

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 2015

JAMES R. FISER, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 15-93  
 ) (Citizens Enforcement – Noise)  
 JAMES “HENRY” MEADOR, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On November 13, 2014, James R. Fiser (Fiser) filed this *pro se* complaint (Comp.) against James “Henry” Meador (Meador) alleging noise pollution violations at Meador’s bar and restaurant “Henry’s Double K” located at 834 South Jackson Street, Mt. Carroll, Carroll County. On December 11, 2014, Meador filed a motion to deny acceptance of the formal complaint (Mot.). On December 23, 2014, Fiser filed a reply to Meador’s motion (Reply). For the reasons below, the Board finds that the complaint is frivolous and grants Meador’s motion to dismiss, but provides a time period for filing an amended complaint. In this opinion, the Board provides the procedural history of this case and summarizes Fiser’s complaint and Meador’s motion to dismiss before explaining its decision.

**PROCEDURAL HISTORY**

On November 13, 2014, Fiser filed a *pro se* citizen’s complaint. The complaint alleges that loud bands and associated noise at Henry’s Double K, located at 834 South Jackson Street interfere with complainant’s sleep in his residence at 842 South Jackson Street in Mt. Carroll. Comp. at 1-3. Specifically, the complaint alleges violations of Sections 23, 24, and 25 of the Environmental Protection Act (Act). *Id.* at 2; 415 ILCS 5/23, 24, 25 (2012). According to the complaint, the duration and frequency of the alleged noise pollution is usually between the hours of 9:00 PM and 1:00 AM and has “persisted from July 2013 to date.” *Id.* at 3. The complaint states that the alleged noise pollution has had a detrimental effect on human health by causing sleep deprivation and is “recognized as a stress inducer.” *Id.* at 4. The Complaint does not seek “closure of the bar or . . . a monetary resolution,” but instead seeks a Board order compelling Meador to perform noise abatement measures and comply with noise regulations. *Id.* at 5.

On December 11, 2014, Meador timely filed a motion to dismiss the complaint as “frivolous” for failing to state a claim pursuant to 35 Ill. Adm. Code 103.212. In his motion, Meador argues that the Board should decline to accept Fiser’s complaint for hearing because it “does not state a cause of action.” Mot. at 2. Meador states that “Fiser’s property is 275 feet from the restaurant. [Fiser’s] house is approximately 350 feet from the restaurant.” *Id.* at 2. Meador alleges that he “has not received any complaints about noise from anyone other than Mr.

Fiser,” including the city or the police. *Id.* at 2-3. Finally, Meador argues that the complaint “does not list any specific noise levels or how I am violating any laws.” *Id.* Meador concluded by arguing that the complaint “fails to state a cause of action by being insufficient as to facts.” *Id.*

On December 23, 2014, Fiser filed a reply to Meador’s motion. Fiser states that he “want[s] the music emanating from inside Mr. Meador’s building to be decreased to a level that does not prohibit [him] from sleeping in [his] bedroom and complies with ENVIRONMENTAL SAFETY.” Reply at 1 (emphasis in original). Fiser attached exhibits to his motion, including Mt. Carroll’s previous and current noise ordinances, a record of decibel readings taken at the Fiser residence, and other documentation. Reply Exhibits A-E. Fiser argues that the current Mt. Carroll ordinance, “allows a much higher level than the state and EPA allows and only applies to sounds emanating from an outside source.” Reply at 1. Fiser asserts he has called the police on multiple occasions and attended city council meetings to report Meador’s noise violations. *Id.* at 2.

### **DISCUSSION**

Under the Act, any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2012); 35 Ill. Adm. Code 103. In this case, Fiser alleges noise pollution from Meador’s business is causing a loss of sleep. Comp. at 1-2. As mentioned above, Fiser specifically alleges violations of Sections 23, 24, and 25 of the Act. Comp. at 1; 415 ILCS 5/23, 24, 25 (2012). As relief, Fiser seeks lowering noise to a level compliant with regulations. Comp. at 3.

