

ILLINOIS POLLUTION CONTROL BOARD  
June 1, 2023

PAUL CHRISTIAN PRATAPAS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 23-62  
 ) (Citizen's Enforcement - Water)  
 CHARLESTON BUILDING AND )  
 DEVELOPMENT; and OZINGA READY )  
 MIX CONCRETE, INC., )  
 )  
 Respondents. )

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

On November 22, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against Charleston Building and Development (Charleston), and Ozynga Concrete Yard #281 (Ozinga) alleging violations of the Environmental Protection Act at a residential home construction site located at 7S110 Donwood, Naperville, in DuPage County. On December 16, 2022, Ozinga filed a motion arguing the complaint was not properly served and that the complaint is frivolous. On January 18, 2023, Charleston filed a motion also arguing improper service and that the complaint is frivolous.

The Board first addresses the proper spelling of the name of the respondent, "Ozynga", then addresses the issue of service, and finally discusses the motions to dismiss. The Board directs the Clerk to correct the respondent "Ozynga" name, denies the motion to dismiss for failure to properly serve at this time, allows Mr. Pratapas to attempt to perfect service, and decides to address the motions to dismiss the complaint at a later time.

**NAMED RESPONDENT**

As filed, Mr. Pratapas named "Ozynga Concrete Yard #281" as one respondent in this complaint. In its January 12, 2022, motion, the attorney for respondent indicated that the proper spelling for the respondent is "Ozinga Ready Mix Concrete, Inc.". Additionally, the respondent says that there is no entity named "Ozinga Concrete Yard #281". 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 other manner now or hereafter permitted by law.” 735 ILCS 5/2-204 (2020). Mr. Pratapas indicated that he personally served the complaints on respondents at addresses in DuPage County.

Ozinga filed its motion challenging service, and CDB adopted those arguments in its own motion. Ozinga notes that the Board’s rules are silent on how personal service may be effectuated, thus, the Board can look to the Code of Civil Procedure for guidance. Mot. at 2, *see also* 35 Ill. Adm. Code 101.100, 101.304. Ozinga argues that under the Code of Civil Procedure, personal service cannot be effectuated by a party to the action. Mot. at 3, *citing* Gocheff v. Breeding, 53 Ill. App. 3d 608, 609 (5th Dist. 1977); 735 ILCS 5/2-202. Ozinga argues that the record is clear that Mr. Pratapas attempted service; therefore, the service was improper. Ozinga argues that the Board should dismiss the complaint, as the Board has no jurisdiction.

The Board’s procedural rules do not state that a complainant may not be the party to personally serve the complaint on a respondent. *See* 35 Ill. Adm. Code 101.304, 103.204. In the Board’s sample complaint form, the Documentation of Service page includes an Affidavit of Service section listing appropriate methods of service. Under the Affidavit of Service section, a complainant may mark Subsection C to indicate that the complainant personally served the complaint themselves. The Board’s rules and sample forms therefore allow personal service of a complaint by a complainant. The Code of Civil procedure similarly allows for service of process on a private corporation to be made in any manner permitted by law. *See* 735 ILCS 5/2-204 (2020).

Here, Mr. Pratapas used an altered version of the Board’s sample Documentation of Service page to indicate that he personally served Charleston and Ozinga. For Charleston, Mr. Pratapas wrote that the person served was “CHARLESTON BUILD AND DEVELOP FRONT DESK CLERK.” For Ozinga, Mr. Pratapas wrote that the person served was “OZYNGA EMPLOYEE WHO CAME OUTSIDE.” Mr. Pratapas did not provide any names or signatures of the persons served, nor did he provide the addresses of service. There is no indication that the persons “served” were registered agents, officers or other agents of the two entities. Further, the “Notice of Service” filed on November 28, 2022, does not indicate what Mr. Pratapas served on the parties at these addresses, so there is no proof of service of the complaint on the respondents.

The Board will allow Mr. Pratapas to file proper proof of service of the complaint on the respondents 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 the respondents. Therefore, the Board will delay its ruling on the motions to dismiss until such date, or after July 3, 2023.

### **ORDER**

1. The Board directs the Clerk to correct the spelling of Ozinga in the docket.
2. The Board denies Ozinga's motion to dismiss complaint for failure to serve.
3. The Board denies Charleston's motion to dismiss 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, 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