

ILLINOIS POLLUTION CONTROL BOARD  
June 4, 2015

SUSAN M. BRUCE, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 15-139  
 ) (Citizens Enforcement – Water)  
 HIGHLAND HILLS SANITARY )  
 DISTRICT, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by G.M. Keenan):

On January 16, 2015, Susan M. Bruce (complainant) filed a complaint against the Highland Hills Sanitary District (District) concerning the District's sanitary sewer system in DuPage County. The complaint alleges violations of the Board's water pollution regulations and a prior Board order that caused sewer backups into complainant's residence and flooding of her yard. The District moves to strike or dismiss the complaint as inadequately pled and in part as frivolous.

For the reasons set forth below, the Board grants the District's dismissal motion but allows complainant 30 days to file an amended complaint curing the deficiencies specified in this order. Below, the Board first provides the procedural history and addresses a procedural matter before summarizing the complaint and the filings regarding the District's motion to strike or dismiss. The Board then discusses and rules upon the pending motion.

**PROCEDURAL MATTERS**

**Procedural History**

As noted above, complainant filed a citizen's complaint (Comp.) on January 16, 2015. On March 4, 2015, complainant filed a document styled as a proof of service stating that she served the complaint on the District on January 15, 2015. Attached to the filing was a certified mail receipt for mail addressed to the District and signed by Kirsten Schoenke on January 20, 2015.

On March 11, 2015, the District moved to dismiss the complaint for lack of personal jurisdiction. The motion asserted that the Board lacked personal jurisdiction over the District because the complaint was not properly served.

By order of March 17, 2015, the hearing officer memorialized an agreement between the parties regarding service of the complaint. Under the agreement, complainant was permitted to re-serve the complaint on the District, and the District had 30 days after the earlier of (1) proper

service of the complaint or (2) the Board's ruling on the pending dismissal motion to file a motion challenging the sufficiency of the complaint. The agreement recited that the filing of such a motion would stay the 60-day period for the District to file an answer to the complaint.

On March 25, 2015, complainant filed an objection to the motion to dismiss for lack of personal jurisdiction. The objection asserted that the motion should be denied as moot because the District had been properly served in accordance with the March 17, 2015 hearing officer order. An amended proof of service stated that complainant's attorney had, on March 17, 2015, personally served a copy of the complaint on the District's president. The Board, taking account of these developments, rules upon the motion to dismiss for lack of personal jurisdiction in the immediately following subsection below.

On April 15, 2015, the District filed a motion to strike or dismiss the complaint as inadequately pled and in part as frivolous (Mot.). At the request of complainant's counsel, on May 6, 2015, the hearing officer extended to May 8, 2015, the deadline for complainant to respond to the District's second dismissal motion. On May 11, 2015, the Board received complainant's response in opposition to that motion (Resp.). The response was timely because it was postmarked May 8, 2015. *See* 35 Ill. Adm. Code 101.300(b)(2).

### **Motion to Dismiss for Lack of Personal Jurisdiction**

The District's motion to dismiss the complaint for lack of personal jurisdiction asserts that under Section 2-211 of the Illinois Code of Civil Procedure (735 ILCS 5/2-211 (2014)), complainant was required but failed to serve the complaint on the District's president or clerk. Complainant's amended proof of service shows that complainant personally served a copy of the complaint on the District's president, and the District acknowledges that the complaint was so served. *See* Mot. at 1. Accordingly, the Board denies as moot the District's motion to dismiss for lack of personal jurisdiction.

### **SUMMARY OF COMPLAINT**

The complaint consists of a completed complaint form, which the Board maintains on its website. The complaint alleges that on four specified days in April, July, and August, 2013, "twice in May 2013," and "three times in 2010," sewage from the District's sanitary sewer system "forcibly entered," in a "geyser like fashion," complainant's house through "every plumbing fixture with a drain. . . ." Comp. at 1-2. The complaint adds that sewage from the District's equipment also flooded complainant's backyard "above the ground level of the house." *Id.* at 2. According to the complaint, this pollution rendered the residence "unhealthy, unpleasant, uninhabitable," and "destroy[ed] complainant's property." *Id.* The complaint asserts that the District's alleged actions violate "Paragraph 601(a) and 602(b) of the Rules of the Board," as well as the Board's order in Traviseo v. Highland Hills Sanitary Dist., PCB 79-72 (Nov. 1, 1979).

