BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VITAUTAS MATULYAUSKAS,	)	
	)	
Complainant,	)	
v.	)	PCB 2026-044
	)	(Citizens Enforcement – Noise)
LISLE PARK DISTRICT,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Andrew S. Paine, Tressler LLP, 233 S. Wacker Drive, 61st Floor, Chicago, Illinois 60606 (apaine@tresslerllp.com), counsel for Respondent;

Bradley P. Halloran, Hearing Officer, Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, Illinois 60605 (Brad.Halloran@illinois.gov).

PLEASE TAKE NOTICE that on November 16, 2026, I filed with the Clerk of the Illinois Pollution Control Board, through the Clerk's Office On-Line (COOL), the following document, a copy of which is served upon you:

1. Complainant's Reply to, and Motion to Strike, Respondent's Affirmative Defenses (35 Ill. Adm. Code 101.506).

Vitautas Matulyauskas

_____

Vitautas Matulyauskas, Complainant, pro se
6282 Timberview Drive, Lisle, Illinois 60532
(630) 747-4018 · vmatulis@gmail.com

Dated: November 16, 2026

Electronic Filing: Received, Clerk's Office 11/16/2026

AFFIDAVIT OF E-MAIL SERVICE

(Service by Non-Attorney — 35 Ill. Adm. Code 101.304(d)(3), (d)(5), 101.1060(e))

I, Vitautas Matulyauskas, being first duly sworn on oath, state as follows:

1. I am the Complainant in this proceeding, appearing pro se. My e-mail address, from which the transmission described below was sent, is vmatulis@gmail.com.

2. On November 16, 2026, at approximately 9:15 .m., I served the foregoing Notice of Filing and Complainant's Reply to, and Motion to Strike, Respondent's Affirmative Defenses by electronic mail, in PDF format, pursuant to Respondent's consent to e-mail service in this proceeding, upon Andrew S. Paine, Tressler LLP, 233 S. Wacker Drive, 61st Floor, Chicago, Illinois 60606, at apaine@tresslerllp.com, and upon Hearing Officer Bradley P. Halloran, Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, Illinois 60605, at Brad.Halloran@illinois.gov. The e-mail transmission contained 7 pages.

3. On the same date, I filed the same documents with the Clerk of the Board through the Clerk's Office On-Line (COOL). This affidavit documents service pursuant to 35 Ill. Adm. Code 101.304(d) and 101.1060, and is filed with the Clerk and served by e-mail on counsel of record for Respondent and on the Hearing Officer.

Vitautas Matulyauskas

Vitautas Matulyauskas, Complainant, pro se
6282 Timberview Drive, Lisle, Illinois 60532
(630) 747-4018 · vmatulis@gmail.com

State of Illinois)
) ss.
County of DuPage)

Subscribed and sworn to before me this 16th day of November, 2026.

Larry Philip Matusiak

Notary Public

Official Seal
LARRY PHILIP MATUSIAK
Notary Public, State of Illinois
Commission No. 1019449
My Commission Expires October 20, 2029

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COMPLAINANT'S REPLY TO, AND MOTION TO STRIKE, RESPONDENT'S AFFIRMATIVE DEFENSES

Complainant, Vitautas Matulyauskas, *pro se*, under 35 Ill. Adm. Code 101.506, moves to strike the three affirmative defenses pleaded in Respondent's Answer to First Amended Complaint, filed and served November 12, 2026 (the "Answer"), replies to those defenses, and states:

I. BACKGROUND

1. The First Amended Complaint, accepted by the Board's order of October 15, 2026, alleges that Respondent violated Section 24 of the Environmental Protection Act ("Act"), 415 ILCS 5/24, and 35 Ill. Adm. Code 900.102. It asks the Board to order Respondent to cease and desist and to abate the noise, and to assess a civil penalty under the Act. First Am. Compl. ¶ 9.

2. The First Amended Complaint seeks no damages. It states that Complainant "asserts no personal-injury claim and no claim that the noise caused or aggravated any medical condition." First Am. Compl. ¶ 8.

3. The Answer pleads three affirmative defenses. Each rests on the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* ("Tort Immunity Act"). Affirmative Defense No. 1 invokes Sections 2-201 and 2-109. Affirmative Defense No. 2 invokes Section 2-202. Affirmative Defense No. 3 lists Sections 2-103, 2-201, 2-204, 2-205, 2-207 and 3-103.

4. This motion is timely. A motion to strike or to challenge the sufficiency of a pleading "must be filed within 30 days after the service of the challenged document." 35 Ill. Adm. Code 101.506. The Answer was served by e-mail on November 12, 2026.

