

FORMAL COMPLAINT PACKAGE

This formal complaint package of the Illinois Pollution Control Board (Board) consists of four parts:

- Explanatory Materials
- Formal Complaint—Form
- Notice of Filing—Form
- Documentation of Service—Form

These materials are for general informational purposes only and do not constitute legal advice or substitute for the provisions of any statute, rule, or regulation. This formal complaint package is available on the Board's website (www.ipcb.state.il.us) and from the Board's Clerk.

EXPLANATORY MATERIALS

Any person can file a formal complaint with the Board. When you file a formal complaint, you, as the “complainant,” start an enforcement action before the Board. A formal complaint filed by anyone other than the Illinois Attorney General or a State's Attorney (e.g., one or more individual citizens, an association, a citizens group, or a corporation) is known as a “citizen's enforcement action.”

By filing a formal complaint, you assume the responsibility to prove to the Board that the individual or entity you are complaining about, called the “respondent,” has committed a violation. Your formal complaint must specifically allege which provision of the following you believe the respondent has violated:

- The Environmental Protection Act (Act)
- The Board's regulations
- A Board order
- A permit issued by the Illinois Environmental Protection Agency (IEPA)

IEPA is not required to investigate your allegations. The Board cannot provide you with legal advice. If the Board accepts your formal complaint, you will generally need to prepare and file other documents with the Board, as well as formally present your case at a public hearing. Board employees cannot prepare these documents for you or speak on your behalf.

Preparing, Filing, and Serving a Formal Complaint

To start an enforcement action before the Board, you must take the following steps:

Step 1—Prepare three documents: a formal “complaint”; a “notice of filing”; and “documentation of service.”

Step 2—“File” (e.g., deliver by U.S. Mail) the three documents from Step 1 with the Board’s Clerk.

Step 3—“Serve” (e.g., deliver by U.S. Mail with a recipient’s signature recorded) copies of the three documents from Step 1 on the alleged polluter (i.e., the respondent).

Step 4—Step 4 is necessary only if the “documentation of service” that you filed as part of Step 2 showed that service on the respondent had been *initiated* but not yet *completed* (i.e., at Step 2, you did not yet have, e.g., the U.S. Postal Service’s delivery confirmation signed by the recipient). Therefore, if you did not have the documentation of *completed* service when you performed Step 2, you must perform Step 4: file with the Board’s Clerk another “documentation of service”—when that documentation becomes available to you—showing that service on the respondent was *completed*.

Each of these steps is further explained below.

Step 1—Prepare the Documents. To prepare your Formal Complaint, Notice of Filing, and Documentation of Service, you may use the forms that follow or create your own. Any documents you create must contain all of the information called for by the forms. A Formal Complaint sets forth your allegations against the respondent and the relief you would like the Board to order. A Notice of Filing notifies the respondent that you have filed the complaint with the Board. The Notice of Filing form in these materials also includes information specific to citizen’s enforcement actions. Documentation of Service provides written proof to the Board that you have served the complaint on the respondent. The Board’s requirements for the *contents* of these three documents are set forth in its procedural rules (35 Ill. Adm. Code 101.302(b)(3), 101.304(d)(1)-(2), 101.Appendices D & E, 103.204), which are located on the Board’s website.

Step 2—File. “Filing” is the term used when a party (e.g., you as the complainant) delivers a document *to the Board’s Clerk* to be placed in the official record of the proceeding; “service” is the term used when a party delivers a copy of that same document *to another party* to the proceeding (e.g., the alleged polluter as the respondent). Once you have completed Step 1, you must “file” the Formal Complaint, the Notice of Filing, and the Documentation of Service with the Clerk. You may file these three documents in one of two ways: (1) in paper; or (2) electronically through the “Clerk’s Office On-Line” (COOL).

If you file in paper, the original of *each* of the three documents and three copies (4 total = 1 original + 3 copies) of *each* document must be delivered to the Clerk at the following address:

Pollution Control Board, Attn: Clerk
100 W. Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

The original of the paper Formal Complaint must bear the pen-and-ink signature of the person filing the document. You can file the paper documents with the Clerk by

delivering them in person, placing them in the U.S. Mail, or using a third-party commercial carrier (e.g., FedEx, UPS).

If you file each of the three documents electronically through COOL, no paper original or paper copy of any of the documents needs to be delivered to the Clerk. COOL is located on the Board's website. To file an electronic document (e.g., Microsoft Word, PDF), you must upload the document on COOL (not e-mail the document to the Clerk). You will first need to obtain a State of Illinois digital signature certificate—a link for doing so is available through COOL.

The Board's *filing* requirements for the Formal Complaint, the Notice of Filing, and the Documentation of Service are set forth in its procedural rules (35 Ill. Adm. Code 101.302, 101.1000-101.1050), which are located on the Board's website.