Regarding relief, the Board's formal complaint form asks the complainant to describe the relief sought, and gives as examples an order that the respondent stop polluting, take pollution

abatement measures, reimburse cleanup costs, change its operation, or pay a civil penalty. *Id.* For this item, complainant wrote, “All.” *Id.*

### **SUMMARY OF MOTION TO STRIKE OR DISMISS**

The motion to strike or dismiss argues, first, that the complaint fails to include allegations meeting the requirements of Section 103.204(c) of the Board’s procedural rules (35 Ill. Adm. Code 103.204(c)(2)). Mot. at 2-5. The District maintains that the complaint does not identify the address or location of the alleged sewer discharges, and should be dismissed on that ground. *Id.* at 2. In addition, the District argues that the complaint’s allegation that sewer backups occurred, among other occasions, “three times in 2010” and “twice in May 2013” should be stricken because they are insufficiently specific to enable the District to prepare a defense. *Id.* As another ground to dismiss the entire complaint, the District asserts that the complaint fails to specify the extent and nature of the alleged sewer backups other than the one that allegedly occurred on April 18, 2013, or to describe the duration of that or any other alleged backup. *Id.* at 3.

Further, the District asserts that the complaint is frivolous in that it seeks to enforce the Board’s final order in Travieso (Travieso order) or, alternatively, that it inadequately pleads a violation of that order. Mot. at 3-5. On the first ground, the District maintains that the Board lacks authority to enforce that order and that the claim for violation of that order fails to state a cause of action upon which the Board could grant relief. *Id.* at 4. In particular, the District continues, pursuant to Section 45(e) of the Environmental Protection Act (Act) and Section 103.600(b) of the Board’s procedural rules, a final Board order in a citizen’s enforcement case may be enforced in a “civil action” only by a person who was a party to the enforcement proceeding. *Id.*, citing 415 ILCS 5/45(e) (2014), 35 Ill. Adm. Code 103.600(b). Complainant, according to the District, was not a party to Travieso and, therefore, may not seek to enforce the Travieso order. *Id.* at 4-5. To the extent the complaint seeks to allege a violation of the Travieso order, the District contends it fails to do so, omitting necessary information including what relation, if any, the Travieso complainant bears to complainant, and what part of the Travieso order is claimed to have been violated. *Id.* at 5. Nor, according to the District, does the complaint “address whether there have been physical changes” to the District’s sewer system that render the Board’s cease and desist order in Travieso “no longer current and valid.” *Id.*

Finally, the District argues that the complaint’s claim that the District violated “Paragraph 601(a) of the Rules of the Board” is frivolous. Mot. at 5. According to the District, that provision, which has been renumbered as 35 Ill. Adm. Code 306.102(a), applies only to entities that “own or operate treatment works.” *Id.* at 6, citing Burns v. Village of Western Springs, PCB 80-31 (Apr. 16, 1981). The complaint, the District continues, does not allege that the District operates a treatment works. *Id.*

The District requests that the complaint be dismissed and the allegations “relating to enforcement” of the Travieso order be dismissed “with prejudice to leave to refile.” Mot. at 6.

## **SUMMARY OF RESPONSE IN OPPOSITION TO MOTION TO STRIKE OR DISMISS**

In her response, complainant states that she “inadvertently omitted” her address when completing the formal complaint form. Resp. at 1. Complainant therefore “proposes to file” within a reasonable period allowed by the Board an amended complaint that includes her address. *Id.* With respect to the specific dates of the alleged sewer backups in 2010 and May 2013, complainant asserts that the existing allegations are sufficient to advise the District of “the extent of the alleged violations to reasonably allow preparation of a defense.” *Id.* at 1-2. Nonetheless, complainant adds, she is “prepared and proposes to file” an amended complaint “with more specificity” regarding the relevant dates in 2010 and May 2013, as well as any other discharges she can identify by specific date. *Id.* at 2.

Regarding the alleged backups other than that on April 18, 2013, complainant maintains that her allegations regarding the nature and duration of the violations is sufficient to reasonably allow the District to prepare a defense. Resp. at 2. Complainant, however, “can, and proposes to,” file an amended complaint “containing additional details on the nature and extent of the alleged discharges.” *Id.* And while the District does not argue that the allegations regarding the “strength” of the discharges are inadequate, complainant adds, in an amended complaint, she would endeavor to characterize the “strength” of the incidents as best she could, by, for example, “describing the height of the geyser-like formations” that allegedly entered her residence. *Id.* at 2-3.

