

ILLINOIS POLLUTION CONTROL BOARD  
December 19, 2013

JON CHVALOVSKY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 14-6  
 ) (Citizens Enforcement - Noise)  
 EXELON, COM ED, EXELON CEO )  
 CHRISTOPHER CRANE, AND COM ED )  
 CEO ANNE PRAMAGGIORE, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by J.D. O’Leary):

On July 12, 2013, Jon Chvalovsky (complainant) filed a *pro se* complaint (Comp.) against Exelon Corporation, Commonwealth Edison Company (ComEd), Exelon CEO Christopher Crane, and ComEd CEO Anne Pramaggiore (collectively, respondents). The complaint alleged noise pollution violations from a ComEd electrical substation located near Mr. Chvalovsky’s residence at 9251 Latrobe, Skokie, Cook County. On October 3, 2013, the Board granted respondents’ motion to dismiss the complaint as frivolous but granted complainant 30 days to file an amended complaint addressing specified deficiencies.

For the reasons below, the Board finds that petitioner’s amended complaint filed October 9, 2013, fails to address the deficiencies described in the Board’s October 3, 2013 order. The Board finds that the amended complaint fails to state a cause of action on which the Board can grant relief and is by definition frivolous. The Board therefore dismisses the case and closes the docket.

**SUMMARY OF BOARD’S OCTOBER 3, 2013 ORDER**

On August 15, 2013, respondents moved to dismiss the original complaint as “frivolous” for failing to state a claim. Complainant did not respond to the motion. On October 3, 2013, the Board found that the complaint was “frivolous” by definition and therefore granted respondents’ motion to dismiss.

In its October 3, 2013 order, the Board noted that complainant alleged violation of provisions including Sections 23 and 25 of the Act. The Board stated that “Section 23 is a legislative declaration, while Section 25 is an authorization for rulemaking. Neither of these provisions can be violated.” *Jon Chvalovsky v. Exelon, et al.*, PCB 14-6, slip op. at 4 (Oct. 3, 2013) (citations omitted).

The Board also noted that complainant alleged violation of Section 24 of the Act. The Board stated that “Section 24 prohibits the emission of noise “*so as to violate any regulation or*

*standard adopted by the Board under this act. . . .* Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24.” Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013) (citations omitted). The Board stated that complainant had not alleged any violation of the Board’s noise regulations. *Id.*, citing 35 Ill. Adm. Code 900. The Board also stated that complainant’s allegation that respondents had caused sleep deprivation was “impermissibly vague. The Board’s procedural rules require greater specificity: ‘[t]he dates, location, events, nature, extent, duration, and strength of discharges 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.’” Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4-5 (Oct. 3, 2013), citing 35 Ill. Adm. Code 103.204(c)(2) (complaint content requirements).

However, the Board granted complainant 30 days to file an amended complaint addressing deficiencies identified in the Board’s order. The Board first directed that “[t]he amended complaint must comply with the content requirement of the Board’s procedural rules. Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 5 (Oct. 3, 2013), citing 35 Ill. Adm. Code 103.204(c)(2). The Board also directed that “a copy of the amended complaint must be served upon respondents, and proof of service upon respondents must be filed with the Board.” Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 5 (Oct. 3, 2013), citing 35 Ill. Adm. Code 101.304 (Service of Documents).

### **AMENDED COMPLAINT**

On October 9, 2013, the Board received from complainant a document labeled “10-7-13 Response to Oct. 3, 2013,” which the Board construes as an amended complaint (Am. Comp.).

The first of three numbered paragraphs in the amended complaint provides as follows: “What happened to 415 ILCS from ch. 111 ½ par. 1023 excessive noise endangers physical + emotional health.” Am. Comp. at 1. The Board notes that Section 23 of the Act was previously codified as Chapter 111 ½, paragraph 1023. *See* Ill. Rev.Stat. 1991, ch. 111 ½, ¶ 1023. As the Board stated in its October 3, 2013 order, Section 23 is a legislative declaration of findings and purpose and cannot be violated. Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013). Complainant’s first paragraph does not address any deficiency identified by the Board in its October 3, 2013 order and fails to respond to the Board’s directions for submitting an amended complaint.