II. STANDARD

5. "Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer." 35 Ill. Adm. Code 103.204(d). A valid affirmative

defense alleges "new facts or arguments that, if true, will defeat . . . the government's claim even if all allegations in the complaint are true." *People v. Community Landfill Co.*, PCB 03-191, slip op. at 2 (Oct. 16, 2003) (quoting *People v. Community Landfill Co.*, PCB 97-193, slip op. at 3 (Aug. 6, 1998)). A motion to strike "admits well-pled facts constituting the defense, as well as all reasonable inferences that may be drawn from those facts, attacking only the legal sufficiency of the pleading." *People v. Petco Petroleum Corp.*, PCB 13-72, slip op. at 3 (Apr. 3, 2025). The Board strikes pleaded defenses that are legally insufficient under that standard. *Id.* at 5–7; *Community Landfill Co.*, PCB 03-191, slip op. at 7–8 (Oct. 16, 2003).

III. ARGUMENT

A. The Tort Immunity Act does not apply to this proceeding.

6. The Tort Immunity Act states its own limit: "Nothing in this Act affects the right to obtain relief other than damages against a local public entity or public employee." 745 ILCS 10/2-101.

7. The sections on which Affirmative Defenses No. 1 and No. 3 rely each provide, as quoted in the Answer, that a public entity or public employee "is not liable for an injury." Answer, Aff. Def. No. 1 ¶¶ 2–3; Aff. Def. No. 3 ¶ 1(a)–(f). Although the First Amended Complaint alleges interference with Complainant's enjoyment of life, it seeks no compensatory recovery for that interference. The relief requested is an abatement order and a statutory civil penalty, neither of which is damages. Affirmative Defense No. 1 is, by its own terms, conditional: it applies "[t]o the extent the vague allegations of Complainant's Complaint allege that any particular condition of the property resulted in an alleged injury." Answer, Aff. Def. No. 1 ¶ 4. The First Amended Complaint asserts "no personal-injury claim." First Am. Compl. ¶ 8. Taking as true the averment that a condition of the property "resulted from a discretionary decision by a Respondent employee," Answer, Aff. Def. No. 1 ¶ 4, that fact would not defeat the claim: Sections 2-201 and 2-109 address liability for an injury, and Section 2-101 preserves relief other than damages.

8. The Board has twice rejected attempts to invoke provisions of the Tort Immunity Act against relief sought in its enforcement proceedings. In 1971, a city respondent invoked the Act's notice provision and its bar on punitive damages. The Board held that the notice provision "pertains specifically to a 'civil action for damages,' which is not the case here," because "[t]his proceeding is an adjudication before an administrative agency," and continued:

> [T]he City's reference to Section 2-102 of Chapter 85 [the Tort Immunity Act] is totally inapplicable since that section deals with "punitive or exemplary damages," a technical term having to do with additional payments in private civil damage actions. The penalties which the Board may invoke pursuant to the Environmental Protection Act are, on the other hand, not in the nature of "damages," but are, rather, administrative sanctions . . . .

Environmental Protection Agency v. City of Champaign, PCB 71-51C, slip op. at 1 (Sept. 16, 1971).

9. In 2009, a city respondent again raised the Tort Immunity Act against a civil penalty. The Board held: "The Board finds that the Tort Immunity Act does not by its terms apply. Section 2-101 of the Tort Immunity Act provides that '[n]othing in this Act affects the right to obtain relief other than damages against a local public entity or public employee.'" *People v. Community Landfill Co.*, PCB 03-191, slip op. at 24 (June 18, 2009), *set aside in part on other grounds sub nom. City of Morris v. Community Landfill Co.*, 2011 IL App (3d) 090847, ¶¶ 27–28. The Board added that the primary purpose of civil penalties is to aid in enforcement of the Act. *Id.* (citing *People v. Fiorini*, 143 Ill. 2d 318, 349 (1991)). The appellate court later set aside the rulings against that city because it found the city was not an operator of the landfill; it did not address the Tort Immunity Act.

10. Illinois courts read Section 2-101 the same way. An action that seeks "relief other than damages" is "excluded from the Tort Immunity Act by the first sentence of section 2-101." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 256, 258 (2004). In a noise nuisance action against a municipality, the Second District held that the Act "applies only to tort actions seeking damages against municipalities and not to actions seeking injunctive relief." *People ex rel. Birkett v. City of Chicago*, 325 Ill. App. 3d 196, 204 (2d Dist. 2001) ("Section 2-101 excludes injunctive remedies from the requirements of the Tort Immunity Act."); *see also Romano v. Village of Glenview*, 277 Ill. App. 3d 406, 410 (1st Dist. 1995).

11. The relief requested here is an order under Section 33 of the Act and a civil penalty under Section 42 of the Act. Neither is damages. The Act applies to units of local government: a "person" under the Act includes a political subdivision, 415 ILCS 5/3.315, and the Board has ordered a municipality to abate noise under Section 24 and 35 Ill. Adm. Code 900.102. *Hoffman v. City of Columbia*, PCB 94-146, slip op. at 21–22 (Oct. 17, 1996).

