

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MICHAEL J. KORMAN, )  
 )  
 Complainant, )  
 )  
 v. ) PCB No. 2021-16  
 ) (Citizen Enforcement – NPDES, Water)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

**NOTICE OF FILING**

To: Michael J. Korman  
2306 Sundrop Drive  
Glenview, Illinois 60026  
mike.korman@swpppaudit.com

PLEASE TAKE NOTICE that today, September 25, 2020, I filed Respondent's, Illinois Environmental Protection Agency, Appearance and Motion to Dismiss, in the above-referenced matter with the Clerk of the Illinois Pollution Control Board, copies of which are attached hereto and served upon you.

Respectfully Submitted,

By: /s/ Arlene R. Haas  
ARLENE R. HAAS  
Assistant Attorney General  
Environmental Bureau North  
Office of the Illinois Attorney General  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602  
(312) 814-3153  
Primary: [ahaas@atg.state.il.us](mailto:ahaas@atg.state.il.us)  
Secondary: [mcacaccio@atg.state.il.us](mailto:mcacaccio@atg.state.il.us)

DATED: September 25, 2020

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MICHAEL J. KORMAN,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 2021-16
	)	(Citizen Enforcement – NPDES, Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**APPEARANCE**

ARLENE R. HAAS, Assistant Attorney General, hereby enters her appearance as attorney on behalf of Respondent, the Illinois Environmental Protection Agency, in the above-referenced matter.

Respectfully Submitted,

By: /s/ Arlene R. Haas  
ARLENE R. HAAS  
Assistant Attorney General  
Environmental Bureau North  
Office of the Illinois Attorney General  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602  
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**CERTIFICATE OF SERVICE**

***Michael J. Korman v. Illinois Environmental Protection Agency, PCB 21-16 (Citizen)***

I, ARLENE R. HAAS, an Assistant Attorney General, do certify that I caused a copy of the foregoing Notice of Filing and Respondent's Appearance and Motion to Dismiss to be served by electronic mail with receipt notification requested to Complainant, Michael J. Korman, listed on the Notice of Filing, on this September 25, 2020.

*/s/ Arlene R. Haas*

ARLENE R. HAAS

Assistant Attorney General

Environmental Bureau

Illinois Attorney General's Office

69 W. Washington Street, Suite 1800

Chicago, IL 60602

(312) 814-3153

[ahaas@atg.state.il.us](mailto:ahaas@atg.state.il.us)

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Complainant,	)	
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v.	)	PCB No. 2021-16
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PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S**  
**MOTION TO DISMISS**

NOW COMES RESPONDENT, the Illinois Environmental Protection Agency (“Illinois EPA”), through its attorney, KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Section 103.212(b) of the Pollution Control Board’s General Provisions, Enforcement (“Enforcement Regulations”), 35 Ill. Adm. Code 103.212(b) (2018), Section 101.500 of the Pollution Control Board’s General Provisions, General Rules (“Procedural Regulations”), 35 Ill. Adm. Code 101.500 (2018), and Section 2-619 of the Code of Civil Procedure, 735 ILCS 5/2 619 (2018), and hereby moves the Pollution Control Board (“Board”) to dismiss Complainant, Michael Korman’s (“Complainant” or “Korman”) Complaint. In support of its Motion to Dismiss, Illinois EPA states as follows:

**I. INTRODUCTION**

Korman filed the Complaint against Illinois EPA with the Board on August 28, 2020, in a citizen enforcement action. The Complaint concerns a National Pollutant Discharge Elimination System (“NPDES”) permit program delegated to the State of Illinois by the United States

Environmental Protection Agency (“USEPA”) beginning in 1977. More specifically, Korman’s claims pertain to the Illinois EPA’s General NPDES Permit for Storm Water Discharges From Construction Site Activities, General NPDES Permit No. ILR10 (“General NPDES Permit”) with an effective date of August 3, 2018.

By letter dated August 20, 2020, Korman sent a petition to USEPA Administrator Andrew Wheeler requesting that USEPA commence proceedings to withdraw approval for the State of Illinois’ administration of the NPDES program (“USEPA Petition”). The petition alleges that Illinois EPA’s administration of the NPDES program does not comply with certain federal requirements. Korman states in the Complaint that he has submitted the USEPA Petition and it is attached to the Complaint. Complaint ¶ 11.

As referenced in his Complaint, Korman has filed with the Board a case against the Illinois Department of Transportation (“IDOT”), *Korman v. Illinois Department of Transportation*, IPCB 2020-62, alleging non-compliance with the requirements of the General NPDES Permit (“IDOT Complaint”).<sup>1</sup> Complaint ¶ 8.

Illinois EPA respectfully requests that the Board enter an order dismissing Korman’s Complaint.

