

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-58
) (Citizens Enforcement - Water)
 D.R. HORTON INC. and EARTHWORKS)
 ENVIRONMETAL, LLC,)
)
 Respondent.)

ORDER OF THE BOARD (by M. Gibson):

On November 16, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Lincoln Valley by DR Horton, Inc. (Horton) and Earthworks Environmental, LLC (Earthworks). The complaint concerns Horton and Earthwork’s residential construction project located at 1011 Churchill Drive in North Aurora, Will County. On December 16, 2022, Horton filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint, as well as a motion to dismiss the complaint on the grounds that Mr. Pratapas alleges a wholly past violation (Horton Mot.). On December 28, 2022, Earthworks filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint on Earthworks, as well as a motion to dismiss the action on the grounds that the complaint is frivolous (Earthworks Mot.).

The Board first addresses the proper name of the respondent, then addresses the issue of service, and finally discusses the motions to dismiss. The Board directs the Clerk to correct the respondent’s name, grants both Horton’s and Earthworks’ motions regarding service, allows Mr. Pratapas to attempt to perfect service, and will address the motions to dismiss the complaint at a later time.

NAMED RESPONDENT

As filed, Mr. Pratapas named “Lincoln Valley by DR Horton” as the respondent in this complaint. In its December 16, 2022, motion, the attorney for Horton indicated that the proper name for the respondent is “D.R. Horton Inc.” The Board corrects the caption in this order and directs the Clerk to correct the respondent’s name in the docket of this case.

SERVICE OF COMPLAINT

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103. Under the Board’s rules, an enforcement proceeding begins by serving a notice and the complaint on a respondent. *See* 35 Ill. Adm. Code

103.204(a), (b). Specifically, service must be “by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient’s signature recorded, or personal service.” *Id.* Notably, enforcement complaints may not be served by e-mail. *See* 35 Ill. Adm. Code 101.1000(e).

If service is not timely initiated or completed, then the “proceeding is subject to dismissal, and the filing party is subject to sanctions.” 35 Ill. Adm. Code 101.304(b)(4). In this case, Mr. Pratapas used a sample complaint form available from the Board’s website that is directed at citizen complaints. The Board’s form includes a sample affidavit of service that lists appropriate methods of service. Mr. Pratapas reported to the Board that the complaint would be served on the respondent by “[p]ersonal service and [Mr. Pratapas] will make the personal delivery. However, the affidavit of service is not available to me currently.” Comp. at 10. Illinois law requires that a private corporation be served by “(1) leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any manner now or hereafter permitted by law.” 735 ILCS 5/2-204 (2020).

Here, the Illinois Secretary of State shows that the registered agent for D.R. Horton Inc. in Illinois is CT Corporation System, whose address is 208 South LaSalle Street, Suite 814, Chicago, Illinois. 60604. However, Mr. Pratapas left a copy of the complaint at the door of the construction site office for the Lincoln Valley project at 1011 Churchill Drive, North Aurora, Illinois, 60504. Therefore, because Mr. Pratapas left the complaint at the construction site and did not personally serve Horton’s registered agent in Illinois, service was not proper on Horton. Additionally, Mr. Pratapas only served the complaint to Earthworks by email. Email is not a valid form of service and Illinois, and therefore service of the complaint is not proper on Earthworks either.

The Board grants Horton’s and Earthworks’ motions to not accept the complaint for failure to serve; however, the Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondents no later than Monday, June 19, 2023, which is the first business day following the 30th day after the date of this order (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint for failure to properly serve the complaint.

MOTION TO DISMISS

The Board cannot accept a complaint until the complaint has been properly served on respondents. Therefore, the Board will delay its ruling on the motions to dismiss until such date, or after June 19, 2023.


ORDER

1. The Board directs the Clerk to correct the name of the respondent Horton in the docket.
2. The Board grants Horton’s motion to not accept the complaint for failure to serve.
3. The Board grants Earthworks’ motion to not accept the complaint for failure to serve.

4. The Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondents no later than Monday, June 19, 2023.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 18, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink on a white background.

Don A. Brown, Clerk
Illinois Pollution Control Board