

ILLINOIS POLLUTION CONTROL BOARD  
October 20, 2022

PAUL C. PRATAPAS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 23-14  
 ) (Citizens Enforcement - Water)  
 HORIZON CONSTRUCTION GROUP, INC., )  
 )  
 Respondent. )

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

On July 15, 2022, Paul C. Pratapas filed a complaint against Horizon Construction Group, Inc. (Horizon). The complaint concerns Horizon’s construction site located at 1150 Lily Cache Lane in Bolingbrook, Will County. After Horizon requested that the Board not accept the complaint because it is frivolous, the complainant moved to modify the complaint with additional alleged violations. For the reasons below, the Board grants both motions and accepts the complaint - as modified by this order – for hearing.

Below, the Board first provides the procedural history and summarizes the complaint. The Board then discusses the pending motions and considers whether the modified complaint is duplicative or frivolous before providing procedural direction and its conclusion.

**PROCEDURAL HISTORY**

On July 15, 2022, the complainant filed a complaint (Comp.). On August 5, 2022, the complainant filed proof of service showing service by certified mail on July 18, 2022.

On August 15, 2022, Horizon filed a motion requesting that the Board not accept the complaint because it is frivolous (Resp. Mot.). On August 26, 2022, complainant filed a motion to modify the complaint (Comp. Mot.). On the same date, complainant also filed a revised motion, which amends the caption.

**SUMMARY OF COMPLAINT**

Using a sample form supplied by the Board, complainant filed a complaint, attached to which were 36 photos. The complaint alleges that Horizon, a construction company, is causing or allowing pollution at 1150 Lily Cache Lane in Bolingbrook, Will County. Comp. at 2 (¶4). Complainant describes the site as “an apartment complex being built with some residents moved in.” Comp. at 3 (¶6).

The Board's form complaint requests that the complainant "[d]escribe the type of pollution that you allege . . . and the location of the alleged pollution" as specifically as he or she reasonably can. Comp. at 3 (¶6). The complaint states that:

[t]oxic concrete washout water and slurry which is prohibited from making contact with soil and migrating to surface waters or into the ground water located in construction area and public parking lot frequented by residents. Also, on topsoil. Significant amounts of sediment and sediment laden water are freely allowed to enter the street and inlets. Vehicles parked on street covered in sediment leaking oil. *Id.* at 3.

The Board's form complaint also asks the complainant to "[l]ist specific sections of the Environmental Protection Act [Act], Board regulations, Board order, or permit that you allege have been or are being violated." Comp. at 3 (¶5). The complaint alleges that Horizon is violating or has violated "The Clean Water Act: NPDES Permit," and 40 CFR §§ 450.21(a)(5), (b), (e)(1), and (e)(3). *Id.*

The Board's form complaint also asks the complainant to "[d]escribe the duration and frequency of the alleged pollution" as specifically as he or she reasonably can. Comp. at 3 (¶7). The complaint states:

Photographed: June 4, 2022 at 3:21pm  
 Photographed: June 8, 2022 at 1:39pm  
 ILEPA inspection leading to Enforcement Action: June 9, 2022  
 Letter of Compliance: June 24, 2022  
 Return to sitewide pollution photographed: July 9, 2022 3:08pm. *Id.*

The Board's form complaint also asks the complainant to "[d]escribe any bad effects that you believe the alleged pollution has or has had. . . ." Comp. at 4 (¶8). The complaint states that

[t]hey are washing out concrete and mortar in the streets. Prior to the enforcement action they were photographed actively using the street inlet as the drain for the washout barrel and adjacent mortar mixer. Inlet drains to several adjacent neighborhood retention ponds before entering the Lily Cache Creek, a Water of The United States posing a risk to plant and animal life. As well as the water quality of the creek and ground water. Concrete washout left on the public parking lot where residents walk their dogs. Still refusing to show me the SWPPP [Stormwater Pollution Prevention Plan] Book as witnessed by two Village of Bolingbrook employees on June 7, 2022, and documented in text messages with the violator June 6, 2022 1:03pm. There is currently no SWPPP info posted, just a blank board on the trailer which is hidden and dangerous to approach for the elderly, people with disabilities or anyone who doesn't want to walk through very rough exposed soil. *Id.*