## II. ARGUMENT

Korman’s Complaint fails on its face and should be dismissed because it is duplicative and frivolous. First, the Complaint is duplicative because Korman has filed similar matters before both USEPA and the Board. Second, the Complaint is frivolous because the relief Korman is seeking

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<sup>1</sup> Although not cited in the Complaint, Korman has filed two other formal complaints against entities covered under the General NPDES Permit in addition to the complaints he has filed against Illinois EPA and IDOT: (1) *Korman v. Medline Industries, Inc.*, PCB 2021-019 and (2) *Korman v. GW Glenview, LLC*, PC 2021-006. Korman has also filed eight requests with the Board for informal investigations relating to the General NPDES Permit.

only arises under federal law, and the Board's authority does not include violations of the federal statutes and regulations. Furthermore, any alleged violations of the Environmental Protection Act ("Act") cited in the Complaint are not a cause of action upon which the Board can grant relief. For these reasons, Illinois EPA requests that the Board dismiss the Complaint.

**A. THE COMPLAINT IS DUPLICATIVE BECAUSE COMPLAINANT HAS BROUGHT SIMILAR MATTERS IN ANOTHER FORUM AND BEFORE THE BOARD**

**1. The Complaint is Virtually Identical to Complainant's USEPA Petition**

The Complaint and Korman's USEPA Petition are based on the same set of facts and alleged violations, namely that Illinois EPA is not properly administering the General NPDES Permit. Korman cites in both the Complaint and the USEPA Petition problems with Illinois EPA's review of the Notices of Intent which permittee's must file to obtain coverage under the General NPDES Permit. Complaint ¶¶ 4 and 7, USEPA Petition ¶¶ 7-9. In addition, both matters request identical relief, specifically to withdraw approval for Illinois' administration of the NPDES program. See, Complaint ¶ 9, USEPA Petition ¶ 1. Given these are duplicate matters, the Complaint should be dismissed.

Section 31(d) of the Act 415 ILCS 5/31(d) (2018), permits any person to file a complaint with the Board. The Board defines in Section 101.202 of the Procedural Regulations, 35 Ill. Admin Code 101.202 (2018), these enforcement actions brought pursuant to Section 31(d) as a "[c]itizen's enforcement proceeding."

Importantly, Section 31(d) of the Act 415 ILCS 5/31(d) (2018), also states that a citizen enforcement proceeding will continue "[u]nless the Board determines that such a complaint is duplicative or frivolous." *See also*, Section 103.212(a) of the Enforcement Regulations, 35 Ill. Admin Code 103.212(a) (2018). Pursuant to Section 103.212(b) of the Enforcement Regulations,

35 Ill. Admin Code 103.212(b), a respondent may file a motion within 30 days of service of the complaint, “alleging that a citizen’s complaint is duplicative or frivolous,” and such motions stay the 60-day period for answering the complaint. *See also, Rulon v. Double D. Gun Club*, PCB No. 03-7, 2002 WL 2012431, at \*2 (Aug. 22, 2002).

Duplicative is defined in Section 101.202 of the Procedural Regulations, 35 Ill. Admin Code 101.202 (2018), as “the matter is identical or substantially similar to one brought before the Board or another forum.” *See also, Brandle v. Ropp*, PCB No.85-68, 1985 WL 21380, at \*1 (June 13, 1985) (The Board granted the motion to dismiss given the complaint’s allegations were “substantially similar” to those in a pending case before the Circuit Court). Additionally, Section 2-619(3) of the Code of Civil Procedure, 735 ILCS 5/2 619(3) (2018), allows for the dismissal of a complaint if “there is another action pending between the same parties for the same cause.” Given the Complaint and USEPA Petition are almost identical, the Board should dismiss the Complaint.

**2. The Complaint is Duplicative of Another Case Before the Board Filed by Complainant and Pertaining to the General NPDES Permit**

The Complaint is similar to another case Korman has filed with the Board, the IDOT Complaint. The cases against Illinois EPA and IDOT involve the same General NPDES Permit and similar allegations. In both cases, Korman alleges problems with the Notices of Intent and other documents permittees must file and maintain as part of their coverage under the General NPDES Permit.

The Board stated that a reason for banning duplicative complaints is a “fear that allowing private complaints might flood the Board with too many cases raising the same issue and unduly harass a respondent.” *League of Women Voters v. North Shore Sanitary Dist.*, PCB No. 70-7, 1970 WL 3665 at \*2 (Oct. 8, 1970). Korman’s filing of similar complaints with the Board

against different entities is the type of duplicative cases the Board is seeking to prevent, and therefore, the Board should dismiss the Complaint.