Next, complainant explains that her residence was previously owned by the complainant in Travieso, but “concedes” that the Board “cannot enforce” the Travieso order at complainant’s request. Resp. at 3. Complainant, therefore, does not object to that part of the dismissal motion and, if granted leave to amend the complaint, would omit any request that the Board enforce the Travieso order. *Id.*

Finally, complainant states that in an amended complaint, she would include “appropriate allegations, based on a reasonable investigation,” concerning the District’s ownership or operation of a “treatment works.” Resp. at 3. Complainant concludes by requesting leave to file an amended complaint “addressing the deficiencies raised in” the motion to dismiss. *Id.* at 4.

## **DISCUSSION**

The Board first provides the legal framework for today’s decision. The Board then analyzes and rules upon the District’s motion to strike or dismiss the complaint as inadequately pled and in part as frivolous.

### **Legal Framework**

Under Section 31(c) of the Act, the Attorney General and the State’s Attorneys may bring actions before the Board to enforce Illinois’ environmental requirements on behalf of the People. 415 ILCS 5/31(c) (2014); 35 Ill. Adm. Code 103.212(c). In addition, Section 31(d)(1) of the Act provides:

Any person<sup>1</sup> may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder . . . . \*\*\* Unless the Board determines that such 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).

The latter type of enforcement action is referred to as a “citizen’s enforcement proceeding,” which the Board defines as “an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.” 35 Ill. Adm. Code 101.202. Complainant’s complaint against the District initiated a citizen’s enforcement proceeding.

Section 31(c), referred to in the passage of Section 31(d)(1) quoted above, states that the complaint “shall specify the provision of the Act or the rule or regulation . . . under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation . . . .” 415 ILCS 5/31(c) (2014). Even though “[c]harges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law” (Lloyd A. Fry Roofing Co. v. PCB, 20 Ill. App. 3d 301, 305, 314 N.E.2d 350, 354 (1st Dist. 1974)), the Act and the Board’s procedural rules “provide for specificity in pleadings” (Rocke v. PCB, 78 Ill. App. 3d 476, 481, 397 N.E.2d 51, 55 (1st Dist. 1979)) and “the charges must be sufficiently clear and specific to allow preparation of a defense” (Lloyd A. Fry Roofing, 20 Ill. App. 3d at 305, 314 N.E.2d at 354).

The Board’s procedural rules codify the requirements for the contents of a complaint, including:

- 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
- 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense.
- 3) A concise statement of the relief that the complainant seeks. 35 Ill. Adm. Code 103.204(c).

Within 30 days after being served with a complaint, a respondent may file a motion to strike or dismiss a complaint, which may include a challenge that the complaint is “duplicative” or “frivolous.” 35 Ill. Adm. Code 101.506, 103.212(b). A complaint is “duplicative” if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill.

---

<sup>1</sup> The Act defines “person” as “any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.” 415 ILCS 5/3.315 (2014).

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.*

### **Ruling on the District’s Motion to Strike or Dismiss**

The District argues that the complaint should be dismissed, first, because it fails to identify the location of the alleged sewer discharges. Mot. at 2. Complainant concedes this omission, and proposes to file an amended complaint specifying complainant’s home address as the location of the alleged overflows. Resp. at 1. The Board agrees that, as currently pled, the complaint does not adequately allege the “location” of the pollution, as required by Section 103.204(c) of the Board’s procedural rules (35 Ill. Adm. Code 103.204(c)). The Board, therefore, grants the motion to strike or dismiss the complaint as inadequately pled. The deficiency can be remedied, however, and the Board accordingly grants complainant’s request for leave to file an amended complaint within 30 days to cure the lack of specificity.

Although the failure to plead the location of the discharges is a sufficient ground to grant the dismissal motion, because the Board is allowing complainant to amend the complaint, the Board proceeds to address the remaining asserted grounds for striking or dismissing the complaint. In doing so, the Board turns first to the District’s arguments that certain allegations in the complaint are insufficiently pled, and then addresses the District’s contentions that particular claims are frivolous.

