

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,)	
)	
Complainant,)	PCB # 2015-139
v.)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY)	
DISTRICT,)	
)	
Respondent.)	

NOTICE OF FILING

To:
Lawrence A. Stein
Huck Bouma PC
1755 South Naperville Road
Wheaton, IL 60189

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document:

RESPONDENT'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO COMPLY WITH BOARD RULES AND TO DISMISS IN PART FOR BEING FRIVOLOUS

a copy of which is hereby served upon you.

Respectfully submitted,



Heidi E. Hanson

Dated: April 15, 2015

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

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RESPONDENT’S MOTION TO DISMISS COMPLAINT FOR FAILURE TO COMPLY WITH BOARD RULES AND TO DISMISS IN PART FOR BEING FRIVOLOUS

Respondent, HIGHLAND HILLS SANITARY DISTRICT (“District”), by and through its attorneys PODLEWSKI & HANSON P.C., respectfully moves the Illinois Pollution Control Board to dismiss the Complaint for failure to comply with the Board’s Procedural Rules and to dismiss in part for being frivolous, pursuant to Procedural Rules 101.500(a), 101.506 and 103.212 (35 Ill. Adm. Code 101.500(a),101.506 and 103.212).

In support of this motion, the District states as follows:

1. Complainant Susan M. Bruce served her Formal Complaint (“Complaint”) on the President of the District on March 17, 2015, and filed it with the Illinois Pollution Control Board (“Board) on March 20, 2015.
2. Board Procedural Rule 103.204(c)(2) (35 Ill Adm. Code 103.204(c)(2)) requires that a complaint “must contain”:

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;

I. The Complaint Fails to Identify The Location of Alleged Discharges

3. The Complaint alleges violations of the Board's water pollution control regulations arising from sewer discharges which occurred at Susan Bruce's house and yard (Complaint, paragraphs 5 through 8) but the only address given in the Complaint for Susan Bruce is that of her attorney, Larry Stein (Complaint, paragraphs 1 and 12).

4. Nowhere in the Complaint does Complainant identify the address or location of the alleged sewer discharges.

5. The Complaint should be dismissed because it fails to comply with 35 Ill. Adm. Code 103.204(c)(2) in that it fails to state the location of the alleged sewer discharges.

II. The Complaint Fails to Allege Specific Dates of Certain of the Alleged Discharges

6. In paragraph 7 of the Complaint, Complainant Susan Bruce alleges that, in addition to specified dates in April, July and August of 2013, backups occurred "twice in May 2013" and "three times in 2010."

7. By failing to specify the dates in 2010 and May of 2013 on which sewer backups were alleged to have occurred, the Complaint has failed to comply with 35 Ill Adm. Code 103.204(c)(2) and further has failed to inform the District of the extent and nature of the alleged sewer discharges with sufficient specificity to enable Respondent to prepare a defense to the violations alleged to have occurred in those time periods.

8. Accordingly, the allegations of violations in 2010 and May of 2013 should be stricken for failure to comply with 35 Ill. Adm. Code 103.204(c)(2).

III. The Complaint Fails to Describe the Nature, Duration, Extent, and Strength of the Alleged Discharges

9. The Complaint, in paragraph 7, provides information on the extent of sewer backups during backyard flooding on April 18, 2013. However, the other eight alleged events are merely described only as “additional backups.”

10. In addition, the Complaint provides no information on the duration of the April 18, 2013 back-up or any of the “additional backups.”

11. The Complaint fails to comply with 35 Ill. Adm. Code 103.204(c)(2) in that it fails to provide the information required by Board rule and fails to advise Respondent of the extent and nature of the alleged violations so as to reasonably allow preparation of a defense. Accordingly, the Complaint should be dismissed.

IV. The Complaint is Frivolous in its Request that the Pollution Control Board Enforce the *Travieso* Order

12. Section 31(d)(1) of the Illinois Environmental Protection 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).

13. "Frivolous" is defined in 35 Ill. Adm. Code 101.202 as a “request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.”

14. To the extent that Complainant asks the Board to find a violation of a 35 year-old Board order to which she was not a party, the Complaint is frivolous in that requests relief that the Board does not have authority to grant and also fails to state a cause of action on which the Board could grant relief.

15. The Complaint, in paragraph 5, alleges that Respondent has violated the Board order "dated November 1, 1979 in case no. PCB 79-72, *Ramon Travieso [sic] v. Highland Hills Sanitary District*". ("*Travieso*").