The second of the three numbered paragraphs in the amended complaint provides as follows: “415 ILCS 5/24 from 111 ½ par 1024 No noise shall emit beyond borders of their property Substation in back of 9251 Latrob noise interferes with noise pollution of transformers emitting of 80 decibels over property line.” Am. Comp. at 3. As the Board stated in its October 3, 2013 order, “Section 24 is not a stand-alone provision.” Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013) (citations omitted). Like the original complaint, the amended complaint does not allege the violation of any of the Board’s noise regulations that could result in a violation of Section 24. *See id.* The Board also notes that the original complaint addressed the duration and frequency of the claimed noise pollution by alleging that it occurred “7 day 24 hours a day over 88 decibels when installed 10 yrs or more ago” and resulted

in sleep deprivation. Comp. at 4, 5. After stating that this allegation was “impermissibly vague” (Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013)), the Board directed complainant to comply with the Board’s procedural rules by specifically addressing “[t]he dates, location, events, nature, extent, duration, and strength of discharges 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.” Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013), citing 35 Ill. Adm. Code 103.204(c)(2). The amended complaint fails to allege any violation of the Board’s noise regulations and is no more specific in describing the alleged violations than the original complaint. Complainant’s second paragraph does not address any deficiency identified by the Board in its October 3, 2013 order and fails to respond to the Board’s directions for submitting an amended complaint.

The third of three numbered paragraphs in the amended complaint provides as follows: “PA 89 455 eff 2-7-96 beyond boundaries of property.” The Board notes that Section 25 of the Act lists Public Act 89-445 as a source. Among its numerous provisions, Public Act 89-445 amended Section 25 to implement the Department of Natural Resources Act but did not otherwise address the noise provisions of the Act. P.A. 89-445, eff. Feb. 7, 1996 (Section 9B-50) (amending reference to Department of Energy and Natural Resources). The Board construes complainant’s third numbered paragraph as re-alleging a violation of Section 25. However, the Board stated in its October 3, 2013 order that Section 25 authorizes the Board to adopt rules and cannot be violated. Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013). Complainant’s third paragraph does not address any deficiency identified by the Board in its October 3, 2013 order and fails to respond to the Board’s directions for submitting an amended complaint.

In its October 3, 2013 order, the Board clearly directed complainant to serve a copy of any amended complaint on the respondent and to provide proof of service on the respondents to the Board. Jon Chvalovsky v. Exelon, et al., PCB 14-6, slip op. at 4 (Oct. 3, 2013), citing 35 Ill. Adm. Code 101.304. The amended complaint includes no certificate of service on the respondents or proof of service to them.

For the reasons described above, the Board finds that complainant’s amended complaint fails to remedy the deficiencies identified by the Board in its October 3, 2013 order. Consequently, the amended complaint fails to state a cause of action on which the Board can grant relief and is by definition frivolous. In addition, the amended complaint does not demonstrate that complainant has served a copy of the amended complaint on the respondents, and complainant has not filed proof of service on the respondents with the Board. The Board dismisses the case and closes the docket.

Finally, the Board notes that the amended complaint asks “[a]re you for helping people with problems or agreeing with big poluting (sic) corporations with there high priced lawyers + let them keep poluting (sic) + ruining the environment.” Am. Comp. at 1. None of the respondents has responded to the amended complaint. The Board emphasizes that it dismisses this case because the amended complaint fails to state a cause of action and because there is no proof that the amended complaint has been served on respondents and not because of any

arguments made by respondents. *See* Jon Chvalovsky v. Commonwealth Edison, et al., PCB 10-13, slip op. at 2 (Jan. 20, 2011).

IT IS SO ORDERED.

Member Burke Abstained

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 19, 2013, by a vote of 3-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Clerk  
Illinois Pollution Control Board