

Electronic Filing, Received, Clerk's Office, July 5, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

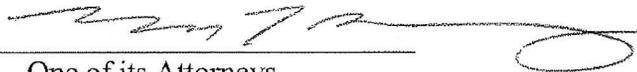
GEORGE R. STRUNK,)
)
 Complainant,)
)
 v.) PCB 07-135
)
 WILLIAMSON ENERGY, LLC)
)
 Respondent.)

ENTRY OF APPEARANCE

Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Charles J. Northrup, of counsel, hereby enters their appearance in this matter on behalf of Respondent, WILLIAMSON ENERGY, LLC.

Respectfully submitted,

WILLIAMSON ENERGY, LLC

By: 
One of its Attorneys

Sorling, Northrup, Hanna,
Cullen & Cochran, Ltd.
Charles J. Northrup, of Counsel
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705
Telephone: 217.544.1144
Fax: 217.522.3173
E-Mail: cjnorthrup@sorlinglaw.com

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PROOF OF SERVICE

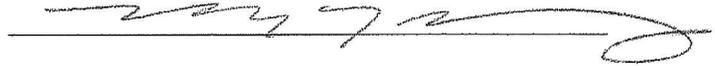
The undersigned hereby certifies that a copy of the foregoing document was electronically filed with:

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph St., Suite 11-500
Chicago, IL 60601

with a copy to:

George R. Strunk
16172 Liberty School Road
Marion, IL 62959

by depositing in the United States mail in Springfield, IL on the 5th day of July, 2007, with postage fully prepaid.

A handwritten signature in black ink, appearing to be "George R. Strunk", written over a horizontal line.

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GEORGE R. STRUNK,)
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 WILLIAMSON ENERGY, LLC)
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 Respondent.)

MOTION TO DISMISS

NOW COMES Respondent, WILLIAMSON ENERGY, LLC, by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Charles J. Northrup, of counsel and pursuant to 35 Ill. Adm. Code 101.506 hereby moves to dismiss this action. In support, Respondent states:

I. Procedural Background

1. On or about June 11, 2007 the above captioned matter was filed with the Illinois Pollution Control Board (the "Board"). Apparently, the Complaint was provided to a representative of the Respondent on June 5, 2007 prior to filing with the Board.

2. The Complaint recites a number of specific sections of the Illinois Environmental Protection Act that allegedly have been violated by the Respondent. The Complaint also sets out a general statement of the nature of the alleged violations. A copy of the Complaint received by Respondent is attached as Exhibit 1.

II. Factual Background

3. Upon information and belief, Complainant George R. Strunk is an individual residing at 16172 Liberty School Road, Marion, Illinois. Williamson Energy LLC operates a

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fully permitted (by both Illinois EPA and the Illinois Department of Natural Resources) coal mining operation approximately ¼ of a mile from Mr. Strunk's property.

III. Argument

A. Procedural Deficiencies

4. As evident from Exhibit 1, Complainant has failed to comply with the Board's procedural Rule at Section 103.204(f). That Rule requires a Complainant to include specific language in the complaint (or notice accompanying the complaint) that the Respondent has 60 days to Answer:

"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 admitted for the 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."

35 Ill. Adm. Code 103.204(f). While a "Note" was provided to Respondent along with the Complaint, it was not the standard "Notice to Respondent" form prepared by the Board. See Exhibit 1. In this "Note" there was no mention that Respondent had 60 days to Answer the Complaint as required by Board Rule. In addition, the "Note" provided to Respondent failed to identify that Respondent had 30 days to file a Motion to Dismiss but rather merely states "If you believe this case is duplicitous or frivolous, please file a motion with the Board within two weeks from the date of service." Given these clear deficiencies, the Complaint must be dismissed. See Stanhibel v. Halat, PCB No. 07-17 (March 1, 2006) 2006 Ill. ENV. LEXIS 618.

B. Substantive Deficiencies

5. With respect to the substance of the Complaint, it too is clearly deficient. The Board's procedural rules provide that a complaint must contain certain minimum requirements. These include a reference to the provisions of the Illinois Environmental Protection Act ("Act")

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that have allegedly been violated (103.204(c)(1)) and the dates, location, events, nature, extent, duration, and strength of the discharges or emissions (103.204(c)(2)). The purpose of these minimum requirements is to afford Respondent with sufficient information to “allow preparation of a defense.” See Stanhibel v. Halat, PCB No. 07-17 (March 1, 2006) 2006 Ill. ENV. LEXIS 618. In this matter, the allegations are deficient on legal and factual grounds such that the Complaint does not meet these minimum standards.

