

ILLINOIS POLLUTION CONTROL BOARD
May 16, 2024

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 24-18
) (Citizens Enforcement - Water)
 M/I HOMES OF CHICAGO, LLC,)
)
 Respondent.)

ORDER OF THE BOARD (by M. Gibson):

On September 12, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint against M/I Homes of Chicago, LLC (M/I Homes). The complaint concerns three residential home construction sites: Chelsea Manor, located in Aurora, Illinois; Silo Bends located at 16646 S. Sunmeadow Drive in Lockport, Will County; and Willow Run, located at 15312 S. Sawgrass Circle in Plainfield, Will County.

The Board first addresses the procedural background, then discusses M/I Homes’ motion to dismiss and for monetary sanctions. The Board grants M/I Homes’ motion to dismiss, grants its motion for monetary sanctions, dismisses the complaint with prejudice, and closes the docket.

PROCEDURAL HISTORY

Mr. Pratapas previously filed three complaints against M/I Homes regarding the three sites at issue here. In each case, the Board dismissed the filing for failure to amend the complaint. *See*, PCB 23-81 (dismissed on September 7, 2023 for failure to timely file an amended complaint); PCB 23-75 (dismissed on August 3, 2023 for failure to timely file an amended complaint); and PCB 23-57 (dismissed on June 1, 2023 for failure to timely file an amended complaint). The Board dismissed the previous three cases without prejudice.

On October 17, 2023, M/I Homes filed a motion to dismiss and for monetary sanctions against Mr. Pratapas (Mot.) and a memorandum of law in support of its motion (Memo.). Mr. Pratapas did not respond to the motion.

Beginning April 8, 2024, Mr. Pratapas sent a series of emails containing harassing and inappropriate language directed at the hearing officer, Board staff, and other unknown individuals who are not parties to this case. On April 25, 2024, the hearing officers assigned to this matter cautioned Mr. Pratapas that “neither the Board Members nor the hearing officers will tolerate intemperate language and threats.” April 25, 2024 Hearing Officer Order, *citing Paul Christian Pratapas v. Lexington Trace LLC and Lexington Trace 2 LLC*, PCB 24-42.

The Board electronically served Mr. Pratapas and counsel for M/I Homes the hearing officer order on April 25, 2024. Later that day, Mr. Pratapas sent a series of emails to the hearing officers and counsel for M/I Homes that contain highly inappropriate language. Those emails have been docketed in this matter.

On April 30, 2024, M/I Homes filed a status report (Status Report), asking the Board to grant M/I Homes' motion with prejudice, award sanctions against Mr. Pratapas by ordering him to pay M/I Homes' attorney's fees, dismiss the complaint as a sanction for his "threatening and harassing conduct," and provide any other relief the Board deems just. Status Report at 5.

During the time period of July 12, 2022, to December 14, 2023, Mr. Pratapas has filed 28 complaints with the Board. All 28 complaints allege water pollution violations at various construction sites in DuPage County and Will County. The Board dismissed 23 cases and five cases remain in various stages of litigation.

CITIZEN COMPLAINT

The complaint alleges the following violations of the Environmental Protection Act (Act) at the three M/I Homes construction sites: 415 ILCS 5/12(a), (d); and 35 Ill. Adm. Code 304.141(b). Comp. at 2.

Mr. Pratapas alleges the following:

Water: Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. 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. These baskets are designed to catch sediment. Not filter it out of water. Comp. at 6.

The complaint requests the following relief:

1. Find that the Respondent has violated their permits
2. Assess a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of the Act and Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation
3. Examination of SWPPP inspection reports and contractor certifications by The Board
4. An order stating SWPPP plan(s) for phasing, curbside protection, concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual.
5. An order stating pollutants must be controlled and minimized from entering the street and/or stormwater system and required regulatory signage posted
6. An order stating concrete washout must not be discharged into the environment
7. A Board order requiring respondent to provide access to the SWPPP Books for the permitted sites referred to in this complaint

8. Pause all SWPPP permits issued to Respondent until complies with Constitution and posts regulatory signage and provides public access to the SWPPP Binder as described above

Comp. at 7.

Motion to Dismiss

M/I Homes asks the Board to dismiss this case with prejudice and to issue monetary sanctions against Mr. Pratapas. Mot. at 2. M/I Homes argues that the complaint is frivolous because it fails to state “any details describing the extent, duration, or strength of the alleged violations.” Memo. at 2. Further, M/I Homes argues that this case is “duplicative of the previous complaints Pratapas filed against M/I.” *Id.*

In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 438, 546 N.E.2d 580, 584 (1989). “To determine whether a cause of action has been stated, the entire pleading must be considered.” *LaSalle National Trust N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557, 616 N.E.2d 1297, 1303 (2nd Dist. 1993), *citing A, C & S*, 131 Ill. 2d at 438 (“the whole complaint must be considered, rather than taking a myopic view of a disconnected part[.]” *A, C & S*, *quoting People ex rel. William J. Scott v. College Hills Corp.*, 91 Ill. 2d 138, 145, 435 N.E.2d 463, 466-67 (1982)).

Frivolous

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. “Frivolous” is defined in the Board’s rules as, “any 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(b).

