

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2007

GEORGE R. STRUNK,)
)
 Complainant,)
)
 v.) PCB 07-135
) (Citizens Enforcement – Air, Noise,
 WILLIAMSON ENERGY, LLC,) Water)
)
 Respondent.)

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

On June 11, 2007, George R. Strunk filed a complaint (Comp.) against Williamson Energy, LLC (Williamson Energy). See 415 ILCS 5/31(d) (2006); 35 Ill. Adm. Code 103.204. Strunk alleges that Williamson Energy has violated Sections 8, 9(a), 9(b), 9.5(c), 12(a), 12(b), 12(c), 23, and 24 of the Environmental Protection Act (Act) (415 ILCS 5/8, 9(a), 9(b), 9.5(c), 12(a), 12(b), 12(c), 23, 24 (2006)) in the operation of a Williamson County coal mining operation.

Section 31(d) of the Act allows any person to file a complaint with the Board. 415 ILCS 5/31(d) (2006). 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). On July 5, 2007, Williamson Energy filed a motion to dismiss, which alleges that the complaint is deficient in various procedural and substantive respects. However, for the reasons stated below, the Board today reserves ruling on Williamson Energy’s motion to dismiss and on whether Strunk’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). Strunk has filed a form certificate of service indicating that the complaint was personally served on Williamson Energy on July 5, 2007. Although that form requires that the complainant be sworn, the certificate contains no indication that Strunk has sworn to it.

Accordingly, the Board directs Strunk to file either a sworn certificate of service or other proof of service on Williamson Energy by Monday, September 10, 2007, which is the first business day after the 30th day from the date of this order. If Strunk fails to file proof of service

on or before that date, the Board may dismiss this proceeding. *See* 35 Ill. Adm. Code 101.304(d).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 9, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board