

ILLINOIS POLLUTION CONTROL BOARD  
November 2, 2006

DALE L. STANHIBEL, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 07-17  
 ) (Citizens Enforcement – Air, Noise)  
 TOM HALAT d/b/a TOM’S VEGETABLE )  
 MARKET, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by A.S. Moore):

On September 18, 2006, Dale L. Stanhibel filed a complaint (Comp.) against Tom Halat d/b/a Tom’s Vegetable Market. *See* 415 ILCS 5/31(d) (2004); 35 Ill. Adm. Code 103.204. Stanhibel alleges that Halat violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2004)) and section 900.102 of the Board’s regulations (35 Ill. Adm. Code 900.102). Stanhibel further alleges that Halat violated these provisions by firing propane cannons in the course of growing and selling vegetables. The complaint concerns Halat’s vegetable market facility at 10214 Algonquin Road, Huntley, McHenry County.

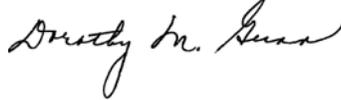
Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2004)) allows any person to file a complaint with the Board. Section 31(d) further provides that “[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.” *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). 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. 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.” *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). The Board has not received such a motion from Halat. However, for the reasons stated below, the Board today reserves ruling on whether Stanhibel’s complaint is frivolous or duplicative.

The Board’s procedural rules provide that “[p]roof of service of initial filings must be filed with the Board upon completion of service.” 35 Ill. Adm. Code 101.304(b). The rules further provide that “[p]roof of proper service is the responsibility of the party filing and serving the document.” 35 Ill. Adm. Code 101.304(d). With his complaint, Stanhibel filed a certificate of service indicating that he had served Halat by certified mail. Comp. at 6. That form certificate directs Stanhibel either to attach a copy of the certified mail receipt to the complaint or to file that receipt later with the Board’s Clerk. *See id.* In spite of this direction, the Board to date has received no proof that Stanhibel has served Halat with a copy of the complaint.

Accordingly, the Board directs Stanhibel to file proof of service of the complaint upon Halat by Monday, November 27, 2006, which is the first business day after the 21st day from the date of this order. If Stanhibel fails to file proof of service on or before that date, then the Board may dismiss this proceeding. *See* 35 Ill. Adm. Code 101.304(d).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 2, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board