12. A civil penalty is not damages merely because it is money. Damages are "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury." *Raintree Homes*, 209 Ill. 2d at 256 (quoting Black's Law Dictionary 393 (7th ed. 1999)). A civil penalty under Section 42 compensates no one. It is not paid to Complainant; the Board may order it paid to the Environmental Protection Trust Fund. 415 ILCS 5/42(a). The Board has described its penalties as "administrative sanctions," *City of Champaign*, slip op. at 1, and has noted that the Act provides separately for civil penalties, in Section 42(a), and for punitive damages, in Sections 22.2(k) and 57.12(f). *Community Landfill Co.*, PCB 03-191, slip op. at 24 (June 18, 2009).

13. Because the Tort Immunity Act does not apply to this proceeding, none of the three affirmative defenses would defeat the claim even if every fact pleaded in them were true. This defect does not depend on the facts pleaded. No additional facts would bring the relief requested within the Tort Immunity Act, so amendment would not cure it. All three should be stricken.

B. Affirmative Defense No. 2 is insufficient for two further reasons.

14. Section 2-202, as quoted in the Answer, concerns acts "in the execution or enforcement of any law." Answer, Aff. Def. No. 2 ¶ 2. The Answer pleads no fact showing that the

conduct alleged in the First Amended Complaint, permitting pickleball play on courts Respondent owns and controls, was the execution or enforcement of any law. 35 Ill. Adm. Code 103.204(d).

15. The only other averment is that "[t]he Respondent's acts or omissions did not constitute willful or wanton conduct." Answer, Aff. Def. No. 2 ¶ 4. The Board has held that "lack of willful, knowing, or repeated action is not an affirmative defense," because willfulness, knowledge and repetition "are not elements" of the violation. *People v. Community Landfill Co.*, PCB 03-191, slip op. at 7 (Oct. 16, 2003). Willful and wanton conduct is not an element of Section 24 of the Act or of 35 Ill. Adm. Code 900.102, and the First Amended Complaint does not allege it.

16. Striking Affirmative Defense No. 2 does not remove Respondent's knowledge, diligence, and subsequent conduct from this proceeding. Those matters remain at issue under Sections 33(c) and 42(h) of the Act, which the Board's April 2, 2026 order directs the parties to address.

C. Affirmative Defense No. 3 pleads no facts.

17. Affirmative Defense No. 3 reproduces six sections of the Tort Immunity Act and then states that they "immunize the Respondent and bar Complainant from recovery." Answer, Aff. Def. No. 3 ¶ 2. It pleads no fact. The Board has stricken a defense that "does not plead facts and would not defeat the People's claims even if all allegations were proven true." *People v. Community Landfill Co.*, PCB 03-191, slip op. at 7 (Oct. 16, 2003); 35 Ill. Adm. Code 103.204(d). More recently, in a citizen noise enforcement case, the Board granted the complainant's motion to dismiss two affirmative defenses because the respondent "failed to plead its affirmative defenses with any supporting facts." *Carper v. Topflight Grain Cooperative*, PCB 22-12, slip op. at 2 (Feb. 17, 2022).

D. Granting this motion leaves Respondent free to address Sections 33(c) and 42(h).

18. Complainant does not ask the Board to limit any evidence or argument Respondent may offer on the factors in Sections 33(c) and 42(h) of the Act. When the Board has stricken defenses of this kind, it has left the respondent free to address the same matters at hearing. *People v. Community Landfill Co.*, PCB 03-191, slip op. at 7–8 (Oct. 16, 2003); *see also People v. Community Landfill Co.*, PCB 03-191, slip op. at 24 (June 18, 2009) (a municipality's concern for its taxpayers may be considered under Section 42(h)).

IV. REPLY TO AFFIRMATIVE DEFENSES

19. Without waiving this motion, and so that no averment in the affirmative defenses is deemed admitted for want of a reply, Complainant replies as follows:

(a) **Affirmative Defense No. 1.** Complainant admits the averment in paragraph 1 that Respondent is a local public entity as defined in 745 ILCS 10/1-206, and denies that this status provides immunity in this proceeding. Paragraphs 2 and 3 quote statutes, which speak for themselves; Complainant denies that they apply to this proceeding. Complainant denies paragraph 4.

(b) **Affirmative Defense No. 2.** Complainant admits the averment in paragraph 1 of Affirmative Defense No. 2 that Respondent is a local public entity as defined in 745 ILCS 10/1-206, and denies that this status provides immunity in this proceeding. Paragraphs 2 and 3 quote or describe statutes, which speak for themselves; Complainant denies that they apply to this proceeding. Complainant denies paragraph 4.

(c) **Affirmative Defense No. 3.** Paragraph 1 quotes statutes, which speak for themselves; Complainant denies that they apply to this proceeding. Complainant denies paragraph 2.

WHEREFORE, Complainant, Vitautas Matulyauskas, respectfully requests that the Board strike Affirmative Defenses No. 1, No. 2 and No. 3 of Respondent's Answer to First Amended Complaint, and grant such other relief as the Board deems appropriate.

Respectfully submitted,



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Dated: November 16, 2026