The Board should dismiss the Complaint, pursuant to Section 31(d) of the Act, Section 103.212(a) & (b) of the Board's Enforcement Regulations, and Section 2-619(3) of the Code of Civil Procedure, because it is duplicative of matters brought by Korman before USEPA and the Board.

**B. THE COMPLAINT IS FRIVOLOUS BECAUSE THE BOARD LACKS THE AUTHORITY TO GRANT THE REQUESTED RELIEF**

The Complaint is requesting as relief, the withdrawal of approval of the Illinois NPDES Program, that is a matter of federal law. Section 402 of the federal Clean Water Act ("CWA"), 33 U.S.C.A. § 1342 (2019), authorizes the NPDES permit program administered by USEPA. Pursuant to Section 402(b) of the CWA, 33 U.S.C.A. Section § 1342(b), USEPA may delegate its authority to administer the NPDES program to states. If a citizen wishes USEPA to investigate a state's administration of a NPDES program, the citizen must petition USEPA in accordance with USEPA's procedures for withdrawing state programs set forth at 40 C.F.R. § 123.64(b)(1). In fact, Korman states in his USEPA Petition that he is filing it pursuant to 40 C.F.R. § 123.64. USEPA Petition ¶ 1.

The Board may also dismiss a complaint if it is "frivolous." Section 31(d) of the Act 415 ILCS 5/31(d) (2018). Section 101.202 of the Procedural Regulations, 35 Ill. Admin Code 101.202 (2018), defines "frivolous" as: "a request for relief that the Board does not have authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." Similarly, Section 2-619(1) of the Code of Civil Procedure, 735 ILCS 5/2 619(1) (2018), allows a complaint to be dismissed if "the court does not have jurisdiction of the subject matter of the action."

The Board does not have the authority to grant the relief Korman is requesting in the Complaint. “[T]he Board’s powers are limited to those vested in it by the Environmental Protection Act.” *Flagg Creek Water Reclamation Dist. v. Village of Hinsdale*, PCB No. 06-141, 2006 WL 2869930 at \*8 (Sept. 21, 2006). Section 5(d) of the Act, 415 ILCS 5/5/(d) (2018) states as follows:

The Board shall have authority to conduct proceedings upon complaints charging violations of the Act, any rule or regulation adopted under this Act. . .

In another matter alleging violations of the CWA, the Board stated that “The Board’s authority under the Act does not extend to allegations of violations of the federal statutes.” *Rulon v. Double D Gun Club*, PCB No. 03-7, 2002 WL 2012431 at \*3 (Aug. 22, 2002) (The Board dismissed as frivolous allegations of violations of the federal Resource Conversation and Recovery Act and the CWA). Korman’s claims are under the CWA, a federal law, and thus, the Board does not have authority to grant the relief sought by Korman’s Complaint and his claims are frivolous.

The Complaint cites some sections of the Act that Korman alleges Respondent has violated. Complaint ¶ 5 However, these sections of the Act do not pertain to the relief Korman is requesting and are not prohibitions. Korman cites Sections 11(a)(5) and 11(a)(8)(b) of the Act, 415 ILCS 5/11(a)(5) and 11(s)(8)(b) (2018), that are part of the legislative declaration. The Board has previously dismissed as frivolous a complaint alleging violations of legislative objectives because they are “not a proper cause of action upon which the Board can grant relief.” *Rulon v. Double D Gun Club*, PCB 03-7, 2002 WL 2012431 at \*3 (citing *Stuart v. Fisher* PCB 02-164 (May 16, 2002)). The remaining sections cited in the Complaint are also not prohibitions. Korman cites Sections 13(b)(1) of the Act, 415 ILCS Section 5/13(b)(1) (2018) which requires the Board to adopt implementing regulations for the NPDES program. Finally, he lists Section 39(q)(3) of the

Act, 415 ILCS Section 5/39(q)(3) (2018), requiring the development of an online portal for permit applicants. Given the alleged violations of these sections of the Act are not causes of action upon which the Board can grant relief, these claims are also frivolous.

The Board should dismiss the Complaint, pursuant to Section 31(d) of the Act, Section 103.212(a) & (b) of the Board's General Provisions, and Section 2-619(1) of the Code of Civil Procedure, because it is frivolous and the Board does not have jurisdiction over the allegations in the Complaint.

### III. CONCLUSION

WHEREFORE, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, respectfully requests that the Board grant its motion and enter an order: (1) dismissing Complainant, MICHAEL KORMAN's, Complaint, (2) staying Respondent's obligation to answer the allegations set forth in the Complaint until this Motion is resolved, and (3) granting such other relief as the Board deems appropriate.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

KWAME RAOUL,  
Attorney General of the State of Illinois

/s/ Arlene R. Haas  
ARLENE R. HAAS  
Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602  
(312) 814-3153  
ahaas@atg.state.il.us