

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 24-09
) (Citizens Enforcement - Water)
 PULTE HOME COMPANY, LLC,)
)
 Respondent.)

ORDER OF THE BOARD (by B. F. Currie):

On July 27, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Pulte Home Company, LLC (Pulte). The complaint concerns five residential home construction sites: Wagner Farms, located at 3723 Quick Fire Drive in Naperville, Will County; Trillium Farms located at Purnell Road, in Winfield, DuPage County; Winding Creek, located at the intersection of McKee Street and Deerpath Road, in Batavia, Kane County; Naper Commons located at 2308 West Lucent Lane in Naperville, DuPage County; and Sawgrass located at Hassert Boulevard and Sedge Drive in Lockport, Will County.

On September 1, 2023, Pulte filed a motion to dismiss on the grounds that the complaint fails to plead sufficient facts, fails state a claim, is frivolous and duplicative, and alleges a wholly past violations (Mot. to Dismiss). Within the motion to dismiss, Pulte requests that the Board impose sanctions as Mr. Pratapas has previously filed complaints against the five sites at issue in this case. On September 7, 2023, Mr. Pratapas filed a motion to amend the complaint (Mot. to Amend) as well as a response to Pulte’s motion to dismiss (Resp.). Pulte did not file a response to the motion to amend.

The Board first addresses the original complaint and Pulte’s motion to dismiss. The Board defers on deciding Pulte’s motion to dismiss, and directs Mr. Pratapas to file an amended complaint to plead with specificity the violations regarding the five sites. Next, the Board addresses Pulte’s motion for sanctions and Mr. Pratapas’ motion to amend the complaint. The Board denies Pulte’s motion for sanctions and grants Mr. Pratapas’ motion to amend the complaint.

MOTION TO DISMISS

Pulte asks the Board to dismiss and not accept the complaint on the basis that the complaint, “is insufficiently pled, frivolous, duplicative, and alleges wholly past violations.” Mot. to Dismiss at 1. Pulte argues that the complaint fails to state a cause of action upon which the Board can grant relief, but rather the complaint “merely recites a list of laws that complainant alleges were violated. *Id.* at 2.

Mr. Pratapas' original complaint alleged that Pulte violated: 415 ILCS 5/12(a), (d) (2022), and 35 Ill. Adm. Code 304.141(b). Comp. at 2. In describing the alleged violations, Mr. Pratapas said:

Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Photographs show concrete trucks have been cleaning out at the end of driveways. Sediment and sediment laden water freely allowed to enter the street and inlets. Inlet filter baskets filled with water and overflowing indicating they are clogged with the fine sediment and require maintenance. Workers photographed on a dirt covered road cleaning their boots off on the curb next to an inlet surrounded with sediment laden water. There appeared to be a total unawareness of any issues at hand. Cut out curbs left without BMPs. Pollutants are not controlled. Comp. at 3.

Mr. Pratapas does not specify to which the five sites the above description of alleged violations applies. Included in the original complaint are 13 photographs. The location and date of the photographs are listed in the complaint, however there is no additional information regarding the alleged violations at each site or how the photographs support the alleged violations. Comp. at 3, 10-14.

Discussion

The Board's procedural rules require complaints to include "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). The Board's rules also require that "[f]acts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification consistent with Section 1-109 of the Code of Civil Procedure." 35 Ill. Adm. Code 101.504. The Board's rules define "frivolous" as "a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202.

Board Findings

A complaint is required to plead facts that, if proven, would establish each element of the violations alleged. The Board finds that the information provided in the initial complaint as well as the motion to amend the complaint do not provide adequate information as to the nature, extent, duration and strength of the discharges alleged to constitute violations. The Board finds that the complaint lacks sufficient details describing with specificity how each of the five sites violated Sections 12(a) and (d) of the Illinois Environmental Protection Act (Act) as well as 35 Ill. Adm. Code 304.141(b). The Board directs Mr. Pratapas to amend his complaint so as to provide specificity of the violations for each of the five locations. The Board directs Mr. Pratapas to file an amended complaint by December 4, 2023. The Board defers its decision on the motion to dismiss until after December 4, 2023.

MOTION FOR SANCTIONS

Mr. Pratapas had previously filed five complaints against Pulte regarding the five sites at issue in this complaint. In each case, the Board dismissed the filing for either failure to properly serve the respondent or failure to amend the complaint. *See*, PCB 23-54 (dismissed on June 1, 2023 for failure to properly serve complaint); PCB 23-55 (dismissed on April 6, 2023 for failure to properly serve complaint); PCB 23-74 (dismissed on July 20, 2023 for failure to properly serve complaint); PCB 23-79 (dismissed on August 3, 2023 for failure to timely file an amended complaint); and PCB 23-63 (dismissed on July 6, 2023 for failure to properly serve the complaint). The Board dismissed the previous five cases without prejudice.

Pulte asks the Board to impose sanctions upon Mr. Pratapas for filing duplicative complaints. Pulte requests, “costs and expenses from dismissal of the prior – identical – actions as sanction for complainant’s failure to follow prior Board orders.” Mot. to Dismiss at 1.

Board Discussion and Findings

The Board’s procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board’s procedural rules. *See* 35 Ill. Adm. Code 101.800. Sanctions may include dismissing a proceeding with prejudice, or barring a party from maintaining a claim or defense. The Board has on rare occasions issued sanctions. For repeated failure to timely file an initial brief, the Board granted an IEPA motion for sanctions that requested to dismiss the proceeding with prejudice. Modine Manufacturing Company v. IEPA, PCB 87-124, slip op. at 3 (November 17, 1988) *aff’d*, 192 Ill. App. 3d 511. On remand from the Fourth District Appellate Court, the Court directed the Board to issue sanctions in the form of awarding attorney fees in an air permit appeal. The Grigoleit Company v. IEPA, PCB 89-184, slip op. at 4 (March 17, 1994).

The Board has broad discretion in determining the imposition of sanctions. *See* IEPA v. Celotex Corp., 168 Ill. App. 3d 592, 597 (3d Dist. 1988); Modine Manufacturing Co. v. PCB, 192 Ill. App. 3d 511, 519 (2d Dist. 1989). In exercising this discretion, the Board considers such factors as “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c).

In this case, the Board does not find that Mr. Pratapas has failed to comply with a previous Board order or the Board’s procedural rules. The five previous complaints were dismissed on procedural grounds and without prejudice. The Board does not find evidence of bad faith in the filing of this complaint. The Board therefore dismisses Pulte’s motion for sanctions.

MOTION TO AMEND COMPLAINT

On September 7, 2023, Mr. Pratapas filed a motion to amend formal complaint which included the text of several sections of a National Pollutant Discharge Elimination System permit


as well as two pages of additional facts. Pulte did not respond to the motion. The Board grants Mr. Pratapas' motion to amend the complaint.

ORDER

1. The Board defers on deciding Pulte's motion to dismiss the complaint until after December 4, 2023.
2. The Board directs Mr. Pratapas to file a second amended complaint by December 4, 2023.
3. The Board grants Mr. Pratapas' motion to amend the complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 2, 2023, by a vote of 4-0.

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

Don A. Brown, Clerk
Illinois Pollution Control Board