16. The Illinois Environmental Protection Act 5/415 ILCS 5/45(e) states as follows:

A final order issued by the Board pursuant to Section 33 of this Act may be enforced through a civil action for injunctive or other relief instituted by a person who was a party to the Board enforcement proceeding in which the Board issued the final order.

17. Board Procedural Rule 103.600(b) (35 Ill. Adm. Code 103.600(b), effective June 8, 2005) states as follows:

A final order issued by the Board pursuant to Section 33 of the Act [415 ILCS 5/33] in a citizen's enforcement proceeding may be enforced through a civil action for injunctive or other relief instituted by a person who was a party to the Board enforcement proceeding in which the Board issued the final order.

18. *Travieso* is a citizen's enforcement case as defined in 35 Ill. Adm. Code 101.202 and the final order in that case was issued by the Board pursuant to 415 ILCS 5/33.

19. Complainant, Susan M. Bruce, is not "a person who was a party" to *Ramon Travieso v. Highland Hills Sanitary District*, PCB 79-72. Therefore, she may not seek to enforce the November 1, 1979 order in that case. Consequently, the Board does not have the authority to

grant any relief to her premised on a violation of that order and as a result, the Complaint fails to state a cause of action on which the Board could grant relief.

20. To the extent that the Complaint seeks to enforce the *Travieso* order it is frivolous and it should be dismissed with prejudice.

V. The Complaint Fails to Comply with Procedural Rules for the *Travieso* Allegations

21. Alternatively, the allegations in the Complaint relating to the *Travieso* order should be dismissed as having failed to comply with 35 Ill. Adm. Code 103. 204(c)(2).

22. The Complaint fails to state what relation, if any, Ramon Travieso bears to Susan Bruce, what part of the order is claimed to be violated, or how and when such violations occurred. Furthermore, the Complaint does not address whether there have been physical changes made to District's sewer system sufficient to render the circumstances on which the 35 year-old *Travieso* "cease and desist" order was based no longer current and valid.

VI. The Complaint is Frivolous in to its Allegations of Violation of Rule 601(a)

23. The Complaint (paragraph 5), alleges that Respondent has violated "Paragraph 601(a) of the Rules of the Board." Board Chapter 3, Rule 601(a), has been renumbered as 35 Ill. Adm. Code Section 306.102(a). See Part 306 Appendix A, References to Previous Rules.

24. 35 Ill. Adm. Code Section 306.102(a), captioned "Systems Reliability", states:

a) Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure,

or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

25. The Board has ruled that Rule 601(a) applies only to entities that “own or operate treatment works.”

A violation of Rule 601(a) cannot be found against Western Springs because it was not shown to own or operate a treatment works, and, therefore, could not have operated it improperly.

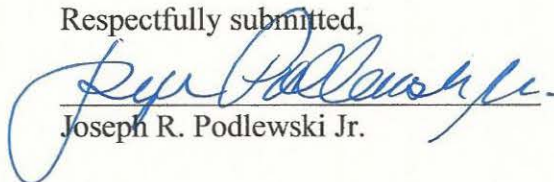
John S. Burns v. Western Springs, PCB 80-31 (February 19, 1981 page 2, 40-496, order vacated and readopted April 16, 1981), *aff'd on other grounds, Village of Western Springs v. Pollution Control Board*, Ill.App.3d 864, 63 Ill. Dec. 527, N.E. 2d 458 (1982).

26. The Complaint fails to allege that the Highland Hills Sanitary District operates a treatment works.

27. Therefore, to the extent the Complaint alleges a violation of Rule 601(a) (now 35 Ill. Adm. Code 306.102(a)) it fails to state a cause of action and should be dismissed.

WHEREFORE, Respondent prays that the Complaint be dismissed and that no hearing be scheduled, and further prays that allegations relating to enforcement of the Board's order in *Ramon Travieso v. Highland Hills Sanitary District, PCB 79-72* be dismissed with prejudice to leave to refile.

Respectfully submitted,



Joseph R. Podlewski Jr.

Dated: April 15, 2015

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served the attached:

RESPONDENT'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO COMPLY
WITH BOARD RULES AND TO DISMISS IN PART FOR BEING FRIVOLOUS

By electronic filing before 4:30 this day, April 15, 2015 upon:


Clerk's Office On-Line
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Mail at Western Springs, Illinois before 4:30 this day, April 15, 2015 postage prepaid, upon the following persons:

One copy to:

Lawrence A. Stein
Huck Bouma PC
1755 South Naperville Road
Wheaton, IL 60189

Dated: April 15, 2015


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