

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANDRA CLAYBORNE,)
)
 Complainant,)
)
 v.)
)
 CITY OF CHICAGO DEPARTMENT)
 OF WATER MANAGEMENT,)
)
 Respondent.)

PCB15-120
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 DEC 23 2014
 ORIGINAL
 STATE OF ILLINOIS
 Pollution Control Board

FORMAL COMPLAINT

Complainant SANDRA CLAYBORNE, by and through her attorneys, Schaeve Law Office, complains formally to the Illinois Pollution Control Board as follows:

1. Complainant is an individual who resides at 345 West Barry Avenue, Unit 7, Chicago, Illinois 60657. Complainant's property is a three-level townhouse-style condominium unit. There are 8 similar units in the building.
2. Complainant may be contacted through her attorneys, Schaeve Law Office, 101 North Wacker Drive, Suite 2010, Chicago, Illinois 60606; phone number: (773) 899-0095; email address: mschaeve@gmail.com.
3. Respondent is a municipal department located at City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602.
4. Respondent holds a permit issued by the Illinois Environmental Protection Agency ("IEPA") to treat and supply potable water to residents of the City of Chicago, including Complainant.
5. Respondent has caused, and continues to cause, water pollution to occur in the form of grit and sand entering the potable water supplied to properties located on the 300 block

of West Barry Avenue, Chicago, Illinois, including Complainant's property situated at 345 West Barry, Unit 7, Chicago, Illinois 60657.

6. Respondent's conduct violates the Environmental Protection Act, 415 ILCS 5/1, the Water Pollution Control Act, 33 U.S.C. § 1251, and the Clean Drinking Water Act, 42 U.S.C. § 300.

7. On information and belief, the location of the pollution is the water main, stop tap, communication pipe and/or other arterial pipes that are Respondent's responsibility and that service the properties on the 300 block of West Barry Avenue, Chicago, Illinois, including Complainant's property at 345 West Barry Avenue, Unit 7, Chicago, Illinois 60657.

8. Complainant first noticed grit and sand in her potable water supply in May 2005 when she began having problems with her laundry washing and drying machines. She called her washer and dryer servicer to attempt to diagnose the problem and fix the machines. Upon examining the washing machine, the servicer found and removed grit and sand from the machine and from the hoses connecting it to her pipes. The servicer informed her that the grit and sand was likely entering her water supply at some location other than at Complainant's pipes, that the grit and sand was causing low water pressure, and that the low water pressure was preventing her washer from functioning properly. Complainant paid money to have her appliances fixed and her hoses flushed, but the grit and sand returned shortly after.

9. In September 2005, Complainant discovered grit and sand in the tanks of her toilets and she discovered that her shower heads were not performing properly because they were plugged up with grit and sand. She hired a plumbing contractor to diagnose and fix these issues. The plumbing contractor advised Complainant that the grit and sand were likely entering her water supply at some location other than at her pipes. Complainant complained to Respondent in

2005 and Respondent came and flushed the water main servicing Complainant's property, but once again the grit and sand returned shortly after.

10. In 2005, Complainant continued to experience grit and sand in her water supply. She telephoned Respondent on a number of occasions and asked that Respondent address the problem. After many phone calls by Complainant, Respondent sent a maintenance crew to the 300 block of West Barry Avenue to diagnose the problem and flush the main and meter area, which provided Complainant with only temporary relief from the grit and sand. Respondent advised Complainant that there was a break in the water main. Respondent is unaware if any action was taken by Complainant to fix the water main break.

11. From 2006 to 2012, Complainant continued to observe low water pressure, grit and sand in the basin and tank of her toilet, and grit and sand coming from the faucets of her shower and sinks. She continued to telephone Respondent to ask that the problem be corrected.

12. In 2009, Respondent sent a crew out and flushed the water main servicing Complainant's property, but the problems returned shortly after.

13. Complainant is unaware of Respondent taking any action from 2009 to 2013 to correct the grit and sand in her water supply despite her regular telephone calls to Respondent to fix the problem. During this time period, Complainant was required to regularly change her toilet's flush valve, shower head, and kitchen faucet head as a result of accumulation of grit and sand.

14. In June 2013, Complainant's second-floor laundry room flooded, causing severe property damage. Her washing machine had malfunctioned due to low water pressure and grit and sand in the machine. The grit and sand had entered the machine through the hoses from Respondent's water supply. The flooding of the second-floor laundry room caused water to seep

through the floor of the laundry room, through the ceiling of the adjacent first-floor kitchen, and onto the floor of the kitchen, causing severe property damage at every stage of the water's migration downward.

15. In July 2013, as a result of the grit and sand in her water supply, Complainant had to manually fill the tanks of each of her three toilets in order have enough water pressure to flush her toilets.

16. In July 2013, Complainant's neighbor telephoned the IEPA to complain about similar issues she was having with grit and sand in her potable water supply. Complainant's neighbor formally resided in another unit in Complainant's building at 345 West Barry Avenue.