6. Complainant first identifies Section 8 of the Act as having been violated. Section 8 of the Act, however, is merely a “legislative declaration” and cannot serve as the basis of a violation. See Metz v. United States Postal Service et al., PCB 98-18 (September 23, 1999)(Dismissing allegations of violations of Section 23 of the Act which is merely a legislative declaration). Accordingly, any reference to Section 8 of the Act should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action under Section 8 of the Act.

7. Complainant next identifies Section 9.2(b) of the Act as having been violated. This section addresses sulfur dioxide emissions from coal burning stationary sources. This has no application to Respondent. Certainly, Complainant makes no factual accusation anywhere in the Complaint with respect to sulfur dioxide emissions from coal burning stationary sources. In the absence of such information, the Complaint fails to meet the standard of Board Rule 101.204(c)(2). Accordingly, any reference to Section 9.2(b) of the Act should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action under Section 9.2(b) of the Act.

8. Complainant next identifies Section 9.5(c) of the Act as having been violated. Section 9.5(c) of the Act, however, is merely a “legislative finding” and cannot serve as the basis

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of a violation. See Metz v. United States Postal Service et al., PCB 98-18 (September 23, 1999)(Dismissing allegations of violations of Section 23 of the Act which is merely a legislative declaration). Accordingly, any reference to Section 9.5(c) of the Act should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action under Section 9.5(c) of the Act.

9. Complainant next identifies Section 12(a), (b), and (c) as being violated. These sections relate to causing or allowing water pollution. Complainant makes two “factual” statements with to these alleged violations. First, Complainant notes “Water contamination from run off of coal stack and refuse.” Second, that “I believe run off is causing water pollution to creeks and water ways.” These statements are deficient to meet the standard of Board Rule 103.204(c)(2). No dates of any such run off are alleged; no creeks or waterways have been identified; no nature or extent or consequences of any discharge is identified. Given the absence of this required information, Respondent has no ability to even begin to mount a defense. Accordingly, any reference to Section 12(a), (b) or (c) of the Act should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action under Section 12 of the Act.

10. Complainant next identifies Section 23 of the Act as having been violated. Here again, Section 23 of the Act is merely a “legislative declaration” and cannot serve as the basis of a violation. Metz v. United States Postal Service et al., PCB 98-18 (September 23, 1999)(Dismissing allegations of violations of Section 23 of the Act which is merely a legislative declaration). Accordingly, any reference to Section 23 of the Act should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action under Section 23 of the Act.

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11. Complainant next identifies Section 24 of the Act as being violated. These sections related to causing or allowing noise pollution. Complainant cites "plant operations" and mobile equipment (back up alarms, trucks and trains). Here, too, these general statements are deficient to meet the standard of Board rule 103.204(c)(2). No dates of any noise are alleged; no specific operations have been identified; no nature or extent or consequences of any noise emissions are identified. Given the absence of this required information, Respondent has no ability to even begin to mount a defense. This is particularly important here where many of the items apparently at the heart of Complainant's Complaint may be exempt from noise regulation such as emergency warning devices (35 Ill. Adm. Code 901.107(b)), horns (35 Ill. Adm. Code 124), and trains and other mobile equipment (35 Ill. Adm. Code 902.140). Even if such noises were regulated, because Respondent cannot identify with any particularity the source of the alleged noise, it has no means of identifying additional parties or entities that may be responsible for the noise, such as a variety of motor carriers. Accordingly, any reference to Section 24 of the Act should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action under Section 24 of the Act.

12. Finally, the Complainant mentions problems with "lights" but fails to identify any Section of the Act that might be violated by light emissions. Accordingly, any reference to violations related to "lights" should be stricken and the Complaint should be dismissed for failing to sufficiently plead a cause of action.

IV. Conclusion

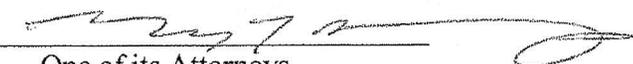
WHEREFORE for all the above reasons, particularly the failure of the Complaint to have complied with Board rules 103.204(c) and (f), Respondent Williamson Energy LLC respectfully

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requests that the Board dismiss Mr. Strunk's Complaint in its entirety and for any other relief the Board deems appropriate.

