

ILLINOIS POLLUTION CONTROL BOARD
 March 28, 2019

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

ORDER OF THE BOARD (by U. Choe):

On February 26, 2019, Diana Leindl and Kevin Leindl (collectively, the Leindls) filed a *pro se* amended complaint (Am. Comp.) against Hartsburg Grain Co. (Hartsburg). The amended complaint results from a February 14, 2019 Board order finding the Leindls’ original September 14, 2018 complaint frivolous for failure to state a cause of action on which the Board can grant relief. The amended 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 amended complaint frivolous and therefore declines to accept it for hearing. However, the Board again allows the Leindls 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. In the amended complaint, the Leindls allege that Hartsburg violated specified noise and air authorities. Am. Comp. at 3. The amended complaint requests that the Board order Hartsburg to install a sound barrier between the grain bins and the Leindls’ home, and implement air pollution abatement to prevent particulate matter from entering the Leindls’ property. *Id.* 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 March 1, 2019, the Leindls filed documentation that they served Hartsburg by certified mail on February 26, 2019. *See* 35 Ill. Adm. Code 101.304(c)(2)(B). 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. The Act requires that a complaint “specify the provision of the Act, rule, regulation, permit, or term or condition thereof under which [the person complained against] is

said to be in violation.” 415 ILCS 5/31(c)(1) (2016); *see also* 415 ILCS 5/31(d)(1) (2016) (citizen complaint must meet these requirements); 35 Ill. Adm. Code 103.204(c)(1).

The amended complaint alleges that Hartsburg violated the following federal authorities, without identifying any specific provisions within them: the “Noise Pollution and Abatement Act of 1972”; the “Clean Air Act Title IV – Noise Pollution”; “Title 42 – The Public Health and Welfare Chapter 85”; and “Grain Elevators: New Source Performance Standards (NSPS)”; and “[Clean Air Act] Title I.” Am. Comp. at 3. The Leindls allege that, as a result, particulate matter reduces visibility, impairs breathing, and clogs their pool pump. *Id.* The amended complaint further alleges that the particulate matter, as well as noise from the dryers, make sleeping and enjoying outdoor activities difficult. *Id.* at 4. The amended complaint also states that the pollution occurs year-round but increases during harvest and shipping. *Id.* at 3.

The Board has authority to hear complaints alleging violations of provisions of the Act, regulations adopted under the Act, permits issued under the Act, and Board orders. However, the amended complaint does not allege the violation of any of these State authorities, let alone specific provisions within them as required. Instead, the amended complaint alleges violations of federal authorities, some specific provisions of which the Board has jurisdiction to enforce but only in specific circumstances not alleged here (*see, e.g.*, 415 ILCS 5/9.1(d)(1) 2016)).

Absent any alleged violations of authorities that the Board has jurisdiction to enforce, the Board is constrained to find that the amended complaint is frivolous because it fails to state a cause of action on which the Board can grant relief. Based on this deficiency, the Board declines to accept the Leindls’ amended complaint for hearing. *See Chvalovsky v. Commonwealth Edison*, PCB 10-13, slip op. at 2 (Aug. 9, 2010).

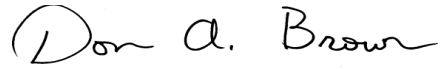
To remedy this deficiency, the Board allows the Leindls until Monday, April 29, 2019—the first business day following the 30th day after the date this order—to file a second amended complaint with the Board. *See* 35 Ill. Adm. Code 101.302. A complaint must reference the specific provisions of the Act and regulations respondent is alleged to be violating and state the extent and nature of the alleged violations so that respondent can reasonably prepare a defense. 35 Ill. Adm. Code 103.204(c).

If the Leindls file a second 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, with recipient signature, as they did with the initial and amended complaints, or by any other acceptable means specified in the Board’s rules for serving an enforcement complaint. *See* 35 Ill. Adm. Code 101.304(c)(2).

Failure to file a timely second amended complaint meeting these requirements may result in dismissal of this case. The deadline for Hartsburg to file an answer to any second amended complaint will be set when the Board receives a timely 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.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 28, 2019, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above the printed name and title.

Don A. Brown, Clerk
Illinois Pollution Control Board