

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE, )  
 )  
 Complainant, ) PCB # 2015-139  
 v. ) (Citizens - Water Enforcement)  
 )  
 HIGHLAND HILLS SANITARY )  
 DISTRICT, )  
 )  
 Respondent. )

NOTICE OF FILING

To:  
Lawrence A. Stein  
Huck Bouma PC  
1755 South Naperville Road  
Wheaton, IL 60189

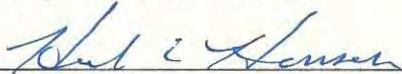
Lawrence A. Stein  
Aronberg Goldgehn Davis & Garmisa  
330 N. Wabash Avenue  
Suite 1700  
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document:

MOTION TO DISMISS AMENDED FORMAL COMPLAINT, OR IN THE ALTERNATIVE,  
MOTION TO STRIKE COMPLAINANT'S REPLY TO AFFIRMATIVE DEFENSES

a copy of which is hereby served upon you.

Respectfully submitted,

  
Heidi E. Hanson

Dated: January 12, 2016

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,	)	
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Complainant,	)	PCB # 2015-139
v.	)	(Citizens - Water Enforcement)
	)	
HIGHLAND HILLS SANITARY	)	
DISTRICT,	)	
	)	
Respondent.	)	

**MOTION TO DISMISS AMENDED FORMAL COMPLAINT, OR  
IN THE ALTERNATIVE, MOTION TO STRIKE  
COMPLAINANT'S REPLY TO AFFIRMATIVE DEFENSES**

Respondent, HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys PODLEWSKI & HANSON P.C., respectfully requests, pursuant to 35 Ill. Adm. Code Section 101.506, that the Board dismiss the amended complaint.

In support of this motion, the District states as follows:

1. In July of 2015, Complainant filed an Amended Formal Complaint in her sewer backup case against Respondent sanitary district, alleging that Respondent's sewers had contributed to flooding in her house and yard.
2. On November 3, 2015, the District filed its Answer and Affirmative Defenses. On December 3, 2015, a status conference was held at which the Hearing Officer, over Respondent's objection, allowed Complainant additional time, until December 10, 2015, to file her response.
3. Complainant's Reply to Affirmative Defenses ("Reply") simply and generally states that Affirmative Defenses 1 through 8 are denied. The Reply does not individually address the specific facts that were asserted in Respondent's affirmative defenses.

4. Because no facts are specifically admitted in the Reply and there is no allegation of insufficient knowledge, the only reasonable reading of the Reply is that every fact alleged in the District's affirmative defenses has been denied. Complainant's Reply has therefore denied essential elements of Complainant's own case, including each of the following:

a) that the property at issue is located within the Highland Hills Sanitary District's service area (Aff. Def. #s 1, 2, and 3, para. 1);

b) that the property has a sewer pipe connection to the District (Aff. Def. #3 para. 25); and

c) that the property has experienced flooding in the house and yard (Aff. Def. #s 1, 2, and 3, para 17.and Aff. Def. #3, para. 24).

5. Complainant's pleadings now fail to support any of its claims and the general denial in its Reply contradicts its own Amended Formal Complaint. Therefore, this case should be dismissed.

6. If the Board does not dismiss this matter, in the alternative Respondent asks that the Board strike the Reply to Affirmative Defenses.

7. Illinois is a fact pleading state and the Illinois Pollution Control Board has found on many occasions that facts must be pled with specificity before it.

Even though "[c]harges in an administrative proceeding need not be drawn with the same refinements as pleadings in the court of law," (Lloyd A. Fry Roofing Co. v. PCB, 20 Ill. App. 3d 301, 305, 314 N.E.2d 350, 354 (1st Dist. 1974)), the Act and the Board's procedural rules "provide for specificity in pleadings..." (Sierra Club v. Midwest Generation, PCB 13-27 (January 8, 2015) at page 23, quoting Rocke v. PCB, 78 Ill. App. 3d 476, 481, 397 N.E.2d 51, 55 (1st Dist. 1979)).

8. The Board rules do not define the requirements for a reply to an affirmative defense. However, they do provide that "the Board may look to the Code of Civil Procedure and

the Supreme Court Rules for guidance when the Board's procedural rules are silent.” 35 Ill Adm. Code 101.100(b).

The Code of Civil Procedure requires the following:

Sec. 2-610. Pleadings to be specific. (a) Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.

(b) Every allegation, except allegations of damages, not explicitly denied is admitted,....

