

ILLINOIS POLLUTION CONTROL BOARD
December 7, 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 noise 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).

In an order dated November 2, 2007, the Board directed Stanhibel to file proof of service of the complaint upon Halat by Monday, November 27, 2006. On November 8, 2006, Stanhibel timely filed the certified mail receipt showing service upon Halat on September 19, 2006. *See* 35 Ill. Adm. Code 101.300(b)(2).

On December 1, 2006, Halat filed a motion to vacate any possible default, extend time to respond to the complaint, and for leave to file a motion to dismiss (Mot.). In his motion, Halat cites 35 Ill. Adm. Code 103.204(f), which provides that

“[a]ny party serving a complaint upon another party must include the following language in the notice: ‘Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in

the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

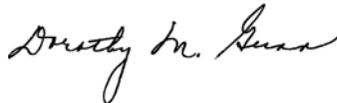
Halat states that Stanhibel failed to attach this notice as required by the Board's procedural rules. Mot. at 1. Halat further states that, as a non-attorney, he "was unaware of the requirements to respond or otherwise plead to the Complaint." *Id.* Reporting that he has now obtained counsel in this matter, Halat seeks from the Board leave to file a motion to dismiss on the basis that "there is an affirmative matter that negates the legal effect of the claim." Mot. at 2, citing 735 ILCS 5/2-619(a), 35 Ill. Adm. Code 101.500, 101.506.

In reviewing Stanhibel's complaint, the Board notes that Stanhibel failed to include the language regarding answering a complaint that is required by 35 Ill. Adm. Code 103.204(f). *See Dale L. Stanhibel v. Tom Halat d/b/a Tom's Vegetable Market*, PCB 07-17 (Sept. 18, 2006). The Board grants Halat's motion for leave to file a motion to dismiss. The Board directs Halat to file his motion to dismiss by Monday, January 8, 2007, which is the first business day after the 30th day from the date of this order. Because service of the complaint did not fully comply with the Board's procedural rules as described above, the Board will accept a motion to dismiss filed consistently with this order as a timely motion. The Board's procedural rules provide that, within 14 days after service of the motion to dismiss, Stanhibel may file a response to the motion. *See* 35 Ill. Adm. Code 101.500(d).

The Board notes that a respondent's timely motion to dismiss stays the 60-day period to file an answer. 35 Ill. Adm. Code 103.204(e). "The stay will begin when the motion is filed and end when the Board disposes of the motion." *Id.* Because the deadline for filing an answer is stayed by operation of the Board's procedural rules, the Board denies as unnecessary Halat's motion to extend the time to respond to the complaint. Also, because the Board does not have before it a motion for default and does not address the issue of default in this order, Halat's motion to vacate any possible default is denied as moot. Finally, the Board reserves ruling on whether the complaint is frivolous or duplicative and whether to accept the complaint for hearing. *See* 35 Ill. Adm. Code 103.212(a).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 7, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board