Step 3—Serve. As noted, the person you are complaining about is called the "respondent." Your formal complaint may identify more than one respondent. When you "file" the three documents with the Board's Clerk (Step 2), you must also "serve" a copy of each document on each respondent. Accordingly, for Step 3, you must deliver to each respondent one paper copy of the Formal Complaint, one paper copy of the Notice of Filing, and one paper copy of the Documentation of Service. You must serve these documents upon each respondent by (1) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; (2) a third-party commercial carrier with a recipient's signature recorded by the carrier upon delivery; or (3) personal service. Documentation of Service for each of these three types of service is described further below. Other types of service are permissible for other documents filed later in the proceeding and have different requirements for Documentation of Service.

The Board's *service* requirements for the Formal Complaint, the Notice of Filing, and the Documentation of Service are set forth in its procedural rules (35 Ill. Adm. Code 101.304), which are located on the Board's website.

Step 4—If You Have Not Already Done So, File Documentation Showing That Service Was Completed. You must provide the Board's Clerk with written "proof" that service of a copy of the Formal Complaint and Notice of Filing was *completed* on each respondent (e.g., certified mail return receipt signed by recipient). If you did not do this at Step 2, you must perform Step 4. Failure to file with the Clerk documentation of *completed* service will subject your complaint to dismissal.

Written proof that service of a document has been initiated or completed is called "Documentation of Service." Step 4 is unnecessary if the Documentation of Service that you filed with the Clerk as part of Step 2 showed that service on each respondent had not merely been initiated, but rather *completed* (i.e., received by the respondent or someone authorized to receive service for the respondent).

However, if you did not have the documentation of *completed* service when you performed Step 2, it would have been permissible for you—as part of Step 2—to file with the Clerk documentation of *initiated* service. Then, when the documentation of

completed service becomes available to you, you must file it with the Clerk. Accordingly, in these situations, you will end up filing with the Clerk both (1) documentation of *initiated* service (when you file your Formal Complaint) and (2) documentation of *completed* service (when that documentation becomes available to you).

“Documentation of Service” of a Formal Complaint

As explained in Step 3 above, there are only three permissible ways for you to serve your Formal Complaint on the respondent: U.S. Mail with recipient signature; third-party commercial carrier with recipient signature; or personal service. What constitutes Documentation of Service for each of these types of service is explained below. There is a Documentation of Service form at the end of these materials.

Recipient’s Signature Recorded by U.S. Postal Service or Third-Party Commercial Carrier. If you serve a Formal Complaint either by U.S. Mail with a recipient’s signature recorded upon delivery or by third-party commercial carrier with a recipient’s signature recorded upon delivery, your Documentation of Service is the delivery confirmation containing the recipient’s signature recorded by the U.S. Postal Service or the third-party commercial carrier—this constitutes documentation of *completed* service.

However, if the delivery confirmation containing the recipient’s signature is not available to you when you file the complaint, you must first provide—with the Formal Complaint filed with the Clerk—another form of Documentation of Service to prove that service has at least been *initiated*: an affidavit of service (for a non-attorney’s use & must be notarized) or a certificate of service (for an attorney’s use) describing how service had been *initiated*, but not yet *completed*. Then, when it becomes available to you, you must file the delivery confirmation containing the recipient’s signature and identify the Formal Complaint to which the signed delivery confirmation corresponds. See 35 Ill. Adm. Code 101.300(c)(2), 101.304(c)(2), (d)(2), 101.Appendix E.

Personal Service. For personal service of a formal complaint, Documentation of Service is either an affidavit of service (for a non-attorney’s use & must be notarized) or a certificate of service (for an attorney’s use) signed by the person who made the personal delivery. Either of these constitutes documentation of *completed* service.

However, if this signed affidavit or certificate is not available to you when you file the complaint, you must first provide—with the Formal Complaint filed with the Clerk—another form of Documentation of Service to prove that service had at least been *initiated*: an affidavit of service or a certificate of service describing how service had been *initiated*, but not yet *completed*. Then, when it becomes available to you, you must file the affidavit or certificate of service containing the signature of the person who made the personal delivery and identify the Formal Complaint to which the affidavit or certificate corresponds. See 35 Ill. Adm. Code 101.300(c)(1), 101.304(c)(2), (d)(1), 101.Appendix E.

Board Accepting Formal Complaint and Assigning Hearing Officer

Once the Clerk's Office receives your Formal Complaint, the Clerk will assign a docket number (e.g., PCB 20-139) to your case. After you have filed with the Clerk documentation that you completed service of your Formal Complaint on each respondent, the Board will schedule the complaint for initial review at a Board meeting. The Board first reviews a Formal Complaint to determine whether it is "duplicative" or "frivolous" within the meaning of Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202 (definitions of the terms "duplicative" and "frivolous")).

