ILLINOIS POLLUTION CONTROL BOARD February 14, 2019

DIANA LEINDL and KEVIN LEINDL,)
Complainants,)
v.) PCB 19-59
HARTSBURG GRAIN CO.,) (Citizens Enforcement – Noise, Air)
Respondent.)

ORDER OF THE BOARD (by U. Choe):

On September 14, 2018, Diana Leindl and Kevin Leindl (collectively, the Leindls) filed a *pro* se complaint (Compl.) against Hartsburg Grain Co. (Hartsburg). The complaint concerns noise and dust allegedly emitted from dryers at Hartsburg's commercial property located at 100 West Front Street in Hartsburg, Logan County. For the reasons below, the Board finds the complaint frivolous and therefore declines to accept it for hearing. However, the Board allows the Leindls until April 1, 2019 to file an amended complaint curing the deficiencies noted below.

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. The Leindls allege that Hartsburg emits excessive noise and air pollution. Comp. at 3. The complaint requests that the Board order Hartsburg to install "a sound barrier to cut down noise," "cut down dust and red eye," and set "time limits for noise." Comp. at 4.

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 January 3, 2019, Diana Leindl filed documentation that she served Hartsburg by certified mail on December 28, 2018. See 35 Ill. Adm. Code 101.304(c). Hartsburg has not filed a motion alleging that the complaint is frivolous or duplicative.

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. Section 31(d)(1) of the Act provides that a complaint "shall specify the provision of the Act, rule, regulation, permit, or term or condition . . . such person is said to be in violation." 415 ILCS 5/31(d)(1) (2016); 35 Ill. Adm. Code 103.204(c)(1).

As noted above, the complaint alleges that Hartsburg emits "excessive noise and air pollution" out of bins with dryers installed, which border the Leindls' property. Comp. at 2-3. The complaint alleges that, as a result, the Leindls are "unable to enjoy outside activities,"

jeopardizing their ability to relax, which in turn adversely affects their health. Comp. at 3. The complaint further alleges that the pollution occurs year-round but increases during harvest and shipping. *Id.* at 3. The complaint does not set forth any provisions of the Act, regulations, permits, or Board orders that this alleged conduct violates.

Absent this information, the Board is constrained to find that the complaint is, by definition, frivolous because it fails to state a cause of action on which the Board can grant relief. This finding does not address the merits of the Leindls' complaint or whether they would be entitled to relief on a properly pled complaint.

The complaint is also deficient in a second respect. The Board's procedural rules state that "[i]ndividuals may appear on their own behalf or through an attorney-at-law." 35 Ill. Adm. Code 101.400(a)(1). The complaint lists both Diana and Kevin Leindl as complainants, but only Ms. Leindl signed the complaint. There is nothing in the record that indicates Ms. Leindl is an attorney. On this record, then, Ms. Leindl cannot represent Mr. Leindl in the proceeding. Mr. Leindl has the option to retain an attorney to represent him, or to sign the amended complaint and represent himself.

Based on these deficiencies, the Board declines to accept the Leindls' complaint for hearing. *See* Chvalovsky v. Commonwealth Edison, PCB 10-13, slip op. at 2 (Aug. 9, 2010).

To remedy these deficiencies, the Board allows the Leindls until Monday, April 1, 2019, the first business day following the 45th day after the date this order, to file an amended complaint with the Board. See 35 Ill. Adm. Code 101.302. If the Leindls file an amended complaint, the Leindls must serve a copy of the amended complaint on Hartsburg and file documentation of service with the Board. See 35 Ill. Adm. Code 101.304. The Leindls may effectuate service by certified mail as they did with the initial complaint, or by any other acceptable means set forth in the Board's rules. See 35 Ill. Adm. Code 101.304(c). Failure to file an amended complaint meeting these requirements may result in dismissal of this case. The deadline for Hartsburg to file an 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). The Board will include a copy of the Act and Board procedural rules with this order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 14, 2019, by a vote of 5-0.

Don A. Brown, Clerk

Illinois Pollution Control Board

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