

ILLINOIS POLLUTION CONTROL BOARD  
January 22, 2015

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):

Gary L. Polchow filed a complaint against Aaron Warren and Sean McAllister. The complaint concerned the Village of Rankin’s public works property in Vermilion County.

The Board dismissed the complaint as frivolous but granted Mr. Polchow until August 25, 2014 to file an amended complaint. Mr. Polchow filed a one-page document on August 22, 2014 and an additional page on August 25, 2014. These filings were insufficient and the Board directed Mr. Polchow to file a new amended complaint addressing questions raised by the Board.

Mr. Polchow filed a second amended complaint on October 17, 2014 (Am. Compl.). Mr. Polchow filed proof that the complaint was served on Mr. McAllister. Mr. Polchow also filed proof of attempted service on Mr. Warren. The Board has not received any filing from Mr. McAllister or Mr. Warren.

The Board dismisses this matter and closes the docket. The Board declines to accept the second amended complaint for hearing because Mr. Polchow has not provided the Board with proof of service on the correct respondent. To take further action on the alleged violations, Mr. Polchow may file a new complaint correcting the deficiencies noted by the Board.

**SUMMARY OF AMENDED COMPLAINT**

Mr. Polchow brought this action against Aaron Warren and Sean McAllister for activities at property owned by the Village of Rankin. Am. Comp. at 2; *see* Property Record attached to Am. Comp. (Property Record). Mr. Polchow alleges that Mr. Warren is the mayor of the Village of Rankin and Sean McAllister is an employee of the Village’s public works department. *Id.*

Mr. Polchow alleges that respondents violated Sections 3.115, 3.270, 9(a), 9(c), and 9(f) of the Illinois Environmental Protection Act (Act). Am. Compl. at 3, citing 415 ILCS 5/3.115, 3.270, 9(a), 9(c), 9(f) (2012). Mr. Polchow alleges that respondents dumped unwanted items mixed with yard waste at the public works site. Am. Compl. at 2. The alleged items mixed with

yard waste appear to include chemicals, oil, diesel fuel, plastic, and rubber. *Id.* at 3. Mr. Polchow also alleges that, when it rains, water runs from the site to a nearby creek. *Id.* Mr. Polchow attached 58 photos to the amended complaint.

Mr. Polchow states that the alleged violations have continued twice a week for two years and are ongoing. Am. Comp. at 3. Mr. Polchow contends that the activities are a “menace to public health and wildlife.” *Id.* at 4. Mr. Polchow also alleges that nearby homes are deteriorating in value and are at risk of fire. *Id.* Mr. Polchow further complains of odors inside nearby homes and that people with breathing problems have to keep their windows closed. *Id.*

Mr. Polchow seeks to “stop this service operation of Village of Rankin.” Am. Comp. at 4. Mr. Polchow requests that Mr. Warren and Mr. McAllister perform clean up and remove the polluted soil from the site. *Id.* Mr. Polchow further requests “abatement measures” and “an order that both respondents stop polluting.” *Id.*

### **BOARD FINDING**

Mr. Polchow’s allegations pertain to activities of the Village’s mayor and an employee at a site owned by the Village of Rankin. Am. Comp. at 2; Property Record. Mr. Polchow alleges that Mr. Warren, as mayor of the Village of Rankin, supervises the public works, and that Mr. Warren “during his course of employment activity orders Sean McAllister during his course of employment.” Am. Comp. at 2. Mr. Polchow alleges that respondents, in the course of their employment, violated various sections of the Act for activities performed at a site owned by the Village of Rankin. Mr. Polchow also seeks to “stop this service operation of Village of Rankin.” *Id.* at 4. Mr. Polchow’s complaint, therefore, appears to be against the Village of Rankin.

Mr. Polchow has not named the Village of Rankin as a respondent in this proceeding and has not listed the Village in the caption of his complaint. Mr. Polchow also has not served the complaint on the Village. In an action against a village, “summons may be served by leaving a copy . . . with the president of the board of trustees or village clerk.” 735 ILCS 5/2-211 (2012). In this case, Mr. Polchow alleges that Mr. Warren is the mayor of the Village of Rankin, and Mr. McAllister is a public works department employee. Am. Comp. at 2. Therefore, there is no proof in the record that Mr. Polchow has served the amended complaint either on the president of the board of trustees of the village, or that Mr. Polchow has served the complaint on the village clerk.

The Board dismisses the second amended complaint. To bring an action against the Village of Rankin, Mr. Polchow must identify the Village in the caption of the complaint and serve the complaint on the Village. Mr. Polchow may file a complaint addressing these deficiencies as a new matter before the Board.

The Board also notes that “[a]n enforcement proceeding will be commenced by the service of a notice and complaint . . . upon all respondents.” 35 Ill. Adm. Code 103.204(a). Further, “[p]roof of service of initial filings must be filed with the Board upon completion of service.” 35 Ill. Adm. Code 101.304(b). In this case, Mr. Polchow alleges that Mr. Warren refused service of the amended complaint. *See Polchow v. Warren*, PCB 14-112, Proof of

Attempted Service on Aaron Warren, p. 1 (Nov. 3, 2014). Mr. Polchow attempted to serve the amended complaint on Mr. Warren through certified mail. The front of the mailing envelope, provided to the Board, includes a United States Postal Service stamp that includes a box marked “unclaimed” that has been checked. *Id.* at 2. The stamp includes a box marked “refused” that was not checked. *Id.* As stated in the Board’s procedural rules, service can be made by registered or certified mail, but can also be done “personally . . . or by messenger service.” 35 Ill. Adm. Code 101.304(c). If Mr. Polchow is unable to serve the amended complaint through certified mail, Mr. Polchow is required to attempt another method of service.

### CONCLUSION

The Board dismisses the second amended complaint and closes this docket. Mr. Polchow may file a new complaint listing the Village of Rankin as a respondent. If Mr. Polchow chooses to take further action in this case, a copy of the complaint must be served on each 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, 103.204.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 22, 2015, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board