The form complaint asks the complainant to “describe the relief that you seek from the Board.” Comp. at 4 (¶9). The complaint requests: “[i]mmediately stop polluting. Use and maintain required BMPs [Best Management Practices]. Control pollutants. Civil fines.” *Id.*

Finally, the complaint states that complainant is not aware that any “identical or substantially similar cases have been brought to the Board.” Comp. at 4 (¶10).

## **DISCUSSION**

### **Statutory and Regulatory Background**

“The Board shall have authority to conduct proceedings upon complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/5(d) (2020). Any person may bring an action before the Board to enforce Illinois’ environmental requirements. 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103.200. The complaint must contain information including a reference to the provision of the Act and regulations that the respondent is alleged to be violating. 415 ILCS 5/31(c)(1) (2020); 35 Ill. Adm. Code 103.204(c)(1).

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 the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2020); 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.*

### **Pending Motions**

As noted above under “Procedural History,” the Board has before it two pending motions. In the following subsection, the Board first addresses Horizon’s motion before deciding petitioner’s.

#### **Horizon’s Motion Requesting That the Board Not Accept the Complaint**

The complaint first alleged that Horizon violated “The Clean Water Act: NPDES Permit.” Comp. at 3 (¶5). It next alleged violations of four specified provisions of the Code of Federal Regulations. *Id.* It did not allege a violation of the Act or Board regulations. *See id.*

Horizon argues that “[t]he Board does not have the authority to enforce the cited Federal law and regulations and cannot grant relief.” Resp. Mot. at 2. Because the complaint alleges violations of authorities that the Board cannot enforce, Horizon concludes that the complaint is frivolous and requests that the Board decline to accept it. *Id.* at 2, 3.

The Board's powers are limited to those vested in it by the Act and do not extend to enforcing exclusively federal law. Korman v. IEPA, PCB 21-16, slip op. at 8 (Mar. 18, 2021), citing Flagg Creek Water Reclamation Dist. v. Village of Hinsdale, PCB 06-141, slip. op. at 8 (Sept. 21, 2006); Rulon v. Double D Gun Club, PCB 03-7, slip. op. at 4 (Aug. 22, 2002). As noted above, Section 5(d) of the Act provides the Board authority to conduct hearings on complaints alleging violations of State authorities. 415 ILCS 5/5(d) (2020). This authority does not extend to alleged violations of federal authorities. The Board does not have authority to adjudicate complainant's alleged violations of federal law and grants Horizon's motion requesting that the Board decline to accept them as frivolous.

### **Complainant's Motion to Modify the Complaint**

The Board also has pending complainant's August 26, 2022 motion to modify the complaint. That motion notes Horizon's request that the Board not accept the complaint. Comp. Mot. at 2. Complainant requested that the complaint list the following additional authorities to allege that Horizon has violated them: Section 12(a) of the Act (415 ILCS 5/12(a) (2020)) and 35 Ill. Adm. Code 304.141(b). Comp. Mot. at 2.

Section 12(a) provides in its entirety that no person shall "[c]ause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act." 415 ILCS 5/12(a) (2020). Section 304.141(b) of the Board's water pollution rules provides in its entirety that

[n]o person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the CWA or the Act, unless limitation for such a pollutant has been set forth in an applicable NPDES Permit. However, the Agency may, by permit condition, provide that the permittee may discharge pollutants present in its water supply intake sources in concentrations not greater than the concentrations in the intake sources, or which are added in trace amounts by normal domestic water usage. 35 Ill. Adm. Code 304.141(b).

