

ILLINOIS POLLUTION CONTROL BOARD
February 14, 2019

CELESTE TAPIA AND MICHAEL W.)
EDWARDS,)
)
Complainants,)
)
v.) PCB 19-71
) (Citizens Enforcement - Noise
MILLER CONTAINER CORPORATION,)
)
Respondent.)

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

On November 7, 2018, Celeste Tapia and Michael W. Edwards (collectively, complainants) filed a complaint (Comp.) against Miller Container. Complainants allege that Miller Container violated Sections 23, 24, and 25 of the Environmental Protection Act (Act) (415 ILCS 5/23, 24, 25 (2016)) by emitting noise from two cyclone machines at its facility located at 3402 78th Avenue West in Rock Island, Rock Island County. Comp. at 2. The complaint requests that the Board order Miller Container “to stop generating noise that reaches our property.” *Id.* at 4 (¶9). If Miller Container does not meet a deadline to do so, complainants request that Miller Container pay unspecified civil penalties. *Id.*

For the reasons below, the Board finds that the alleged violations are frivolous. Complainants may file an amended complaint by Monday, March 4, 2019, or face dismissal of this case.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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. 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).

On December 20, 2018, the Board granted Miller Container’s unopposed motion to extend the deadline to file a motion to dismiss to January 16, 2019. *See* 35 Ill. Adm. Code 103.212(b). On January 3, 2019, Miller Container filed a motion to dismiss the complaint as frivolous (Mot.). Complainants did not respond to the motion and are deemed to have waived their objection to the granting of the motion. 35 Ill. Adm. Code 101.500(d).

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.

The complaint first alleges a violation of Section 23 of the Act. Comp. at 3. Section 23 provides in its entirety that “[t]he General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment. It is the purpose of this Title to prevent noise which creates a public nuisance.” 415 ILCS 5/23 (2016).

Miller Container argues that the Board has explained that Section 23 is a legislative declaration and cannot be violated. Mot. at 2, citing Chvalovsky v. Commonwealth Edison, PCB 10-13, slip op. at 2 (Dec. 2, 2010). The Board agrees that complainants’ alleged violation of Section 23 “fails to state a cause of action on which the Board can grant relief” and dismisses the allegation as frivolous. See Brisson v. Flood Brother Disposal & Recycling Servs., PCB 19-68, slip op. at 2 (Dec. 20, 2018).

Next, the complaint alleges a violation of Section 24 of the Act. Comp. at 3. Section 24 provides in its entirety 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).

Miller Container cites the Board’s statement in Chvalovsky, PCB 10-13, slip op. at 2, that

Section 24 is capable of being violated, but “[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 Vill. of Hainesville, 272 Ill. App 3d 764, 768, 651 N.E.2d at 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 (emphasis in original), citing 415 ILCS 5/24. Accordingly, 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).

As in Chvalovsky, the complaint does not allege any violation of a Board noise regulation or standard. Comp. at 3; see 35 Ill. Adm. Code Part 900-910 (Subtitle H noise regulations). The Board agrees that complainants’ alleged violation of Section 24 “fails to state a cause of action on which the Board can grant relief” and dismisses the allegation as frivolous. See Brisson, PCB 19-68, slip op. at 2.

Third, the complaint alleges a violation of Section 25 of the Act, which authorizes the Board to “adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.” 415 ILCS 5/25 (2016).

Miller Container argues that the Board has explained that Section 25 authorizes rulemaking and cannot be violated. Mot. at 2, citing Chvalovsky, PCB 10-13, slip op. at 2. The Board agrees that complainants' alleged violation of Section 25 "fails to state a cause of action on which the Board can grant relief" and dismisses the allegation as frivolous. See Brisson, PCB 19-68, slip op. at 2.

Based on the statutory and caselaw authorities above, the Board finds that each of the violations alleged in the complaint is frivolous because it fails to state a cause of action on which the Board can grant relief. Accordingly, the Board dismisses the complaint. See Reed v. Howard, PCB 07-109, slip op. at 2 (Aug. 9, 2007).

However, to remedy this deficiency, the Board allows complainants until Monday, March 4, 2019, 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. If they file an amended complaint, complainants must serve a copy of the amended complaint upon respondents and also file documentation of service with the Board. See 35 Ill. Adm. Code 101.304. In addition to the provision of the Act and regulations alleged to have been violated, an amended complaint must 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. The deadline for respondents to file any motion attacking, or any answer to, an amended complaint will be set when the Board receives one. 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 February 14, 2019, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board