

22262-1

BEFORE THE POLLUTION CONTROL BOARD

SUSAN M. BRUCE,)
)
 Complainant,)
)
 v.)
)
 HIGHLAND HILLS SANITARY DISTRICT,)
)
 Respondent.)

No. 2015-139

RECEIVED
CLERK'S OFFICE

MAR 25 2015

STATE OF ILLINOIS
Pollution Control Board



ORIGINAL

OBJECTION TO MOTION TO DISMISS

Complainant, SUSAN M. BRUCE, by her attorneys, HUCK BOUMA PC, object to the motion to dismiss of the respondent, HIGHLAND HILLS SANITARY DISTRICT. In opposition to the motion, complainant states as follows:

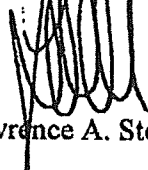
1. The motion should be denied as moot because the respondent was properly reserved on March 17, 2015, in accordance with the order of March 17, 2015.
2. Accurate copies of the proof of service and order are attached as exhibits A and B, respectively.

[The remainder of this page is intentionally left blank.]

WHEREFORE, complainant, SUSAN M. BRUCE, requests an order denying as moot the motion of the respondent to dismiss for lack of personal jurisdiction, and for all other relief deemed appropriate under the circumstances.

Respectfully submitted,


HUCK BOUMA PC



Lawrence A. Stein

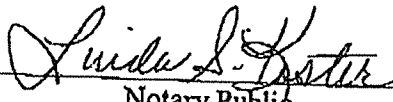
Lawrence A. Stein
HUCK BOUMA PC
1755 South Naperville Road
Wheaton, Illinois 60189
Telephone (630) 221-1755
Facsimile (630) 221-1756
Attorney No. 6216903

3. The *Notice to Respondent* and *Formal Complaint* I handed to Mr. Sarno then were in the forms attached as exhibits A and B, respectively.



Lawrence A. Stein

SUBSCRIBED and SWORN to before me this 18th day of March, 2015.



Notary Public



Lawrence A. Stein
HUCK BOUMA PC
1755 South Naperville Road
Wheaton, Illinois 60189
Telephone (630) 221-1755
Facsimile (630) 221-1756
Attorney No. 6216903
Email:
lstein@huckbouma.com

IN THE MATTER OF)
)
 SUSAN M. BRUCE,)
 Complainant,)
)
 v.)
 HIGHLAND HILLS SANITARY DISTRICT,)
)
 Respondent.)

NOTICE TO RESPONDENT

NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.lpcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks 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. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority,

however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

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 if admitted for 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).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

CERTIFICATE OF MAILING

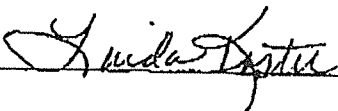
I, Linda Koster, state as follows under penalty of perjury this fifteenth day of January 2015:

1. I filed this *Notice to Respondent* by placing it in an envelope with proper postage prepaid and plainly addressed to State of Illinois, Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601.

2. I served this *Notice to Respondent* by placing accurate copies of it in an envelope with proper postage prepaid and by certified mail, return receipt requested, and plainly addressed to Highland Hills Sanitary District, 566 East 13th Place, Lombard, Illinois 60148.

3. I deposited the envelopes in the United States mail at Wheaton, Illinois on January 15, 2015, before 4:30 p.m.

4. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>

FORMAL COMPLAINT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of:)
Susan M. Bruce,)
(Insert your name(s) in the space above))
Complainant(s),)
v.)
HIGHLAND HILLS SANITARY DISTRICT,)
(Insert name(s) of alleged polluter(s)))
Respondent(s))

PCB 20 -
(For Board use only)

Note: If you do not use this formal complaint form and instead draft and type your own, it must contain all of the information requested by this form. All items must be completed. If there is insufficient space to complete any item, you may attach additional sheets, specifying the number of the item you are completing. Once completed, you must file the original and nine copies of the formal complaint, notice to respondent, and certificate of service with the Clerk of the Board at the above address.

1. Your Contact Information

Name: Susan M. Bruce, c/o Lawrence A. Stein, Huck
Bouma PC

Street Address: 1755 S. Naperville Road, Wheaton

County: DuPage

State: Illinois

Phone Number: (630) 221 - 1755

2. Place where you can be contacted during normal business hours (if different from above)

Name: _____

Street Address: _____

County: _____

State: _____

Phone Number: () - _____

3. Name and address of respondent (alleged polluter)

Name: Highland Hills Sanitary District

Street Address: 566 E. 13th Pl., Lombard

County: DuPage

State: Illinois

Phone Number: (630) 627 - 1930

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above

The respondent's sanitary sewer system.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.

Paragraph 601(a) and 602(b) of the Rules of the Board in that there is backup from sewers depositing human waste in the yard and House. The opinion and order of the Pollution Control Board dated November 1, 1979 in case no. PCB 79-72, Ramon Traviseo v. Highland Hills Sanitary District.

6. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution

Sewer back-ups from all plumbing fixtures with a drain, including floor drains, toilets, bathtubs, showers, and even elevated sinks. Sewage eruptions from respondent's equipment or structure in the backyard, that floods the backyard and even infiltrates into the house.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known)

April 18, 2013: Sewage forcibly entered the house through every drain in a geyser like fashion, and also through the respondent's equipment in the complainant's backyard, flooding the backyard above the ground level of the house. Additional backups twice in May 2013, July 24, 2013, August 3 and 6, 2013, and three times in 2010.

- 8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity

The polluting renders the home unhealthy, unpleasant,
uninhabitable, and destroys complainant's property.

- 9. Describe the relief that you seek from the Board (e.g., an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action))

All.