### **Arguments Regarding Insufficient Pleading**

The District asserts that the complaint’s allegations that sewer backups occurred, among other occasions, “three times in 2010” and “twice in May 2013” do not meet the pleading standards of Section 103.204(c) of the Board’s procedural rules (35 Ill. Adm. Code 103.204(c)). Mot. at 2. Section 103.204(c) requires that a complaint include factual details such as the dates, locations, and nature and consequences of the alleged violations, as necessary to advise the respondent of the extent and nature of the alleged violations to “reasonably allow preparation of a defense.” 35 Ill. Adm. Code 103.204(c); *see also* Lloyd A. Fry Roofing, 20 Ill. App. 3d at 305, 314 N.E.2d at 354. The complaint here alleges that the sewer backups occurred on particular days in April, July, and August, 2013, as well as on unspecified days in May 2013 and 2010. The Board notes that the latter two allegations, while less specific than the other dates identified in the complaint —*e.g.*, April 18, 2013—are similar to allegations that the Board has previously found to meet the applicable pleading standards.

For example, Schilling v. Hill, PCB 10-100 involved allegations that improperly managed construction activities led to contamination of the citizen complainants’ pond and flooding of their property. Schilling, PCB 10-100, slip op. at 2-3. The complaint alleged that this pollution occurred “during or about 2006 and 2007,” and again “during the spring of 2010.” *Id.* at 10. The respondents moved to dismiss the complaint on the ground, among others, that it lacked specific dates on which the alleged pollution occurred. *Id.* However, the Board found that the complaint alleged “facts in sufficient detail,” emphasizing that “[i]n a citizen enforcement action, a complaint can adequately allege pollution without having to give exact

dates and times upon which the contaminants caused pollution, and the exact names of the contaminants.” *Id.* at 10-11, citing Finley v. IFCO ICS-Chicago, Inc., PCB 02-208, slip op. at 7 (Aug. 8, 2002). And in Finley, the Board held legally sufficient allegations that air pollution from the respondent’s facility began on January 1 and continued through the filing of the complaint on May 21, 2002, and “generally” occurred during the facility’s “work day operations.” *Id.* In both cases, the Board ruled that the respective complaints sufficiently advised the respondents of the nature and extent of the alleged violations to reasonably allow the respondents to prepare a defense. *Id.*; Schilling, PCB 10-100, slip op. at 10.

Similarly, here, the Board finds that the complaint is sufficiently specific regarding the dates on which the alleged pollution occurred. The complaint’s references to three unspecified dates in 2010 and two in May 2013 is sufficient to advise the District of dates of the alleged violations, and need not pinpoint the exact dates of the alleged violations. *See* 35 Ill. Adm. Code 103.204(c). While conceivably this level of specificity might not suffice for complainant to fully prevail on her claims, that is not the standard at this stage. Rather, the Board need only determine whether the complaint’s allegations are sufficiently specific. The Board finds that they are, and accordingly denies the motion to strike or dismiss them. In the amended complaint that the Board permits by this order, complainant may, but need not, furnish additional details about the dates at issue.

Nor is the Board persuaded that the complaint lacks necessary detail concerning the extent and nature of the alleged backups. The District focuses only on the allegations regarding the backups into complainant’s home and flooding of her backyard on April 18, 2013, without taking account of the complaint’s other allegations about the extent and nature of the pollution. These are the allegations that the pollution consisted of “[s]ewer back-ups from all plumbing fixtures with a drain . . . [and] [s]ewage eruption from respondent’s equipment or structure in the backyard, that floods the backyard and even infiltrates into the house.” Comp. at 2. The complaint also alleges that the sewer backups “deposit[ed] human waste in the yard and [h]ouse,” rendering “the home unhealthy, unpleasant, uninhabitable, and destroy[ing] complainant’s property.” *Id.* These allegations appear to generally describe the pollution and its consequences, regardless of the exact dates on which the alleged backups occurred. As for the duration of the alleged discharges, the Board deems it sufficient that the complaint describes their nature—“eruptions” through plumbing fixtures—and their enduring effects; the complaint need not spell out the precise duration of each alleged backup. Thus, the Board concludes that the complaint gives enough information about the nature and extent of the alleged backups and flooding to reasonably allow the District to prepare a defense. Of course, if complainant wishes, she may add further information on these subjects in an amended complaint.