Respectfully submitted,

WILLIAMSON ENERGY, LLC

By: 
One of its Attorneys

Sorling, Northrup, Hanna,
Cullen & Cochran, Ltd.
Charles J. Northrup, of Counsel
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705
Telephone: 217.544.1144
Fax: 217.522.3173
E-Mail: cjnorthrup@sorlinglaw.com

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed with:

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Chicago, IL 60601

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George R. Strunk
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by depositing in the United States mail in Springfield, IL on the 5th day of July, 2007, with postage fully prepaid.



RECEIVED
JUN 05 2007

BY:

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

NOTE: All items must be completed. If there is insufficient space to complete any item, additional sheets may be attached, specifying the number of the item you are completing. Once completed, you must file the original and nine copies with the Board.

FORMAL COMPLAINT

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GEORGE R. STRUNK

(Insert your name(s) on lines
above),

Complainant,

v.

PCB _____
(For use by the Board)

WILLIAMSON ENERGY LLC
POND CREEK MINE #1
199859AAF

(Insert names of alleged polluter(s)
on lines above),

Respondent.

1. Your Name, Address and Phone:

GEORGE R. STRUNK
16172 LIBERTY SCHOOL ROAD
MARION, ILL. 62959

Phone 618-983-8818

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1618 848 5155 # 37 8

2. Place where you can be contacted during normal business hours (if different from above):

Phone 618-983-8818

3. Name and Address of Respondent (Alleged Polluter)

WILLIAMSON ENERGY LLC.

P.O. BOX 99

OR JOHNSTON CITY, ILL. 62951
LIBERTY SCHOOL ROAD
MARION, ILL 62959

Phone 618-983-3020
(if known)

4. Describe the type of business or activity which you allege (believe) is causing pollution (for example, manufacturing company, grain elevator, home repair shop)

COAL MINE AND PREP PLANT AND
SHIPPING FACILITY

5. List specific Sections of the Environmental Protection Act and/or Board regulations which you allege (believe) are being violated. (415 ILCS 5/8) From Ch 111 1/2 PAR 1002

TITLE II AIR
SEC. 8 / SEC. 9-R-B / SEC. 9.5 (C) / TITLE III WATER
SEC. 12 (a)(b)(d)
TILE VI NOISE
SEC. 23 / SEC. 24 / (UNKNOWN - LIGHTS -)

6. Describe the type of alleged pollution (for example air, odor, noise, water, drinking water, sewer back-ups) and the location of the alleged pollution. Be as specific as possible in describing the pollution discharge or emission. I: DUST FROM COAL STACK & REFUSE

Pile & HAULAGE ROADS AROUND MINE SITE. SMELL

II WATER CONTAMINATION FROM RUN OFF OF COAL STACK & REFUSE. ODOR

III NOISE IN PLANT OPERATIONS - BELTS AND TRAFER POINTS - MOBILE EQUIPMENT OPERATIONS (DOZER TRACK AND BACKUP ALARMS) TRUCKS FOR REFUSE & COAL TRANSPORT - TRAIN NOISE & ODOR

IV LIGHTS: AT NIGHT LIGHTS DIRECTED OUT OF MINE SITE AT MY HOME MAKE IT DIFFICULT TO SLEEP

7. Describe the duration and frequency of the alleged pollution. Be as specific as possible about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing; include dates and/or times of day if available.

I FIRST NOTICED WHEN MINE CONSTRUCTION STARTED AND IT HAS GOTTEN WORSE SINCE COAL PRODUCTION HAS STARTED. WHEN THE WINDS BLOW (SLIGHTEST BREEZE) IT CARRIES DUST FROM COAL PILE & ~~STACK~~ REFUSE ARE TRAFFIC IN AND OUT OF MINE MAKE A LOT OF DUST & NOISE. I BELIEVE RUN OFF IS CAUSING WATER POLLUTION TO CREEKS AND WATER WAYS. THE NOISE IS VERY DISTURBING AT ALL TIMES OF DAY AND NIGHT WHEN MINE IS OPERATING. THE LIGHTS ON EVERY NIGHT ARE DIRECTED 'OUT' AND TOWARD MY HOME, LIGHTING UP THE DARKNESS MAKING IT DIFFICULT TO SLEEP AND ENJOY THE NIGHT.