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). Mr. Pratapas’ complaint alleges that the violation occurred at three residential construction sites. Comp. at 6. However, the complaint lacks any details describing the dates, extent, duration, or strength of the alleged violations and only cites general violations, such as toxic concrete washout. *Id.* Mr. Pratapas concedes in his complaint that this case is a refiling and consolidation of previous cases that the Board dismissed. *Id.*

Complaints must request relief that the Board has the ability to grant. 35 Ill. Adm. Code 101.202(b). The Board has broad statutory authority to grant relief; however, the Board cannot issue the relief requested in number 4 as the Board cannot order changes to SWPPPs [Storm Water Pollution Prevention Plans]. Therefore, the Board dismisses requested relief numbered 4. The Board can find violations of a permit or term or condition of a permit, but those violations

have not been pled with specificity here, therefore requested relief numbered 1 and 8 are dismissed as well.

Mr. Pratapas alleges violations of the water pollution section of the Act – 415 ILCS 5/12(a) and 12(d) as well as a violation of the Board’s water pollution regulations at 35 Ill. Adm. Code 304.141(b). The Board finds that these alleged violations have not been pled with specificity. The Board grants M/I Homes’ motion to dismiss with prejudice for frivolousness.

Duplicative

M/I Homes asks the Board to find the complaint is duplicative and to dismiss it with prejudice. Mot. at 1, *citing* 415 ILCS 5/31(d); 35 Ill. Admin. Code § 103.212(a). Section 31(d)(1) says, in part: “Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein...” 415 ILCS 5/31(d)(1) (2022). Section 103.212(a) of the Board’s procedural rules says, in part: “When the Board receives a citizen’s complaint, *unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.*” 35 Ill. Adm. Code 35 103.212. The term “duplicative” is defined as, “the matter is identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202.

A complaint is duplicative if it is identical or substantially similar to a matter that is currently before the Board or in another forum. *See, James Fiser v. James L. Meador and Henry’s Double K, LLC*, PCB 18-84, slip op. at 8-9 (Sept. 6, 2018). In *Fiser v. Meador*, the Board noted that it had previously dismissed a noise complaint filed by Mr. Fiser, but that there were no current noise violation complaints pending before the Board, so the Board found the present case not duplicative. *Id.*

Similarly, though Mr. Pratapas filed three previous complaints against M/I Homes and those complaints were dismissed by the Board, there is not currently an identical case before the Board. Nor has M/I Homes alleged that a similar cases is pending in another forum. Therefore, the Board finds that this case is not duplicative.

Motion for Sanctions

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.

As previously mentioned, Mr. Pratapas started sending harassing and inappropriate emails on April 8, 2024. Even after the April 25, 2024 hearing officer order stating that the Board will not tolerate any “intemperate language or threats,” Mr. Pratapas continued sending emails with highly inappropriate language.

The Board has found that *pro se* litigants are held to the same standards as attorneys. In *Jay Aguilar v. Venus Laboratories, Inc.*, the *pro se* complainant failed to respond to the motion to dismiss. The Board put forth the responsibilities of a complainant as follows, “[b]y filing a

formal complaint, the complainant assumes the responsibility to actively proceed with the case. That responsibility includes the obligation to respond to the written motions filed by Venus Laboratories and to otherwise follow the Board's procedural rules regarding practice before the Board." Aguilar v. Venus Laboratories, PCB 93-2, slip op. at 4-5 (Feb. 25, 1993).

In order for Mr. Pratapas to prevail at hearing, he must present facts and arguments as to why a violation should be found. The burden is upon Mr. Pratapas to establish at a formal hearing, by oral testimony under oath, that a violation did occur under the terms of the Act and applicable regulations. "The Board hearing is not an informal informational hearing at which the Board or the respondent must explain its actions. The hearing is more in the nature of a court proceeding with testimony under oath and questions of the witnesses... The initial burden at hearing to explain why a violation should be found is not upon the Board or respondent." Aguilar v. Venus Laboratories at 5.

The Board is concerned with Mr. Pratapas' failure to file a response to the motion to dismiss. By filing a formal complaint, the complainant assumes the responsibility to actively proceed with the case. That responsibility includes the obligation to respond to the written motions filed by M/I Homes and to otherwise follow the Board's procedural rules regarding practice before the Board.

Additionally, the Board is deeply concerned with the content of Mr. Pratapas' emails. 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 Illinois Environmental Protection Agency 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).

Harassment, name-calling, and threats have no place in Board proceedings. Furthermore, by continuing to send highly inappropriate emails, Mr. Pratapas has unreasonably failed to comply with the hearing officers' April 25, 2024 order. Therefore, the Board grants M/I Homes' motion for sanctions and dismisses this matter with prejudice.

ORDER

1. The Board grants M/I Homes' motion to dismiss for frivolousness.
2. The Board denies M/I Homes' motion to dismiss for being duplicative.
3. The Board grants M/I Homes' motion for sanctions, dismisses the case with prejudice, and closes the docket.

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) (2022); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

| Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court | |
|---|---|
| Parties | Board |
| Paul Christian Pratapas 545 N. Mendenhall Road #8 Memphis, TN 38117 Paulpratapas@aol.com | Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren Street Suite 630 Chicago, Illinois 60605 Don.Brown@illinois.gov |
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2024, by a vote of 4-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board