

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2014

MAURICE WHISENHUNT,)
)
 Complainant,)
)
 v.) PCB 14-34
) (Citizens Enforcement - Noise)
 JEFF MOORE,)
)
 Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

On November 4, 2013, Maurice Whisenhunt (complainant) filed a *pro se* complaint (Comp.) against Jeff Moore (respondent). The complaint alleged noise pollution violations from two grain bins with dryers located east of complainant's property at 16147 East Saddle Club Road, Bonnie, Jefferson County. On December 9, 2013, respondent, through his attorney, filed an answer to the complaint. For the reasons discussed below, the Board finds the complaint is frivolous, does not accept the complaint for hearing, but provides a time period for filing an amended complaint.

SUMMARY OF COMPLAINT AND ANSWER

The complaint alleges that two grain bins with dryers owned by respondent and located east of complainant's property line, cause noise that results in "loss of sleep" and interferes "with peace of mind, to a point one does not want to be in the yard." Comp. at 4. Complainant states that the noise has occurred for "[a]pproximately 6 years" with a very high frequency, sometimes for 24 hours a day. Specifically, the complaint alleges violations of Section 23 of Title VI of the Environmental Protection Act (Act) (415 ILCS 5/23 (2012)). The complaint requests that the Board order respondent to, "change it's [sic] operation" in reference to the grain bins and, "put the dryer on his side to the east side." Comp. at 4. Respondent's answer admits to the location of the grain bins and admits to the use of the grain bins. Ans. at 1-2. The answer denies violations of Section 23 of the Act. *Id.*

DISCUSSION

Under the Act, any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2012); 35 Ill. Adm. Code 103. In this case, the complainant alleges noise pollution that has resulted in the loss of sleep and disruption of complainant's peace-of-mind. Comp. 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) (2012); *see also* 35 Ill. Adm. Code 103.212(a). A citizen 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.” 35 Ill. Adm. Code 101.202.

Section 23 of the Act is a legislative declaration that cannot be violated. Strunk v. Williamson Energy, LLC (Pond Creek Mine #1), PCB 08-13, slip op. at 3-4 (Sept. 20, 2007). Since the complaint alleges violations of only Section 23 of the Act, and Section 23 of the Act cannot be violated, the Board finds that the complaint is frivolous pursuant to Section 101.202 of the Board’s procedural rules. 35 Ill. Adm. Code 101.202. Therefore, the Board cannot accept the complaint for hearing.

To remedy the deficiencies described above, the Board will allow respondent to file an amended complaint with the Board alleging a violation of another section of the Act. Any such amended complaint must be filed by February 10, 2014, which is the first business day following the 30th day after the date of this order. Failure to file an amended complaint before that date 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. In addition, a copy of any 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.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 9, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board