

ILLINOIS POLLUTION CONTROL BOARD  
November 7, 2002

CLEAN THE UNIFORM COMPANY- HIGHLAND,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 03-21
	)	(Citizens UST Enforcement)
ARAMARK UNIFORM & CAREER APPAREL, INC.,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On August 23, 2002, Clean the Uniform Company- Highland (complainant) filed a complaint against Aramark Uniform & Career Apparel, Inc. (respondent). The complaint alleges that the respondent violated Sections 12 (a) and (d), 21 (a), 21(d)(2), 21(e) and 57 of the Environmental Protection Act (Act) (415 ILCS 5/23, 24 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). On September 26, 2002, respondent filed a motion to dismiss (Mot.) along with a motion to appear *pro hac vice*. On October 7, 2002, complainants filed a response (Resp.) to the motion to dismiss.

The Board denies the motion to dismiss and grants the motion to appear *pro hac vice*. The Board finds that the alleged violations of the Act are neither duplicative nor frivolous for the reasons discussed below. However, the request for injunctive relief is frivolous and the Board will strike that portion of the complaint. This matter is accepted for hearing.

**MOTION TO DISMISS**

**Arguments**

Respondent argues that this complaint should be dismissed as the complaint does not allege violations of the Board's regulations contrary to the requirements of the Board's procedural rules at 35 Ill. Adm. Code 103.204(c). Respondent asserts that the Board's procedural rules require that the complaint allege violations of the Act *and regulations*. Mot. at 1. Respondent argues that because the complaint does not contain proper references to the regulations that respondent is alleged to have violated, respondent cannot prepare a defense. Mot. at 2.

Complainant maintains that there is no alleged violation of the Board's regulations because complainant is not asserting that respondent violated the Board's regulations. Resp. at 1. Furthermore, complainant maintains that there is sufficient notice of the alleged violations in the complaint to warrant proceeding with the complaint. Resp. at 3. Finally, complainant argues

that the respondent is reading the Board's procedural rules too narrowly and such a reading is not supported by the Act. Resp. at 2-3.

### **Discussion and Conclusion**

The Board's procedural rules at 35 Ill. Adm. Code 103.204(c) provide:

- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
  - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
  - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
  - 3) A concise statement of the relief that the complainant seeks. 35 Ill. Adm. Code 103.204(c)

Section 103.204(c) sets forth the information which must be contained in the complaint. 35 Ill. Adm. Code 103.204(c). However in these procedural rules, nothing requires that a complainant allege both violations of the Act and the Board's regulations in order to file a complaint with the Board. Rather, if there are alleged violations to both the Act and the Board's regulations, the complaint must so state. In this case, the complainant makes no allegation that the Board's rules were violated so the complaint need not contain alleged violations of the Board's regulations. The motion to dismiss is accordingly denied.

### **DUPLICATIVE/FRIVOLOUS DETERMINATION**

#### **Discussion**

Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002) allows any person to file a complaint with the Board. Section 31(d) further provides that "[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing." *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests "relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b).

The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicative.

Furthermore, after careful consideration of the respondent's arguments, the Board finds that the complaint is not frivolous in that the complaint does state a cause of action. However, the complaint seeks both cost recovery and "injunctive" relief. Comp. at 1. The Board is not authorized to grant injunctive relief (415 ILCS 5/43 (2000)) and that portion of the complaint is stricken.

### **Conclusion for Duplicative/Frivolous Determination**

The Board finds that the alleged violations of Act are neither duplicative nor frivolous, pursuant to Section 31(d) of the Act (415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). However, the request for injunctive relief is frivolous and will be stricken.

### **ACCEPT FOR HEARING**

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.212(a). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider respondent to have admitted the allegation. 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

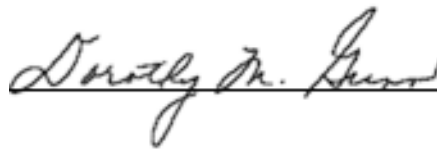
If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2000). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any, including a specific dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2002, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board