

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

SECOND 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.

3. On July 5, 2007, Respondent filed a Motion to Dismiss. On August 8, 2007, the Board granted in part and denied in part Respondent's Motion to Dismiss. The Board ordered Complainant to address certain deficiencies in his Complaint and to file an Amended Complaint.

4. Although not served upon Respondent or Respondent's counsel, Complainant has apparently filed certain materials as an Amended Complaint. Respondent now moves to dismiss this "amended complaint."

II. Factual Background

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

6. The Board's August 8, 2007 Order specifically requires that any amended complaint filed by Complainant "must comply with all applicable requirements, including but not limited to those listed at 35 Ill. Adm. Code 103.204 and those pertaining to proof of service." Complainant's "Amended Complaint" does not 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). Given this clear deficiency, the Complaint must be dismissed. See Stanhibel v. Halat, PCB No. 07-17 (March 1, 2006) 2006 Ill. ENV. LEXIS 618.

In addition, and perhaps more importantly, Complainant has yet to serve the "Amended Complaint" upon Respondent or Respondent's counsel. While Respondent did, on its own,

discover that an "Amended Complaint" has been filed with the Board (by review of the Board's web-site), this does not satisfy compliance with the Board's rules or its August 8, 2007 Order. Respondent does not raise this argument lightly or as a means to impose further requirements upon a pro se litigant. However, the rules serve an important purpose. Respondent should not be charged with periodically and by chance reviewing the Board's web-site to discover if pleadings or other documents have been filed. It is Complainant's obligation to notify Respondent of certain filings so that Respondent can respond timely. The Complainant's failure to properly notify Respondent of filings will serve only to further delay this matter and potentially prejudice Respondent in the event a "deadline" is missed because of a lack of notice. For these reasons, the Complainant's "Amended Complaint" should be dismissed.

B. Substantive Deficiencies

5. With respect to the substance of the "Amended Complaint," portions of it are clearly deficient and should be dismissed. 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") 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 references Sections 9(a) and (b) in the "Amended Complaint." With respect to 9(a), Complainant references "dust." Apparently to support his complaint about dust,

Complainant provides a copy of a "Concerned Citizen Receipt and Report Form" and a copy of a "Daily Log" of observations. Neither of these documents provide sufficient information to satisfy the requirements of 103.204(c)(2). The "Concerned Citizen Receipt and Report Form" merely notes that Complainant called the Illinois EPA and complained about dust. Neither the Complainant nor this Form identify the nature, extent, strength, or duration of the dust "problem" as required. In addition, the "Concerned Citizen Receipt and Report Form" notes: "Observed coal dust off of stacker much as most other mines." Clearly this innocuous notation should not be enough to substantiate a formal Complaint. The "Daily Log" also suffers from the same infirmity while a few notations do identify "dust", there is no information about such required elements as nature, extent, strength or duration

With respect to the Complainant's reference to violations of 9(b) of the Act, that provision prohibits a variety of activities without a *permit*. Complainant however makes no allegation that Respondent is operating without a *permit* (which is not the case). In fact, the Complainant merely lumps together his allegations of "dust" referenced above as a violation of Section 9(b). In the absence of any allegations on this *permitting* issue, any claim that Section 9(b) has been violated cannot be sustained and should be dismissed.

7. Complainant next again identifies Section 12(a), (b), and (c) as being violated. These sections relate to causing or allowing water pollution. However, the only factual support for this alleged violation is that the Illinois Department of Natural Resources sent a "Notice of Violation" to "Steelhead Development Company" in January, 2006 concerning a "sediment basin" issue in November, 2005. From the IDNR documents attached to the "Amended Complaint" it is clear that there was no discharge or emission into a water of the State or any other violation of Section 12 of the Act. Apparently, too, this "violation" was resolved by the

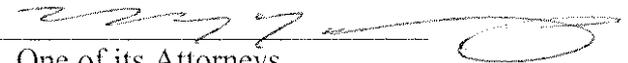
submittal of certain "as-built certifications" to the IDNR. Other than this "incident," Complainant makes no other allegations concerning any violation of Section 12. Complainant has provided no dates of any other water problems; no creeks or waterways have been identified; nor is any nature or extent or consequences of any discharge is identified. Given the absence of the information required under 103.204(c)(2), Respondent has no ability to even begin to mount a defense. Accordingly, any reference to Section 12(a), (b) and (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.

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 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

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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 9th day of November, 2007, with postage fully prepaid.

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