Section 31(d)(1) of the 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) (2012); *see also* 35 Ill. Adm. Code 103.212(a). A citizen 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.* (definition of “frivolous”).

Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. *See* 35 Ill. Adm. Code 103.212(b). Meador did so here, alleging that the complaint is frivolous for failing to state a claim. In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004).

Again, the complaint alleges violations of Sections 23, 24, and 25 of the Act. 415 ILCS 5/23, 24, 25 (2012). Section 23 is a legislative declaration, Section 24 is not a stand-alone statutory prohibition, and Section 25 authorizes the Board to create rules regulating noise. *See* 415 ILCS 5/23, 24, 25 (2012). As explained in more detail below, none of these provisions can be violated. *See Strunk v. Williamson Energy, LLC* (Pond Creek Mine #1), PCB 07-135, slip op. at 9-10 (Sept. 20, 2007) (regarding Sections 23 and 24 of the Act (415 ILCS 5/23, 24 (2012))); and *Chad Gifford v. American Metal Fibers, Inc.*, PCB 08-13, slip op. at 3-4 (Sept. 20, 2007) (regarding Sections 24 and 25 of the Act (415 ILCS 5/24, 25 (2012))).

As the Board found in Strunk, “Section 23 of the Act states legislative findings and purposes. It does not provide [a complainant] with substantive rights.” Strunk, slip op. at 9 (internal citations omitted). Section 23 of the Act cannot be violated. Maurice Whisenhunt v. Jeff Moore, PCB 14-34, slip op. at 2 (Jan. 9, 2014).

Section 24 of the Act provides that “[n]o person shall emit beyond the boundaries of this 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 (2012). Section 24 of the Act is capable of being violated, but “[t]he appellate court has previously stated that Section 24 is not a general statutory prohibition.” *See Strunk*, slip op. at 10, citing Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002); *see also Shepard v. Northbrook Sports Club and the Village of Hainesville*, 272 Ill. App 3d 764, 768, 651 N.E.2d at 555, 558 (2nd Dist. 1995). Instead, Section 24 of the Act 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 in original). 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). The complaint does not allege the violation of any Board noise regulation or standard, which can be found at Part 900 of the Board’s noise regulations. *See* 35 Ill. Adm. Code Part.900.

Finally, as the Board stated in Gifford, “[b]ecause Section 25 merely authorizes the Board to promulgate noise regulations, Section 25 cannot be violated.” Gifford, slip op. at 3-4. As explained above, Sections 23, 24, and 25 of the Act cannot be violated, and therefore the Board grants Meador’s motion and finds Fiser’s complaint frivolous with regard to the alleged violations of those sections of the Act.

In order to remedy the deficiencies described above, the Board will allow Fiser to file an amended complaint with the Board correcting the deficiencies described above. *See* 35 Ill. Adm. Code 101.302. Any such amended complaint must be filed by March 23, 2015, which is the first business day following the 30th day after the date of this order. Failure to file an amended complaint before that date will subject this case to dismissal. The amended complaint must comply with the content requirement of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204. In addition, a copy of the amended complaint must be served upon Meador, and proof of service upon Meador must be filed with the Board. *See* 35 Ill. Adm. Code 101.304. The deadline for Meador to file any motion attacking, or any answer to, the amended complaint will commence upon receipt of the amended complaint. *See* 35 Ill. Adm. Code 101.506, 103.212(b); *see also* 35 Ill. Adm. Code 103.204(e).

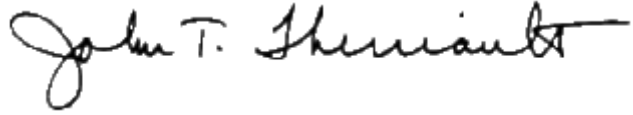
## CONCLUSION

The Board finds that the complaint “fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202 (definition of “frivolous”). Accordingly, the complaint is frivolous, and the Board, therefore, grants Meador’s motion to dismiss the

complaint but allows Fiser 30 days to file an amended complaint addressing the deficiencies described above.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 19, 2015, by a vote of 4 - 0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board