### **Arguments That Particular Claims are Frivolous**

The District contends that the complaint is frivolous to the extent it seeks to enforce the Travieso order. *See* Mot. at 3-5. Under Section 45(e) of the Act (415 ILCS 5/45(e) (2014), the District continues, that order is enforceable only in a civil action brought by a party to the Board proceeding in which it was issued. *See* Mot. at 4-5. To the extent the complaint seeks to enforce the Travieso order under Section 45(e)—*i.e.*, in a “civil action” for injunctive or other relief—the Board agrees that it is frivolous. Section 45(e) provides that a final order issued by the Board in

an enforcement action may be “enforced” in a *civil* action brought by a person who was a party to the prior proceeding. 415 ILCS 5/45(e) (2014). Complainant concedes she was not a party to Travieso, and Board proceedings are not “civil actions” (*i.e.*, a kind of judicial proceeding). *See People v. NL Indus.*, 152 Ill. 2d 82, 99-100, 604 N.E.2d 349, 356 (1992) (observing that while the Board “has no enforcement powers,” the Act provides for institution of a “*civil* action to obtain an injunction” enforcing final Board orders) (emphasis in original). Thus, the Board finds that the Travieso order may not be “enforced” in this proceeding.

The Board does have authority, however, to find that the District violated the Travieso order, upon a proper showing of such a violation. Under Section 31(d)(1) of the Act, “[a]ny person” may file a complaint “against any person allegedly violating . . . any Board order.” 415 ILCS 5/31(d)(1) (2014). Thus, complainant is entitled to assert a claim for violation of the Travieso order even though she was not a party to that proceeding. Nonetheless, the normal pleading standards apply to such a claim (*see id.*), and the complaint must, therefore, specify the “manner in and extent to which” the District is said to have violated the Travieso order (*see id.* at 5/31(c)). The District argues that the complaint does not meet this standard. The Board agrees that the complaint does not identify what part of the Travieso order the District is alleged to have violated, how the District did so, or what relationship, if any, there is between complainant and Mr. Travieso.<sup>2</sup> Thus, the Board rules that complainant’s claim for violation of the Travieso order is inadequately pled. In the amended complaint complainant is permitted to file, complainant may choose to abandon that claim, as her response proposes, *see* Resp. at 3, or re-plead it.

Finally, the District maintains that the complaint fails to state a cause of action for violation of Section 306.102(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 306.102(a)). In relevant part, that provision states that all “treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards” during “contingencies” such as flooding or equipment failure. 35 Ill. Adm. Code 306.102(a). The District argues, and complainant concedes, that the complaint does not allege that the District owns or operates a “treatment works.” The Board agrees that this is an element of a violation of Section 306.102(a) that must be pled in a complaint. *See Burns v. Village of Western Springs*, PCB 80-31, slip op. at 2 (Apr. 16, 1981), *aff’d*, 107 Ill. App. 3d 864, 438 N.E.2d 458 (1982) (ruling that a violation of Rule 601(a) “cannot be found” because the respondent was not shown to “own or operate” a treatment works). Complainant may remedy this deficiency in an amended complaint, as she proposes.

The Board grants the District’s motion to strike or dismiss the complaint, but, as noted above, also grants complainant’s request for leave to file an amended complaint correcting the deficiencies described above. *See* 35 Ill. Adm. Code 101.302. In addition, the amended complaint should provide the current codifications of the regulations cited in the complaint as “Paragraph 601(a) and 602(b) of the Rules of the Board.” *See* 35 Ill. Adm. Code 306.Appendix

---

<sup>2</sup> In Travieso, the Board found that the District had violated “Rules 601(a) and 602(b) of the Water Pollution Rules” and Section 33(c) of the Act; issued a cease and desist order against “causing sewer backups at Complainant’s residence,” effective within 120 days after the date of the order; and required the District to submit to the Board and the Agency a “compliance program” to reduce “excess infiltration” into the District’s system. Travieso, PCB 79-72, slip op. at 2.



A (listing current codifications of “old Board rule numbers”). Any such amended complaint must be filed by July 6, 2015, which is the first business day immediately following the 30th day after the date of this order. Failure to file an amended complaint on or before that date will result in dismissal of this case. The amended complaint must comply with the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204. In addition, a copy of the amended complaint must be served upon the District, and proof of service upon the District must be filed with the Board. *See* 35 Ill. Adm. Code 101.304. The deadline for the District to file any motion attacking, or any answer to, the amended complaint will commence upon receipt of the amended complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b); *see also id.* at 103.204(e).

### **CONCLUSION**

The Board grants the District’s motion to strike or dismiss the complaint. The Board also grants complainant’s request to file an amended complaint addressing the deficiencies described above, which complainant must file on or before July 6, 2015. Failure to timely file an amended complaint will result in the Board’s dismissing this case and closing the docket.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 4, 2015, by a vote of 5-0.



---

John T. Therriault, Clerk  
Illinois Pollution Control Board