17. On information and belief, the IEPA contacted Respondent and, as a result, Respondent flushed the water main and meter area, which provided Complainant and Complainant's neighbor only temporary relief from the grit and sand. Respondent also removed grit and sand from Complainant's washing machine hoses, toilet tanks, shower faucets and kitchen faucets.

18. Weeks after Respondent flushed the water main and meter area in 2013, Complainant began having the same problems with low water pressure, grit and sand in the tanks and basins of her toilets, grit and sand in the heads of her shower and faucets, and grit and sand in her washing machine and its hoses. She again began repeatedly telephoning Respondent to ask that Respondent implement a permanent solution to correct the problem because the flushing of the main was achieving only temporary relief.

19. In April 2014, Complainant telephoned the IEPA and complained about her issues with grit and sand. On information and belief, the IEPA contacted Respondent and, as a result, Respondent hired a private company to attempt to diagnose the problem. The private company

came to Complainant's property to investigate, but to Complainant's knowledge no corrective action was taken by Respondent.

20. On information and belief, Complainant's unit is nearest in proximity to the water main as compared to the other units in her building at 345 West Barry Avenue and, as a result, she has experienced the most problems with grit and sand as compared to the other units in her building.

21. On information and belief, the residents of the high-rise condominium located at 339 West Barry Avenue, which is the high-rise condominium building immediately east of Complainant's property, regularly experience low water pressure and grit and sand in their toilet basins and tanks.

22. Respondent has ignored, and continues to ignore, Complainant's requests for a permanent solution to the grit and sand in her potable water supply. As a result, Complainant continues to experience grit and sand in her water supply, causing severe damage to her property and great cost to repair or replace her property.

23. On information and belief, the water main servicing Complainant's property and the properties on Complainant's block is over 100 years old, is degraded and damaged, and is causing a significant threat to the health, safety and welfare of Complainant and other residents of the 300 block of West Barry Avenue.

24. By its actions, Respondent has caused, and appears certain to continue to cause, pollutants to be present in Complainant's potable water supply in violation of Respondent's permit, of the Illinois Environmental Protection Act, and of any rule or regulation of the Board or permit or term or condition thereof.

WHEREFORE, Complainant SANDRA CLAYBORNE, respectfully requests that the

Illinois Pollution Control Board:

- (a.) Enter a preliminary order immediately upon the filing of this Complaint that, within three (3) months of the filing of this Complaint, Respondent must flush the its water main and arterial pipes servicing Complainant's property, and must do the same each and every three (3) months thereafter until Respondent becomes permit compliant;
- (b.) Conduct a hearing;
- (c.) Enter a written order giving its decision on the evidence it hears and on the allegations and relief pled in this Complaint, including that:
 - (i.) Respondent is in violation of its IEPA permit and must become compliant with its permit within six (6) months by taking measures to prevent sand, grit or other pollutants from entering Complainant's water supply on a permanent basis;
 - (ii.) Respondent must test Complainant's potable water supply for all pollutants and toxic materials and conduct an investigation to determine the point(s) where grit and sand have entered, and continue to enter, Complainant's potable water supply; and
 - (iii.) Respondent must pay all costs of testing and remediation;
- (d.) Order that Respondent comply with its IEPA potable water permit in all other ways;
- (e.) Order that Respondent pay for all costs incurred by Complainant for repair or replacement of her washing machine, hardwood flooring and other property due to property damage cause by flooding caused by sand and grit in her water supply; and
- (f.) Provide for any further relief that the Board deems appropriate.

Respectfully submitted,
SCHAEVE LAW OFFICE

By Mark Schaeve,
One of the attorneys for SANDRA CLAYBORNE

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Downers Grove, Ill. 60515
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mschaeve@gmail.com
Atty. No. 6291156

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Notice and this Formal Complaint, by placing same in the U.S. mail certified, with return receipt requested, in Chicago, Illinois on 11/21/14 addressed to:

City of Chicago Department of Water Management
City Hall
121 N. LaSalle Street
Chicago, Illinois 60602

Mark Schaeve

Mark A. Schaeve

NOTICE TO RESPONDENT

NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks 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. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion

alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or

your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 City of Chicago Dept. Water Mgmt
 121 N. La Salle St.
 Chicago, IL 60602

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 B. Received by (Printed Name) Agent Addressee
 C. Date of Delivery
 D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
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1. Article Number (Transfer from service label) 7009 2820 0001 5913 5882
 PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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STATE OF ILLINOIS
 Pollution Control Board



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Return Receipt Fee (Endorsement Required)	2.70
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Sent To: City of Chicago Dept. Water Mgmt.
 Street, Apt. No., or PO Box No. 121 N. La Salle St
 City, State, ZIP+4 Chicago, IL 60602

PS Form 3800, August 2006 See Reverse for Instructions



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 PLEASE COME AGAIN
 HAVE A NICE DAY

 * YOUR RECEIPT *
 * THANK YOU *

PLB15-120