

ILLINOIS POLLUTION CONTROL BOARD  
October 4, 2018

LAWRENCE REED, )  
)  
Complainant, )  
)  
v. ) PCB 19-1  
) (Citizens Enforcement - Noise  
MARTIN PASILLAS, )  
)  
Respondent. )

ORDER OF THE BOARD (by C.M. Santos):

On July 5, 2018, Lawrence Reed filed a *pro se* citizens complaint (Comp.) alleging that Martin Pasillas had violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2016)). The complaint concerns Reed’s property at 211 North Winston Drive in Palatine, Cook County. For the reasons below, the Board finds that the alleged violation of Section 24 of the Act is frivolous, dismisses the complaint, and sets a deadline of November 5, 2018, for Reed to file an amended complaint.

Under the Act, any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315 (defining “person”), 31(d)(1) (2016); 35 Ill. Adm. Code 103. According to Reed, Pasillas violated Section 24 of the Act (415 ILCS 5/24 (2016) through noise emitted from the muffler modification on two vehicles, particularly when starting the vehicles. Comp. at 3. Reed alleges that the noise has occurred at least six and as many as 12 times a day between 5:30 AM and 11:30 PM for four years. *Id.* Reed states that the noise affects his “enjoyment of life” and that he is “annoyed and depressed” because of it. *Id.* at 4. The complaint states that Reed is not aware of another identical or similar case. *Id.* As relief, Reed requests a fine to “[h]ave them stop polluting the neighborhood. . . .” *Id.*

On August 23, 2018, the Board stated that the record lacked documentation that Reed had served the complaint on Pasillas. Reed v. Pasillas, PCB 19-1, slip op. at 1 (Aug. 23, 2018). The Board directed Reed by Monday, September 24, 2018, to file documentation that he had served the complaint on Pasillas or face dismissal. *See* 35 Ill. Adm. Code 101.304(d). The Board reserved ruling on whether the complaint is duplicative, frivolous, or otherwise deficient. *See* 415 ILCS 5/31(d)(1); 35 Ill. Adm. Code 103.

On September 20, 2018, Reed filed a statement that he had served the complaint on Pasillas by certified mail on September 1, 2018. He attached a U. S. Postal Service (USPS) receipt showing payment of certified mail postage and fees on that date. Although Reed stated that he had not received a delivery confirmation, he attached a USPS report corresponding to the tracking number of his September 1, 2018 certified mail and indicating delivery to Pasillas on September 11, 2018. *Id.* Regarding service, the Board notes that Pasillas filed an appearance

and answer (Ans.) on August 31, 2018. The Board finds that Reed timely provided documentation of service.

Section 31(d)(1) of the Act provides that, unless the Board determines that a complaint is duplicative or frivolous, it will schedule a hearing. 415 ILCS 5/31(d)(1) (2016). Within 30 days after being served with the complaint, a respondent may file a motion alleging that the complaint is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). 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. Nothing in the record indicates that the complaint is duplicative.

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.” 35 Ill. Adm. Code 101.202. Pasillas has not filed a motion alleging that the complaint is frivolous. However, Pasillas’ answer concludes by stating that the complaint “has failed to state a cause of action” under Section 24 and requests that the Board dismiss the complaint. Ans. at 5.

As noted above, the complaint alleges a violation of Section 24 of the Act (415 ILCS 5/24 (2016)). Section 24 provides that “[n]o 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 (2016).

“Section 24 is capable of being violated, but [t]he appellate court has previously stated that Section 24 is not a general statutory prohibition.” Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013), citing Shepard v. Northbrook Sports Club and Vill. of Hainesville, 272 Ill. App 3d 764, 768, 651 N.E.2d at 555, 558 (2nd Dist. 1995); Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002). 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 (emphasis in original), citing 415 ILCS 5/24. “Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24.” Chvalovsky, PCB 14-6, slip op. at 4, citing Rulon, PCB 03-7, slip op. at 4; Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998). The complaint does not allege any violation of a Board noise regulation or standard (*see* Comp. at 3. *See* 35 Ill. Adm. Code Part 900-910 (Subtitle H noise regulations).


Taking all well-pled allegations as true, drawing all reasonable inferences from the allegations in favor of Reed, and in light of the statutory and caselaw authorities above, the Board finds that the complaint is frivolous because it fails to state a cause of action on which the Board can grant relief. Accordingly, the Board dismisses Reed’s complaint. *See* Reed v. Howard, PCB 07-109, slip op. at 2 (Aug. 9, 2007).

However, to remedy this deficiency, the Board allows Reed until Monday, November 5, 2018, the first business day following the 30th day after the date of this order, to file an amended complaint with the Board. *See* 35 Ill. Adm. Code 101.302. The amended complaint must comply with the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204. In addition, Reed must serve a copy of the amended complaint upon respondents and

file proof of service upon respondents with the Board. *See* 35 Ill. Adm. Code 101.304. Failure to file an amended complaint meeting these requirements may result in dismissal of this case. The deadline for respondents to file any motion attacking, or any answer to, the amended complaint will be set when the Board receives an amended complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b); *see also* 35 Ill. Adm. Code 103.204(e).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 4, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board