Horizon has not responded to the motion. Under the Board's procedural rules, Horizon waives objection to granting the motion, but this waiver does not bind the Board's disposition of the motion. 35 Ill. Adm. Code 101.500(d).

The Board grants complainant's unopposed motion and modifies the complaint by adding these alleged violations of State law. As noted above, the Board has authority to conduct hearings on complaints alleging violations of State authorities. 415 ILCS 5/5(d) (2020).

### **Whether the Complaint as Modified Is Duplicative**

The Board first addresses whether the complaint – as amended above by granting the parties’ motions - is duplicative. As noted above, 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. In describing “the duration and frequency of the alleged pollution,” the complaint refers to “ILEPA inspection leading to Enforcement Action: June 9, 2022.” Comp. at 3 (¶7). However, the complainant is not aware that any “identical or substantially similar cases have been brought to the Board.” Comp. at 4 (¶10). The record does not show that any complaint alleging a violation by Horizon is before the Board or in another forum. Horizon’s motion did not argue that the original complaint is duplicative, and it did not respond to complainant’s motion to modify. Based on the record now before it, the Board finds that the complaint is not duplicative.

### **Whether the Complaint as Modified is Frivolous**

Next, the Board turns to whether the complaint is frivolous. As modified by granting the two motions above, the complaint “states a cause of action on which the Board can grant relief” by alleging violations of State law authorities. A complaint may also be frivolous if it requests “relief that the Board does not have authority to grant.” 35 Ill. Adm. Code 101.202. The complaint requests relief including an order that Horizon “immediately stop polluting.” Section 33(b) of the Act provides that, if the Board finds a violation, its final order may include an order to cease and desist from violations of the Act and regulations. 415 ICLS 5/33(b) (2020). The complaint also requests an order that Horizon “[u]se and maintain required BMPs” and that it “control pollutants.” The Board after finding a violation can order a respondent to develop and implement an abatement plan. *See, e.g., Gill v. CHS, Inc. – Carrollton Farmers Elevator*, PCB 16-68, slip op. at 3 (Jan. 21, 2016), citing *McDonagh and Fishbaum v. Michelin*, PCB 08-76, slip op. at 4 (July 10, 2008); *Pawlowski v. Johansen and Quinley, individually and d/b/a Benchwarmers Pub, Inc.*, PCB 99-82 (Apr. 4, 2000 and Sept. 21, 2000). If the complainant proves a violation, the Board can consider these requests for mitigation as an element of abatement under Section 33. Finally, complainant requests an order that Horizon pay “civil fines.” Section 42(a) of the Act provides the Board with authority to impose civil penalties for violations of the Act and Board regulations. 415 ILS 5/42(a) (2020). Accordingly, the complaint as modified above requests relief that the Board has authority to grant, and the Board finds that the complaint is not frivolous.

The Board finds that the complaint meets the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204(c). The Board accepts the complaint – as modified by this order - for hearing. *See* 415 ILCS 5/31(d)(1) (2020); 35 Ill. Adm. Code 103.212(a). A respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails by that deadline to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider that respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

## PROCEDURAL DIRECTION

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2020). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon the "lowest cost alternative for achieving compliance"; the need to deter further violations by the respondent and others similarly situated; and whether the respondent "voluntarily self-disclosed" the violation. 415 ILCS 5/42(h) (2020). Section 42(h) requires the Board to ensure that the penalty is "at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship." *Id.* Such penalty, however, "may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *Id.*

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent's economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the

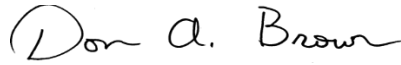
Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

### **CONCLUSION**

For the reasons above, the Board grants Horizon's motion requesting that the Board not accept complainant's alleged violations for hearing and also grants complainant's motion to modify the complaint. The Board finds that the complaint – as modified by this order – is neither duplicative nor frivolous and accepts the modified complaint for hearing.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 20, 2022, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown".

---

Don A. Brown, Clerk  
Illinois Pollution Control Board