

ILLINOIS POLLUTION CONTROL BOARD
January 20, 2011

JON CHVALOVSKY,)
)
 Complainant,)
)
 v.) PCB 10-13
) (Citizens Enforcement - Noise)
 COMMONWEALTH EDISON, FRANK)
 CLARK, and TIM JOHNSON,)
)
 Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

This is a citizen's enforcement action. Jon Chvalovsky, who resides at 9251 Latrobe Avenue in Skokie, Cook County, filed a complaint *pro se* against Commonwealth Edison, Frank Clark, and Tim Johnson (respondents). The complaint concerns alleged noise emissions from a transformer behind Mr. Chvalovsky's house and transmission lines in the vicinity of Church Street and Laramie Avenue in Skokie, Cook County. For the reasons below, the Board dismisses the case and closes the docket.

On August 8, 2009, Mr. Chvalovsky filed his complaint with the Board. For over a year thereafter, respondents sought, and received from the hearing officer, extensions of time to answer or otherwise respond to the complaint, all without objection from Mr. Chvalovsky. The last such extension expired on November 19, 2010, on which date respondents filed an answer to the complaint.

Section 31(d)(1) of the Environmental Protection Act (Act) provides that "[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing." 415 ILCS 5/31(d)(1) (2008); *see also* 35 Ill. Adm. Code 103.212(a). In an order of December 2, 2010, the Board found that Mr. Chvalovsky's complaint is frivolous for failing to state a cause of action. The Board therefore declined to accept the case for hearing at that time. The Board nevertheless granted Mr. Chvalovsky leave to file, by January 3, 2011, an amended complaint to cure the original complaint's deficiencies, all of which were identified by the Board in the order. *See Chvalovsky v. Commonwealth Edison*, PCB 10-13, slip op. at 2 (Dec. 2, 2010). Mr. Chvalovsky filed a letter with the Board on December 9, 2010, which the Board construes as an amendment to his complaint.

Mr. Chvalovsky's amendment (Am. Comp.) does address the issue of when the alleged pollution began, one of the deficiencies of the original complaint. *See Chvalovsky*, PCB 10-13, slip op. at 2. After stating that he has lived in the Latrobe Avenue house since 1954, Mr. Chvalovsky alleges in his amendment that the noise has persisted since the transformer was installed 10 years ago. Am. Comp. at 2. The complaint, even as amended, however, remains deficient.

Mr. Chvalovsky's original complaint alleges the violation of Section 24 of the Act (415 ILCS 5/24 (2008)).¹ Section 24 reads as follows:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (2008).

As the Board observed in its December 2, 2010 order, "[t]he appellate court has previously stated that Section 24 is not a general statutory prohibition." Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002), citing Shepard v. Northbrook Sports Club and the Village of Hainesville, 272 Ill. App 3d 764, 768, 651 N.E.2d 555, 558 (2nd Dist. 1995). Instead, Section 24 prohibits the emission of noise "'so as to violate any regulation or standard adopted by the Board under this Act.'" Shepard, 272 Ill. App. 3d at 768, 651 N.E.2d at 558, quoting 415 ILCS 5/24 (emphasis provided by court). Accordingly, the Board stressed in its order of December 2, 2010, that "Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24." Rulon, PCB 03-7, slip op. at 4, citing Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998). In determining that Mr. Chvalovsky's original complaint is frivolous for failing to state a cause of action, the Board found that the complaint "does not allege the violation of any Board noise regulation or standard." Chvalovsky, PCB 10-13, slip op. at 2.

Today the Board finds that Mr. Chvalovsky's amendment to his complaint also fails to allege the violation of any Board noise regulation or standard. Therefore, the amendment fails to adequately supplement the original complaint's allegation that respondents violated Section 24 of the Act. The amendment does mention decibel level readings, but without any citation to the Board's noise rules (numeric or nuisance), respondents cannot reasonably be expected to prepare a defense. *See* 35 Ill. Adm. Code 103.204. Because Mr. Chvalovsky has not properly pled a violation of the Act or any Board noise regulation or standard, the Board finds that the complaint, as amended, still "fails to state a cause of action upon which the Board can grant relief" and remains, by definition, "frivolous." 35 Ill. Adm. Code 101.202. Accordingly, the Board cannot accept this matter for hearing.

The Board's December 2, 2010 order cautioned Mr. Chvalovsky that the failure to remedy the deficiencies of the complaint through amendment would subject this case to dismissal. *See* Chvalovsky, PCB 10-13, slip op. at 2. Under the circumstances described above, the Board dismisses the case and closes the docket. The Board emphasizes that this dismissal is based solely upon the failure of Mr. Chvalovsky's pleadings to state a cause of action, not upon any allegations in respondents' answer, as Mr. Chvalovsky's amendment suggests. Nothing in this order precludes Mr. Chvalovsky from filing another complaint attempting to properly plead

¹ The original complaint also alleges the violation of Sections 23 (a legislative declaration) and 25 (a rulemaking authorization) of the Act (415 ILCS 5/23, 25 (2008)), neither of which can be violated, as found in the December 2, 2010 order. *See* Chvalovsky, PCB 10-13, slip op. at 2.

a noise violation. Any such complaint would be treated by the Board as a new case and assigned a new docket number.

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) (2008); *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.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 20, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board