

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 2018

CELESTE TAPIA and MICHAEL W. )  
EDWARDS, )  
 )  
Complainants, )  
 )  
v. ) PCB 19-71  
 ) (Citizens Enforcement - Noise)  
MILLER CONTAINER CORPORATION, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C.M. Santos):

On November 7, 2018, Celeste Tapia and Michael W. Edwards (collectively, complainants) filed a complaint against Miller Container Corporation (Miller Container). The complaint concerns Miller Container’s packaging manufacturing facility located at 3402 78th Avenue West in Rock Island, Rock Island County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2016); 35 Ill. Adm. Code 103. In this case, complainants allege that Miller Container violated Sections 23, 24, and 25 of the Act by emitting noise from two cyclone machines at its facility. Complainants ask the Board to order Miller Container to cease and desist from the alleged violations by a deadline and, if Miller Container does not meet that deadline, to pay a civil penalty. On November 8, 2018, complainants filed documentation that they had served Miller Container by certified mail on October 31, 2018. *See* 35 Ill. Adm. Code 101.300(c)(2), 101.304(c)(2), 101.304(d)(2).

Section 31(d)(1) of the Act provides that “[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2014); *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). Unless Miller Container files a motion to dismiss, it “must file and answer within 60 days after receipt of the complaint” if it wishes to deny any allegation in the complaint. 35 Ill. Adm. Code 103.204(e).

On November 28, 2018, Miller Container filed a motion for an extension of time to file a motion to dismiss the complaint as duplicative or frivolous (Mot.). Miller Container states that it was served with the complaint on November 1, 2018, resulting in a deadline of December 1,

2018, to file a motion to dismiss and – if it does not file a motion – a deadline of January 2, 2019, to file an answer. Mot. at 1.

Miller Container states that it engaged counsel during the month of November and requests an extension to allow time “to investigate the nature of the claimed noise issues, to discuss the issues with the Petitioners, and for Respondent’s counsel to familiarize themselves with the issues in the case.” Mot. at 2. Miller Containers requests an extension to January 16, 2019, to file a motion to dismiss. *Id.* at 1. If Miller Container does not move to dismiss, it requests a deadline of January 16, 2019, to file its answer. *Id.*

Complainants did not respond to the motion or request that the Board extend their deadline to respond. *See* 35 Ill. Adm. Code 101.500(d). The Board grants Miller Container’s unopposed motion and extends the deadline to file a motion to dismiss to January 16, 2019. If Miller Container does not file a motion to dismiss on or before that date, the deadline for Miller Container to file an answer is January 16, 2019.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board