

ILLINOIS POLLUTION CONTROL BOARD
December 7, 2023

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

ORDER OF THE BOARD (by M. Gibson):

On November 18, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint against Lexington Trace by Lexington Homes, whose proper name is Lexington Trace LLC (Lexington). The complaint concerns Lexington’s residential construction project located at 3S490 Barkley Avenue in Warrenville, DuPage County.

The Board first addresses the procedural background of this matter, then Lexington’s motion to dismiss with prejudice, and finally Mr. Pratapas’ motions to amend the complaint. The Board denies Lexington’s motion to dismiss with prejudice, denies Mr. Pratapas’ motions to amend the complaint, closes the case, and dismisses the docket.

PROCEDURAL BACKGROUND

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. 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, and a motion to dismiss the complaint for frivolousness. Mr. Pratapas did not file a response to the motions.

On June 1, 2023, the Board granted Lexington’s motion for rule to file out of time and extension but directed Mr. Pratapas to file the required proof of service of the complaint on Lexington no later than July 3, 2023, or face dismissal of the complaint for failure to properly serve. *See* 35 Ill. Adm. Code 101.304(c), (d); *see also* 35 Ill. Adm. Code 103.204(a). The Board reserved ruling on Lexington’s motion to dismiss until and unless service of the complaint was perfected.

On June 27, 2023, Mr. Pratapas filed a certified mail receipt accompanied by the original Notice of Filing of this complaint and a Certificate of Service indicating that he sent the complaint to Lexington’s registered agent via certified mail on June 26, 2023. On July 7, 2023, Mr. Pratapas filed the signed certified mail return receipt indicating that Lexington’s registered agent received the mailing on June 29, 2023.

On August 3, 2023, the Board found that Mr. Pratapas timely filed the required proof of service of the complaint on Lexington; granted Lexington’s motion to dismiss for frivolousness, in part, but directed Mr. Pratapas to file an amended complaint no later than September 5, 2023, or face dismissal of the complaint; and struck three of Mr. Pratapas’ requests for relief.

On August 29, 2023, Mr. Pratapas filed both a motion to amend the formal complaint and a second motion to amend the complaint. On September 29, 2023, Lexington filed a motion to dismiss with prejudice.

MOTION TO DISMISS WITH PREJUDICE

On September 29, 2023, Lexington filed a motion to dismiss with prejudice (Mot. to Dismiss). Lexington asks the Board to dismiss the complaint on the basis that Mr. Pratapas “failed to amend the Complaint as ordered by the Board.” Mot. to Dismiss at 2. Lexington argues that the case should be dismissed with prejudice because Mr. Pratapas failed to file an amended complaint by September 5, 2023. *Id.* at 3.

Legal Background

Section 101.202 Definitions for Board's Procedural Rules

“Sanction” means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. 35 Ill. Adm. Code 101.202.

The Board’s rules on sanctions are found at 35 Ill. Adm. Code Section 101.800.

Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders

a) If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a party.

b) Sanctions include the following:

4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;

- c) In deciding what sanction to impose, the Board will consider factors including: the relative severity of the refusal or failure to comply; the history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith by the offending party or person.

35 Ill. Adm. Code 101.800

Board Discussion and Findings

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.

The Board has on rare occasions issued sanctions. For repeated failure to timely file an initial brief, the Board granted an IEPA 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).

In this matter, the Board does not find that Mr. Pratapas' failure to amend the complaint is a pattern of bad faith or deliberate noncompliance with its rules. The remedy for the failure to amend is dismissal of the complaint. The Board denies Lexington's motion to dismiss with prejudice.

MOTION TO AMEND COMPLAINT

On August 3, 2023, the Board directed Mr. Pratapas to file an amended complaint no later than September 5, 2023, or face dismissal of the complaint. *See* 35 Ill. Adm. Code 101.202(b). Mr. Pratapas filed two motions to amend his complaint on August 29, 2023. Both motions request that the Board consider attached photographs. However, motions to amend the complaint are not amended complaints. Even if the Board considered the motions as amended complaints, both fail to refer to provisions that Lexington is alleged to have violated and fail to contain "[t]he dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations." 35 Ill. Adm. Code 103.204(c). Therefore, because Mr. Pratapas failed to timely file an amended complaint, the Board dismisses this case and closes the docket.

ORDER


1. The Board denies Lexington’s motion to dismiss with prejudice.
2. The Board denies Mr. Pratapas’ motions to amend the complaint, closes the case, and dismisses 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 1779 Kirby Parkway, Ste. 1, #92 Memphis, Tennessee, 38138 paulpratapas@gmail.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov
Meltzer, Purtil & Stelle LLC Attn.: Jason M. Metnick 125 S. Wacker Drive, Suite 2900 Chicago, IL 60606 imetnick@moslaw.com	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 7, 2023, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board