8. Describe any bad effects which you believe the alleged pollution has on human health, plant or animal life, or the environment.

I KNOW THAT THE COAL DUST IS HARMFUL TO HUMANS -
ANIMAL & PLANT LIFE. IT ALSO HARMS THE FISH ON HOMES
AND BARNY AND AUTOS. THE NOISE DISTURBS OUR PEACEFUL
ATMOSPHERE WE ONCE KNEW CAUSING UNREST AND STRESS ON
HUMANS & WILDLIFE. THE SMELL OF OLD COAL & REFUSE IS SICKENING
AND DIESEL FUMES FROM TRAINS AND EQUIPMENT IS ~~MAKING~~
THE LIGHTS KEEP ME AWAKE OFTEN AND INVADE MY PRIVACY.

9. Describe the relief you wish the Board to grant (for example, an order that the Respondent stop polluting, perform a specific action, make a specific change in its operation, and/or pay a money penalty; the Board cannot order Respondent to pay you money damages, attorney's fees or any out-of-pocket expenses which you incur by filing this complaint.

I WANT THE BOARD TO ORDER MINING OPERATIONS
TO BE STOPPED UNTIL ALL MY COMPLAINTS
ARE CORRECTED THEREBY GIVING ME BACK
THE SAFE ENVIRONMENT I HAD BEFORE THE
MINE STARTED.

10. State whether you know if there is any court or other forum in which you are or anyone else is suing or complaining against this Respondent for the same alleged pollution discharge or emission.

I KNOW OF NO OTHER COMPLAINTS BEING
FILED AT THIS TIME. HOWEVER, I'M SURE THERE
WILL BE SOME FROM MY NEIGHBORS NEAR THE MINE
IN THE FUTURE.

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12-5-05: 3:13PM ILLINOIS E.F.A.

MARION KU

1010 2ND BLDG

- 01 2

II. CERTIFICATION (Optional but encouraged)

I GEORGE R. STANK having read the above do hereby swear and attest that I have read the forgoing and I have filled out the above form accurately and to the best of my knowledge.

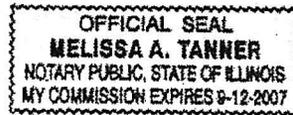
George R. Stank

Subscribed to and Sworn
before me this 5th day
of June, ~~19~~ 2007

Melissa A. Tanner
Notary Public

My Commission Expires

9-12-2007



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12- 5-05: 3:13PM: ILLINOIS E. P. A.

MARION RO

1618 346 5155

7/ 3

NOTE: THIS FORM MUST BE INCLUDED IN THE SERVICE TO RESPONDENT INFORMATION FOR RESPONDENT RECEIVING COMPLAINT

The Board will not accept this complaint that has been served upon you if the case is determined to be either duplicitous or frivolous. Duplicitous means that a similar case is pending in another court or in another action before the Board. The response to question #10 in the complaint states the opinion of the Complainant(s) on this issue.

Neither can the Board accept the complaint if the action is frivolous. Frivolous means that the requested relief is beyond the Board's authority to grant. For example, the Board has the authority to order the Respondent(s) to cease and desist the polluting activity and order a fine after following certain procedures. The Board does not have the authority for example to grant monetary compensation to the Complainant for damage to health or property. Also, the Board cannot order the polluting activity to cease while the case is pending, except under special circumstances. The response to question #9 in the complaint states the opinion of the Complainant(s) on this issue.

If you believe this case is duplicitous or frivolous, please file a motion with the Board within two weeks from the date of service. The motion must state the basis for which the motion is made and a concise statement of the relief sought. Memoranda, affidavits, and any other relevant documents should accompany the motion. If more time than two weeks is necessary to gather supporting evidence, please indicate this within the two weeks and state your reasons as well as the amount of additional time needed. Upon good cause, the Board may grant an extension at its next Board meeting.

Ten (10) copies of the motion must be filed with the Clerk of the Board with proof of service. Service may be done either personally or by First Class United States mail. Mail service is presumed completed four days after mailing.

If no response is received by the Board within two weeks, the Board, at its discretion, may find that the complaint is not duplicitous or frivolous and may accept the case for hearing.

If you have any questions, please contact the Clerk's Office, at (312) 814-3629.