ILCS 5/23, 24, 25 (2008)). *Id.* at 3. As relief, Mr. Chvalovsky seeks "[s]ome kind of sound proofing to muffle noise to quiet the buzzing." *Id.* at 4.

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). Respondents have filed no such motion.

As noted, Mr. Chvalovsky's complaint alleges the violation of Sections 23, 24, and 25 of the Act (415 ILCS 5/23, 24, 25 (2008)). Section 23 is a legislative declaration, while Section 25 is an authorization for rulemaking. Neither of these provisions can be violated. Strunk v. Williamson Energy, LLC (Pond Creek Mine #1), PCB 07-135, slip op. at 9 (Sept. 20, 2007) (Section 23); Gifford v. American Metal Fibers, Inc., PCB 08-13, slip op. at 3-4 (Sept. 20, 2007) (Section 25).

Section 24 is capable of being violated, but "[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 3d 764, 768, 651 N.E.2d 555, 558 (2nd Dist. 1995). Instead, 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. 3d at 768, 651 N.E.2d at 558, quoting 415 ILCS 5/24 (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). Mr. Chvalovsky's complaint does not allege the violation of any Board noise regulation or standard.

Additionally, as pled in the complaint, both the timeframe in which the alleged pollution began and the frequency of the alleged sleep prevention are unclear. The Board's procedural rules require greater specificity. *See* 35 Ill. Adm. Code 103.204(c)(2).

Under these circumstances, the Board finds that Mr. Chvalovsky's complaint "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202. The complaint is therefore "frivolous" and is not accepted for hearing.

To remedy the deficiencies described above, the Board allows Mr. Chvalovsky until January 3, 2011, which is the first business day following the 30th day after the date of this order, to file an amended complaint with the Board. *See* 35 Ill. Adm. Code 101.302. Failure to so file will subject this case to dismissal. The amended complaint must comply with the content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 103.204. Further, a copy of the amended complaint must be served upon respondents, and proof that respondents were so served must be filed with the Board. *See* 35 Ill. Adm. Code 101.304. The time periods for respondents to file any motion attacking, or any answer to, the amended complaint will commence upon 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 December 2, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board