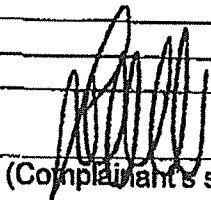
- 10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government)

Case No. PCB 79-72, Ramon Traviseo v. Highland Hills Sanitary
District

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.)

The complainant, an individual, is being represented by the undersigned, who is licensed to practice law in Illinois.

12.



Lawrence A. Stein, her Attorney

(Complainant's signature)

HUCK BOUMA PC
1755 South Naperville Road, Wheaton, Illinois 60189
(630) 221-1755
lstein@huckbouma.com

CERTIFICATION
(optional but encouraged)

I, _____, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

(Complainant's signature)

Subscribed to and sworn before me

this _____ day

of _____, 20__.

Notary Public

My commission expires: _____

RECEIVED
CLERK'S OFFICE
MAR 17 2015
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2015

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

HEARING OFFICER ORDER

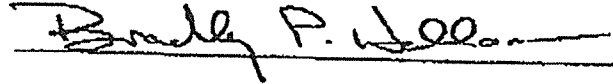
On March 16, 2015, all parties participated in a telephonic conference with the hearing officer.. The parties discussions centered on service issues. Subsequent the conference, respondent memorialized the agreement orally discussed and electronically submitted an agreement between the parties. The agreement between the parties is as follows:

- A. Complainant Bruce may re-serve the complaint filed on January 16, 2015.
- B. Respondent District shall have thirty (30) days from the earlier of either: (i) the date of proper re-service of the complaint; or (ii) the date of the Board's ruling on the District's pending motion to dismiss for lack of personal jurisdiction, in which to file a motion to dismiss the complaint under Section 101.506 and 103.212(b) of the Board's Procedural Rules (35 Ill. Adm. Code 101.506, 103.212 (b)).
- C. A motion by the District under Sections 101.506 and 103.212(b) of the Board's Procedural Rules (35 Ill. Adm. Code 101.506, 103.212(b) filed within thirty (30) days from earlier of either: (i) the date of the proper re-service of the complaint; or (ii) the date of the Board's ruling on the District's pending motion to dismiss for lack of personal jurisdiction, shall be timely filed and shall stay the 60-day period in which to answer the complaint, pursuant to section 103.204(e) of the Board's Procedural Rules (35 Ill. Adm. Code 103.204(e)).

EXHIBIT B

2

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

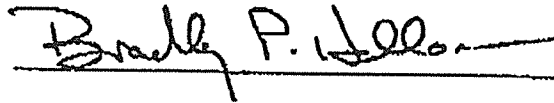
Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 17, 2015, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 17, 2015:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-8917

SERVICE LIST

PCB 2015-139
Joseph R. Podlewski, Jr.
Podlewski & Hanson, P.C.
4721 Franklin Avenue, Suite 1500
Western Springs, IL 60558-1720

PCB 2015-139
Heidi E. Hanson
Podlewski & Hanson, P.C.
4721 Franklin Avenue, Suite 1500
Western Springs, IL 60558-1720

PCB 2015-139
Susan M. Bruce
Huck Bouma PC
1755 South Naperville Road
Suite 200
Wheaton, IL 60189

PCB 2015-139
Lawrence A. Stein
Huck Bouma PC
1755 Naperville Road
Suite 200
Wheaton, IL 60189

PCB 2015-139
Highland Hills Sanitary District
566 East 13th Place
Lombard, IL 60148

RECEIVED
CLERK'S OFFICE
MAR 25 2015

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF MAILING

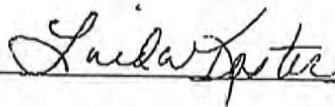
I, Linda Koster, state as follows under penalty of perjury this twenty-fifth day of March 2015:

1. I filed this *Objection to Motion to Dismiss* by placing it in an envelope with proper postage prepaid and plainly addressed to State of Illinois, Clerk of the Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601.

2. I served this *Objection to Motion to Dismiss* by placing accurate copies of it in an envelope with proper postage prepaid and by certified mail, return receipt requested, and plainly addressed to Joseph R. Podlewski, Jr., Esq., Heidi E. Hanson, Esq., Podlewski & Hanson P.C., 4721 Franklin Avenue, Suite 1500, Western Springs, Illinois 60558.

3. I deposited the envelopes in the United States mail at Wheaton, Illinois on March 18, 2015, before 4:30 p.m.

4. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



HUCK BOUMA^{PC}

ATTORNEYS AT LAW

1755 S. Naperville Road, Suite 200 Wheaton, Illinois 60189 Phone: (630)221-1755 Fax: (630)221-1756

FACSIMILE TRANSMISSION

DATE: March 25, 2015
 TO: Clerk - Illinois Pollution Control Board
 FAX NO. (312) 814-3669
 FROM: Lawrence A. Stein / Linda
 RE: 2015 - 139
 Objection to Motion to Dismiss
 FILE:

RECEIVED
 CLERK'S OFFICE
 MAR 25 2015
 STATE OF ILLINOIS
 Pollution Control Board

Attached please find a copy of complainant, Susan M. Bruce's Objection to Motion to Dismiss

THIS DOCUMENT CONTAINS _____ PAGES INCLUDING THIS FAX COVER SHEET.
 IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL (630) 221-1755.

Confidentiality Notice

THE INFORMATION IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE USE OF THE ADDRESSEE LISTED ABOVE. IF YOU ARE NEITHER THE INTENDED RECIPIENT NOR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THE TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE (630/221-1755) TO ARRANGE FOR THE RETURN OF THE ORIGINAL DOCUMENTS TO US.