

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2018

STEVEN BRISON,)
)
 Complainant,)
)
 v.) PCB 19-68
) (Citizens Enforcement - Noise
 FLOOD BROTHERS DISPOSAL &)
 RECYCLING SERVICES; FLOOD)
 BROTHERS DISPOSAL/RECYCLING)
 SERVICES, an Illinois corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On November 7, 2018, Steven Brison filed a *pro se* citizens complaint (Comp.) alleging that Flood Brothers Disposal & Recycling Service; Flood Brothers Disposal/Recycling Services (Flood Brothers) had violated Sections 23, 24, and 25 of the Environmental Protection Act (Act) (415 ILCS 5/23, 24, 25 (2016) and City of Chicago Ordinances 7-28-226 and 8-32-130. The complaint concerns Flood Brothers’ removal of waste from Claremont Park, which is located 2334 West Flournoy Street in Chicago, Cook County. For the reasons below, the Board finds that the alleged violations are frivolous, dismisses the complaint, and sets a deadline of Tuesday, January 22, 2019, for Brison to file an amended complaint.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315 (defining “person”), 31(d)(1) (2016); 35 Ill. Adm. Code 103. According to Brison, Flood Brothers has caused noise pollution by performing waste removal during between the hours of 4:00 AM and 5:50 AM when it is prohibited by the City of Chicago. Comp. at 2. He alleges that he first noticed this waste removal in the late spring or early summer and that it continued three times a week during the summer and twice a week after the beginning of October. *Id.* at 6. He further alleges that the operations resulted in emission of noise including squeaky brakes, reverse beeping, banging, compacting, mechanical equipment, and engine noise. *Id.* at 3, 7. The complaint states that these noises result in loss of sleep, irritability, and increased stress. *Id.* at 7.

The complaint requests that the Board order Flood Brothers “to stop picking up garbage in the City of Chicago” during hours prohibited by the City’s ordinance and that the Board assess a penalty “in excess of \$15,000.” Comp. at 7, 8.

Section 31(d)(1) of the Act provides that, unless the Board determines that a complaint is duplicative or frivolous, it will schedule a hearing. 415 ILCS 5/31(d)(1) (2016). Within 30 days after being served with the complaint, a respondent may file a motion alleging that the complaint

is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). On November 13, 2018, Brison filed a response from the United States Postal Service to his request for proof of delivery. *See* 35 Ill. Adm. Code 101.304(c)(2). The response indicates delivery on November 8, 2018. Flood Brothers has not filed a motion alleging that the complaint is duplicative or frivolous.

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. Brison states that a previous Board case, Roti, et al. v. LTD Commodities, PCB 99-19, *aff’d* 355 Ill. App.3d 1039 (2nd Dist. 2005), involves types and sources of noise that are “substantially similar” to those alleged in the complaint. However, Roti involves different parties, operations, noise sources, and a different location. The Board construes the reference to Roti as a citation to a case that may provide authority regarding alleged noise violations. Nothing in the record indicates that the complaint is duplicative as that term is defined in the Board’s regulations.

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.” 35 Ill. Adm. Code 101.202.

As noted above, the complaint first alleges a violation of Section 23 of the Act. Comp. at 2. Section 23 provides in its entirety that “[t]he General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment. It is the purpose of this Title to prevent noise which creates a public nuisance.” 415 ILCS 5/23 (2016).

Section 23 is a legislative declaration and cannot be violated. Chvalovsky v. Commonwealth Edison, et al., PCB 10-13, slip op. at 2 (Dec. 2, 2010), citing Strunk v. Williamson Energy, PCB 07-135, slip op. at 9 (Sept. 20, 2007).

The complaint next alleges a violation of Section 24 of the Act. Comp. at 2. Section 24 provides in its entirety that “[n]o person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.” 415 ILCS 5/24 (2016).

“Section 24 is capable of being violated, but ‘[t]he appellate court has previously stated that Section 24 is not a general statutory prohibition.’” Reed v. Pasillas, PCB 19-1, slip op. at 2 (Oct. 4, 2018); Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013), citing Shepard v. Northbrook Sports Club and Vill. of Hainesville, 272 Ill. App 3d 764, 768, 651 N.E.2d at 555, 558 (2nd Dist. 1995); Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002). 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 (emphasis in original), citing 415 ILCS 5/24. “Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24.” Chvalovsky, PCB 14-6, slip op. at 4, citing Rulon, PCB 03-7, slip op. at 4; Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998). The complaint does not allege any

violation of a Board noise regulation or standard. Comp. at 2; *see* 35 Ill. Adm. Code Part 900-910 (Subtitle H noise regulations).

The complaint next alleges a violation of Section 25 of the Act, which authorizes the Board to “adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.” 415 ILCS 5/25 (2016).

As an authorization of rulemaking, Section 25 cannot be violated. Chvalovsky v. Commonwealth Edison, et al., PCB 10-13, slip op. at 2 (Dec. 2, 2010), citing Gifford v. American Metal Fibers, PCB 08-13, slip op. at 3-4 (Sept. 20, 2007).

Finally, the complaint alleges violation of City of Chicago Ordinances 7-28-226 and 8-32-130. Comp. at 2. Section 5(d) of the Act gives the Board “authority to conduct proceedings on complaints charging violations” of various authorities including the Act and Board regulations. This authority does not extend to complaints alleging violations of municipal ordinances. *See* 415 ILCS 5/5(d) (2016). The complaint acknowledges that the Board “is not responsible for enforcing Chicago ordinances.” Comp. at 2.

In light of the statutory and caselaw authorities above, the Board finds that the complaint is frivolous because it fails to state a cause of action on which the Board can grant relief. Accordingly, the Board dismisses Brison’s complaint. *See Reed v. Howard*, PCB 07-109, slip op. at 2 (Aug. 9, 2007).

However, to remedy this deficiency, the Board allows Brison until Tuesday, January 22, 2019, 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. If he files an amended complaint, Brison must serve a copy of the amended complaint upon respondents and file documentation of service upon respondents with the Board. *See* 35 Ill. Adm. Code 101.304. Documentation of service must identify “the filed document to which the signed delivery confirmation corresponds.” 35 Ill. Adm. Code 101.304(d)(2). Failure to file an amended complaint meeting these requirements may result in dismissal of this case. The deadline for respondents to file any motion attacking, or any answer to, the amended complaint will be set when the Board receives an 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.

Board Member C.K. Zalewski abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2018, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The letters are cursive and fluid, with a large initial "D" and "B".

Don A. Brown, Clerk
Illinois Pollution Control Board