

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-60
) (Citizens Enforcement - Water)
 LEXINGTON TRACE BY LEXINGTON)
 HOMES,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Van Wie):

On November 18, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Lexington Trace by Lexington Homes (Lexington or respondent). The complaint concerns Lexington’s residential construction project located at 3S490 Barkley Avenue, Warrenville, DuPage County. On January 6, 2023, Lexington filed a motion for rule to file out of time and extension of time to file motion to dismiss the complaint (Mot. for Ext.). On January 23, 2023, Lexington filed a motion requesting that the Board not accept the complaint for failure to properly serve the complaint on Lexington, as well as a motion to dismiss on the grounds that the complaint is frivolous (Mot. to Dis.).

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

NAMED RESPONDENT

As filed, Mr. Pratapas named “Lexington Trace by Lexington Homes” as the respondent in this complaint. In its January 11, 2023, motion, the attorney for the respondent indicated that the proper name for the respondent is “Lexington Trace LLC.” 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.

Here, Mr. Pratapas attempted service on Lexington in two ways. First, the Complaint was emailed to an employee at Lexington. As noted above, the Board rules prohibit service of a complaint in an enforcement proceeding by electronic means. Second, the Complaint was sent via certified mail to a person not authorized by law to accept service. 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 other manner now or hereafter permitted by law.” 735 ILCS 5/2-204 (2020). The Illinois Secretary of State shows the registered agent for Lexington Trace LLC is Thomas P. Duffy, whose address is 1515 E. Woodfield Road, Suite 250, Schaumburg, Illinois, 60602. Therefore, because Mr. Pratapas did not serve Lexington’s registered agent in Illinois or someone authorized to accept service on behalf of Lexington, service was not proper on Lexington.

MOTIONS FOR RULE TO FILE OUT OF TIME AND EXTENSION OF TIME AND MOTION TO NOT ACCEPT COMPLAINT

In its motion to file out of time and for extension to file motion to dismiss, Lexington argues that it has several good faith bases to challenge service of the Complaint and the sufficiency of same. Mot. for Ext. at 3. Lexington also states that its request for an extension of time to file a motion to dismiss is not being brought to cause undue delay or for improper reasons. *Id.* Rather, Lexington asserts that it only received the complaint by U.S. Mail on January 5, 2023, and filed its motion for extension just five days later. *Id.* Lexington states that no party will suffer any prejudice as a result of its request. *Id.* The Board finds that Lexington’s request to file a motion for rule to file out of time and extension of time to file motion to dismiss is supported by good cause, and grants the motion. 35 Ill. Admin. Code § 101.522.

In its motion to not accept or dismiss filed January 23, 2023, Lexington argues that the board should not accept the complaint for failure to properly serve Lexington. Mot. to Dis. At 3-4. Based on the Board’s discussion above, the Board grants Lexington’s motion 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 respondent no later than Monday, July 3, 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 respondent. Therefore, the Board will delay its ruling on the motion to dismiss until the complaint has been properly served in this case.

ORDER

1. The Board directs the Clerk to correct the name of the respondent in the docket.
2. The Board grants Lexington's motion for extension of time to file out of time and extension of time to file motion to dismiss.
3. The Board grants Lexington's 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 respondent no later than Monday, July 3, 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 June 1, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board