

ILLINOIS POLLUTION CONTROL BOARD
July 24, 2014

MR. GARY L. POLCHOW,)
)
 Complainant,)
)
 v.) PCB 14-112
) (Citizens Enforcement – Air, Water)
 AARON WARREN and SEAN)
 MCALLISTER,)
)
 Respondents.)

ORDER OF THE BOARD (by J.A. Burke):

On February 28, 2014, Gary L. Polchow filed a complaint (Comp.) against Aaron Warren and Sean McAllister. The complaint concerns the Village of Rankin’s public works property in Vermilion County.

On April 17, 2014, the Board ordered Mr. Polchow to provide proof of service of the complaint on the respondents. On April 30, 2014, Mr. Polchow provided the Board with a return receipt (green card) signed by Mr. Warren on March 3, 2014. On May 1, 2014, Mr. Polchow provided the Board with a return receipt signed by Mr. McAllister on April 29, 2014. Answers to the complaint were due within 60 days after receiving the complaint. The Board has not received any answer to the complaint.

Complaint

Under the Environmental Protection Act (Act), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/31(d)(1) (2012); 35 Ill. Adm. Code 103. Mr. Polchow contends that the Village of Rankin public works property is burning unwanted items beyond yard waste, resulting in odor, hazardous waste, and chemicals entering the soil and a neighboring creek. Comp. at 2-3. The odor is also entering nearby homes. *Id.* at 4. Mr. Polchow alleges that this operation is causing air and water pollution. *Id.* at 3.

Mr. Polchow states that the items being burned include items that are not yard waste, and that the smoke is touching the ground. Comp. at 3. Mr. Polchow requests that the respondents change the operation and its location, which Mr. Polchow contends creates a fire risk due to proximity to a neighboring building. *Id.* at 4.

Board Review of the Complaint

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) (2012);

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.* Respondents filed no motion or answer to the complaint.

The Board finds Mr. Polchow’s complaint frivolous because it does not “state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. Mr. Polchow has not cited to a section of the Act which is allegedly being violated. In the portion of the complaint relating to listing “specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated,” Mr. Polchow references attachments to the complaint. The attachments include a copy of a report prepared by an inspector from the Illinois Environmental Protection Agency. The inspector discussed whether conditions observed on March 19, 2012 constituted violations of Sections 9(a) and 9(f) of the Act. However, it is not clear whether these are the sections of the Act which Mr. Polchow alleges were or are being violated.

For the Board to accept the complaint, Mr. Polchow must cite a specific section of the Act which he contends the respondents are violating. 415 ILCS 5/31(c)(1) (2012). A complete copy of the Act can be found on the Board’s website at www.ipcb.state.il.us. (The Act can specifically be found at <http://www.ipcb.state.il.us/documents/dsweb/Get/Document-68123>).

Further, the complaint names Aaron Warren and Sean McAllister as respondents but then alleges that the polluting conduct occurred at the Village of Rankin’s public works property. The complaint is unclear as to whether the Village of Rankin is responsible for the alleged conduct or these two individuals in their personal capacities have violated the Act.

For the above reasons, the Board cannot accept the complaint for hearing.

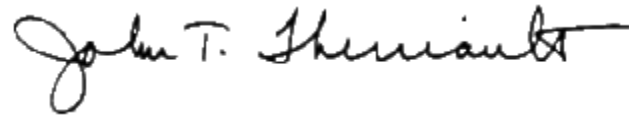
Opportunity to File Amended Complaint

The Board finds above that Mr. Polchow’s complaint is frivolous because it does not cite to a section or sections of the Act which Mr. Polchow alleges to be violated. However, the Board allows Mr. Polchow until August 25, 2014 to file an amended complaint with the Board. The amended complaint must comply with the content requirements of the Board’s procedural rules. *See, e.g.*, 35 Ill. Adm. Code 103.204. The amended complaint must specify the section of the Act being violated. The amended complaint must also identify who is violating those sections of the Act and whether they are acting in the course of their employment or as individuals.

Further, Mr. Polchow must serve a copy of the amended complaint on any named respondent. Mr. Polchow then must file with the Board proof that each respondent was served. *See* 35 Ill. Adm. Code 101.302, 101.304. The time periods for any respondent to file any motion attacking, or any answer to, the amended complaint will commence upon their respective receipts of the amended complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b); *see also* 35 Ill. Adm. Code 103.204(e).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 24, 2014, 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 at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board