"Duplicative" means the Formal Complaint is identical or substantially similar to a case brought before the Board or another forum. See 35 Ill. Adm. Code 103.212(a) and item 10 of the Formal Complaint form. "Frivolous" means the complaint seeks 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. See 35 Ill. Adm. Code 103.212(a) and items 5 through 9 of the Formal Complaint form. For example, the Board has the authority to order a respondent to stop polluting and pay a fine, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant.

If the Board finds that a Formal Complaint is either duplicative or frivolous, the Board will dismiss the complaint and notify both you and each respondent of its decision. Under the Act, you may then seek relief from the alleged violation in the circuit court (see 415 ILCS 5/45(b)), or you may file an appeal of the Board's decision with the appellate court (see 415 ILCS 5/41(a)).

If, however, the Board finds that a Formal Complaint is neither duplicative nor frivolous, the Board will generally accept the case for hearing and assign a hearing officer. The hearing officer will then contact the parties to schedule times for holding telephone status conferences and a hearing. At hearing, you, as the complainant, must present evidence, such as sworn testimony, to prove that the respondent has committed the violation or violations alleged in the Formal Complaint.

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare the Formal Complaint and any motions or briefs, and present the case at hearing.

Costs

To file with the Board your Formal Complaint or any other document in the enforcement proceeding, you do not pay any filing fee to the Board. The Board will pay its own hearing costs, such as hearing room rental, court reporting fees, and hearing officer expenses. You are responsible for the costs that you or your attorney may incur in pursuing your complaint (*e.g.*, attorney fees, duplicating charges, travel expenses, and witness fees).

If you have any questions, please contact the Clerk's Office at (312) 814-3461.

FORMAL COMPLAINT

Before the Illinois Pollution Control Board

)	
)	
)	
)	
<i>[Insert your name(s) in the space above]</i>)	
Complainant(s),)	
)	
v.)	PCB 20 -
)	<i>[For Board use only]</i>
)	
)	
)	
<i>[Insert name(s) of alleged polluter(s) in the space above]</i>)	
)	
Respondent(s))	

Note to the Complainant: If you do not use this Formal Complaint form and instead draft and type your own, it must contain all of the information requested by this form. All items must be completed. If there is insufficient space to complete any item, you may attach additional sheets, specifying the number of the item you are completing. Once you have completed the Formal Complaint, the Notice of Filing, and the Documentation of Service, you must "file" these three documents with the Clerk of the Board and "serve" a copy of each document on each respondent. Specific requirements for the filing, service, and contents of these documents are set forth in the Board's procedural rules (35 Ill. Adm. Code 101, 103) and addressed in the explanatory materials accompanying this form.

1. Your Contact Information

Name: _____
Street Address: _____

County: _____
State: _____
Phone Number: () - _____

2. Place where you can be contacted during normal business hours (if different from above)

Name: _____
Street Address: _____

County: _____
State: _____
Phone Number: () - _____

3. Name and address of the respondent (alleged polluter)

Name: _____
Street Address: _____

County: _____
State: _____
Phone Number: () - _____

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.

6. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known).

8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity.

9. Describe the relief that you seek from the Board (e.g., an order requiring that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)).

10. Identify any identical or substantially similar case you know of brought before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government).

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.)

12. _____
(Complainant's signature)

CERTIFICATION
(optional but encouraged)

I, _____, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

(Complainant's signature)

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____

NOTICE OF FILING

Note to the Complainant: This Notice of Filing must accompany the Formal Complaint and the Documentation of Service. Once you have completed the Notice of Filing, the Formal Complaint, and the Documentation of Service, you must file these three documents with the Board's Clerk *and* serve a copy of each document on each respondent.

Please take notice that today I, _____, filed with the Clerk of the Illinois Pollution Control Board (Board) a Formal Complaint, a copy of which is served on you along with this Notice of Filing. You may be required to attend a hearing on a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Complainant's signature

Street _____

City, state, zip code _____

Date _____

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

The following information has been prepared by the Board for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation. Information about the Formal Complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5) and the Board's procedural rules (35 Ill. Adm. Code 101, 103). These can be accessed on the Board's website (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules.

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this Formal Complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202 (definitions of the terms "duplicative" and "frivolous")). "Duplicative" means the complaint is identical or substantially similar to a case brought before the Board or another forum. See 35 Ill. Adm. Code 103.212(a) and item 10 of the Formal Complaint.

“Frivolous” means that the Formal Complaint seeks 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. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 through 9 of the Formal Complaint.

