

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAR 26 2015

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
BERNARD and CAROLYN CARR and)
JEFFREY YERK,)
)
Respondents.)

AC 2015-017

(IEPA No. 367-14-AC)



ORIGINAL

NOTICE OF FILING

To: Bernard and Carolyn Carr
and Jeffrey Yerk
3994 N. Fisk Road
Astoria, Illinois 61501

Carol Webb
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, Illinois 62702

PLEASE TAKE NOTICE that on this date I filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled COMPLAINANT'S RESPONSE TO MOTION TO DISMISS.

Respectfully Submitted,

Michelle M. Ryan
Assistant Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: March 24, 2015

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ILLINOIS ENVIRONMENTAL)
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COMPLAINANT'S RESPONSE TO
MOTION TO DISMISS

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Assistant Counsel Michelle M. Ryan, pursuant to 35 Ill. Adm. Code 101.500(d), and respectfully states as follows:

(1) On October 24, 2014, Illinois EPA issued an Administrative Citation ("AC") to Respondents, Bernard and Carolyn Carr and Jeffrey Yerk (collectively "Respondents"), based on an inspection conducted on October 1, 2014.

(2) On November 5, 2014, Illinois EPA filed proof that Respondents had been served with the AC on October 27, 2014.

(3) On December 1, 2014, Respondent Yerk filed a Petition for Review. The proof of service required by 35 Ill. Adm. Code 101.302(f) and 101.304 was not filed with the Petition for Review.

(4) On December 18, 2014, the Illinois Pollution Control Board (“Board”) issued an Order noting “several deficiencies” in the Petition for Review and ordering an Amended Petition for Review to be filed by January 20, 2015. The Board also ordered that the Amended Petition for Review be served on Illinois EPA and that proof of service be filed with the Board.

(5) On January 20, 2015, Respondents filed an Amended Petition for Review. The proof of service required by 35 Ill. Adm. Code 101.302(f) and 101.304 and the Board’s December 18, 2014 Order was not filed with the Amended Petition for Review.

(6) On February 5, 2015, the Board accepted the Amended Petition for Review.

(7) On February 25, 2015, the undersigned participated in a status call with the Board Hearing Officer, during which she explained that she had been unable to locate a phone number for the Respondents in time for the status call. On the same date, a Hearing Officer Order was issued directing Respondents to provide a telephone number for status calls.

(8) Despite the provision of the undersigned’s telephone number with the AC and its availability on the Board’s Clerk’s Office Online (“COOL”) system, the undersigned has not had any telephone contact from Respondents in this matter to date.

(9) Respondents have not provided the undersigned with a telephone number to date, as required by the Hearing Officer Order.

(10) On March 13, 2015, Respondents filed a Motion to Dismiss. The proof of service required by 35 Ill. Adm. Code 101.302(f), 101.304, and 101.500(b) was not filed with the Motion. However, this document was actually received by the undersigned on March 13, 2015.

(11) “All motions to...dismiss...must be filed within 30 days after the service of the challenged document....” 35 Ill. Adm. Code 101.506. Because Respondents’ Motion was filed more than four months after the date of service, it should be denied.

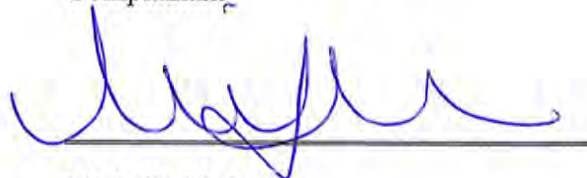
(12) All references in Respondents’ Motion to the “date of the hearing” are misplaced, as no hearing has yet been set in this matter.

(13) Petitioner’s inability to contact Respondents by telephone is not cause for dismissal of this AC.

(14) The facts contained in Respondents’ Motion are speculative, and altogether unsupported by oath, affidavit or certification, as required by 35 Ill. Adm. Code 101.504. Furthermore, Respondents cite no support from statutory, regulatory, or case law.

WHEREFORE, for the foregoing reasons, Illinois EPA requests that the Board deny Respondent’s Motion to Dismiss.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Complainant



Michelle M. Ryan
Assistant Counsel

Dated: March 24, 2015

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument entitled COMPLAINANT'S RESPONSE TO MOTION TO DISMISS are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.



Michelle M. Ryan
Assistant Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: March 24, 2015

PROOF OF SERVICE

I hereby certify that I did on the 24th day of March, 2015, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled COMPLAINANT'S RESPONSE TO MOTION TO DISMISS

To: Bernard and Carolyn Carr
and Jeffrey Yerk
3994 N. Fisk Road
Astoria, Illinois 61501

Carol Webb
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, Illinois 62702

and the original and nine (9) copies of the same foregoing instrument on the same date

To: John Therriault, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

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Assistant Counsel

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