(c) Denials must not be evasive, but must fairly answer the substance of the allegation denied. (emphasis added) 735 ILCS 5/2-610.

and

Sec. 2-603. Form of pleadings. (a) All pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply.

(b) Each ...count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation. (emphasis added) 735 ILCS 5/2-603.

10. Complainant's Reply fails to comply with the Code of Civil Procedure because it is not specific, does not contain an explicit admission or denial of each allegation of the pleading to which it relates, is evasive, and does not address the separate, factual allegations of the affirmative defenses.

11. Even if the Board were to elect not to follow the Code of Civil Procedure in this instance, the Board's rules and past orders provide sufficient clarity as to the scope of acceptable pleading.

12. The Board has, on many occasions, noted that affirmative defenses must be pled with the same specificity as a complaint. See e.g., Sierra Club v. Midwest Generation PCB,

PCB 13-27 (January 8, 2015), pages 13-15 citing Richco Plastic Co. v. IMS Co., 288 Ill. App. 3d 782, 784, 681 N.E.2d 56, 58 (1st Dist. 1997) and International Ins. Co. v. Sargent & Lundy, 242 Ill. App. 3d 614, 630, 609 N.E. 2d 842, 853 (1st Dist. 1993).

13. With regard to an answer to a complaint, the Board's rules provide that "material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief." (emphasis added) 35 Ill Adm. Code 103.204(d).

15. It would be illogical and inconsistent to assume that complaints, answers, and affirmative defenses must be pled with specificity but that replies to affirmative defenses need only be pled generally.

16. There is no provision in either the Board's procedural rules or the Code of Civil Procedure which allows for a general denial of an affirmative defense. Such a denial would not advance the cause of narrowing the issues or informing the other party of which facts are disputed.

17. The Board has cautioned citizen complainants that they are not free to ignore its procedural rules. "Citizen complainants must follow the Board's procedural rules. *See* 35 Ill. Adm. Code 101, 103."

<http://www.ipcb.state.il.us/AboutTheBoard/CitizensGuidetotheBoard.asp?Section=Enforcement>  
(Jan. 7, 2016).

18. Complainant's pleading (or lack thereof) has introduced confusion into a process that was intended to define and refine issues between the parties. By denying all facts, Complainant contradicts her own case. If the Reply is not interpreted as a complete denial then it

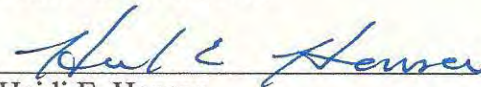
is unclear what is being denied and it appears to be an evasive attempt to avoid any admissions, increase the scope of discovery, and prejudice a fact-based motion for summary judgment.

19. As a further ground for this motion to dismiss, the Reply was not filed in conformance with the Board's procedural rule, 35 Ill Adm. Code 101.304(d)(5), in that the Proof of Service was neither signed by an attorney nor notarized.

WHEREFORE Respondent respectfully requests that the Board dismiss this matter for failure to state any claim and failure to comply with the Board's procedural rules. If the Board does not dismiss this matter, then Respondent asks that the Board strike the Reply and hold that all of the facts alleged in the affirmative defenses have been admitted. If the Board does not so hold, then Respondent asks that it order Complainant to fully, separately, and specifically, reply to each factual allegation in the Affirmative Defenses.

Respectfully submitted,

Highland Hills Sanitary District  
by its attorneys,  
Podlewski & Hanson



Heidi E. Hanson

Dated: January 12, 2016

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on the date of January 12, 2016 the attached:

MOTION TO DISMISS AMENDED FORMAL COMPLAINT, OR IN THE ALTERNATIVE, MOTION TO STRIKE COMPLAINANT'S REPLY TO AFFIRMATIVE DEFENSES

Upon the following persons, by electronic filing before 4:30 this day:

Clerk's Office On-Line  
Illinois Pollution Control Board  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Postal Service mailbox at Western Springs, Illinois before 4:30 this day, January 12, 2016 with proper postage prepaid, upon the following persons:


One copy to:

Lawrence A. Stein  
Huck Bouma PC  
1755 South Naperville Road  
Wheaton, IL 60189

Lawrence A. Stein  
Aronberg Goldgehn Davis & Garmisa  
330 N. Wabash Avenue  
Suite 1700  
Chicago, Illinois 60611

Bradley Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

Dated: January 12, 2016

  
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