If you believe that this Formal Complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you received the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. See 35 Ill. Adm. Code 101.504, 103.212(b). If you need more than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after you received the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the Formal Complaint is duplicative or frivolous will stay the 60-day period for filing an Answer to the complaint. See 35 Ill. Adm. Code 103.204(e), 103.212(b); see also 35 Ill. Adm. Code 101.506 (generally, all motions to strike, dismiss, or challenge the sufficiency of any pleading must be filed within 30 days after service of the challenged document).

The party making a motion must “file” the motion with the Board’s Clerk and “serve” a copy of the motion on each of the other parties to the proceeding. The Board’s filing and service requirements are set forth in its procedural rules (35 Ill. Adm. Code 101.300, 101.302, 101.304), which are located on the Board’s website (www.ipcb.state.il.us).

If you do not file a motion with the Board within 30 days after the date on which you received the Formal Complaint, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing without any input from you. The Board will then assign a hearing officer who will contact you to schedule times for holding telephone status conferences and a hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an Answer to this Formal Complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an Answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

Failing to file an Answer to the Formal Complaint within 60 days after you were served with the complaint may have severe consequences. Failure to timely file an Answer will mean that all allegations in the Formal Complaint will be taken as if you admitted them

for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney. See 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an Answer and any motions or briefs, and present a defense at hearing.

Costs

In defending against this Formal Complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file with the Board your Answer or any other document in the enforcement proceeding. The Board will pay its own hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3461.

DOCUMENTATION OF SERVICE

Note to the Complainant: This Documentation of Service must accompany the Formal Complaint and the Notice of Filing. Once you have completed the Documentation of Service, the Formal Complaint, and the Notice of Filing, you must file these three documents with the Board's Clerk *and* serve a copy of each document on each respondent.

This form for the Documentation of Service is designed for use by a non-attorney and must be notarized, *i.e.*, it is an "affidavit" of service. An attorney may modify the form for use as a "certificate" of service, which is not required to be notarized.

Affidavit of Service

I, the undersigned, on oath or affirmation, state that on the date shown below, I served copies of the attached Formal Complaint and Notice of Filing on the respondent at the address listed below by one of the following methods: [*check only one—A, B, C, D, or E*]

A. _____ U.S. Mail or third-party commercial carrier with the recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery. Attached is the delivery confirmation from the U.S. Postal Service or the third-party commercial carrier containing the recipient's signature and showing the date of delivery as _____ [*month/date*], 20____. [*Attach the signed delivery confirmation showing the date of delivery.*]

B. _____ U.S. Mail or third-party commercial carrier with a recipient's signature recorded or to be recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery. However, the delivery confirmation from the U.S. Postal Service or the third-party commercial carrier containing the recipient's signature is not available to me at this time. On _____ [*month/date*], 20____, by the time of ____:____ AM/PM, at _____ [*address where you provided the documents to the U.S. Postal Service or the third-party commercial carrier*], copies of the attached Formal Complaint and Notice of Filing were provided to the U.S. Postal Service or the third-party commercial carrier, with the respondent's address appearing on the envelope or package containing these documents, and with proper postage or delivery charge prepaid. [*Within seven days after it becomes available to you, file with the Board's Clerk the delivery confirmation—containing the recipient's signature and showing the date of delivery—and identify the Formal Complaint to which that delivery confirmation corresponds.*]

C. _____ Personal service and I made the personal delivery on _____ [*month/date*], 20____, by the time of ____:____ AM/PM.

D. _____ Personal service and another person made the personal delivery. Attached is the affidavit of service signed by the other person (or the declaration of service signed by the process server) who made the personal delivery, showing the date of delivery as

_____ [month/date], 20___. [Attach the other person's signed affidavit or declaration showing the date of delivery.]

E. _____ Personal service and another person made or will make the personal delivery. However, the affidavit of service signed by the other person (or the declaration of service signed by the process server) who made or will make the personal delivery is not available to me at this time. On _____ [month/date], 20__, by the time of __:__ AM/PM, at

[address where you provided the documents to the person making the personal delivery], copies of the attached Formal Complaint and Notice of Filing were provided to _____ [name of the person making the personal delivery], with the respondent's address appearing on the envelope or package containing these documents, and with proper delivery charge prepaid. [Within seven days after it becomes available to you, file with the Board's Clerk the affidavit or declaration of service—containing the signature of the person who made personal delivery and showing the date of delivery—and identify the Formal Complaint to which that affidavit or declaration corresponds.]

RESPONDENT'S ADDRESS:

Name _____

Street _____

City, state, zip code _____

(list each respondent's name and address if multiple respondents)

Complainant's signature

Street _____

City, state, zip code _____

Date _____

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____