

ILLINOIS POLLUTION CONTROL BOARD
March 18, 2021

MICHAEL J. KORMAN)
)
 Complainant,)
)
 v.) PCB 21-06
) (Citizens Enforcement – NPDES, Water)
 GW GLENVIEW, LLC,)
)
 Respondent.)

ORDER OF THE BOARD (by B.F. Currie):

Michael J. Korman (Korman) filed a *pro se* complaint (Comp.) against GW Glenview, LLC (GW), alleging possible water violations, and an inadequate National Pollutant Discharge Elimination System (NPDES) Permit, for GW’s proposed development project at the southwest corner of Willow Road and Pfingsten Road in Glenview, Illinois. GW filed a motion to dismiss the complaint as frivolous.

For the reasons below, the Board grants GW’s motion and dismisses the complaint as frivolous because it does not state a cause of action on which the Board can grant relief.

PROCEDURAL HISTORY

On July 24, 2020, Mr. Korman filed a *pro se* complaint using a sample form provided by the Board. The complaint alleges that GW’s Notice of Intent (NOI) does not comply with NPDES permit requirements, which Korman argues may result in catastrophic flooding. Comp. at 3.

On August 11, 2020, GW filed a motion to dismiss (Mot.) the complaint arguing that it is frivolous.

On August 17, 2020, Korman filed a response to GW’s motion (Resp.). On August 26, 2020, GW filed a reply to Korman’s response. On September 3, 2020, Korman filed a second response. On September 25, 2020, GW filed a reply to Korman’s second response to the motion to dismiss.

PRELIMINARY MATTER

Under Section 100.500(e) of the Board’s procedural rules, “[t]he moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed with the Board within 14 days after service of the response.” 35 Ill. Adm. Code 101.500(e).

On August 26, 2020, GW filed a reply to Korman's response to its motion to dismiss without filing a motion seeking leave to do so. *See Reply*. Subsequently, Korman filed a sur-response on September 3, 2020, and GW filed a sur-reply on September 25, 2020. Because all three of these filings were filed without leave of the Board they will not be considered in the discussion.

SUMMARY OF COMPLAINT

The complaint alleges that GW's application, including the NPDES and Stormwater Pollution Prevention Plan are materially deficient. *Comp.* at 3. Mr. Korman argues that if the construction project is allowed to continue adjacent neighbors may suffer catastrophic flooding and municipal infrastructure could be damaged. *Id.* The complaint states that pollution does not currently exist but seeks to mitigate future potential flooding. *Id.*

SUMMARY OF RESPONDENT'S MOTION TO DISMISS

In the motion GW argues that Mr. Korman's complaint is frivolous because it asks for relief the Board cannot grant. *Mot.* at 1. GW contends that the Board has no authority to prevent or prohibit acts of pollution that have not or may not ever occur. *Id.* GW further argues that the complaint itself acknowledges that there is currently no pollution at the site. *Id.*

GW maintains that it has complied with every regulatory requirement in applying for and obtaining the required permits, including approval from IEPA and Metropolitan Water Reclamation District of Chicago. *Mot.* at 2.

DISCUSSION

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); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997).

A 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." 35 Ill. Adm. Code 101.202. The Act requires that a complaint "specify the provision of the Act, rule, regulation, permit, or term or condition thereof under which [the person complained against] is said to be in violation." 415 ILCS 5/31(c)(1) (2018); *see also* 415 ILCS 5/31(d)(1) (2018) (citizen complaint must meet these requirements); 35 Ill. Adm. Code 103.204(c)(1).

Mr. Korman filed an enforcement action complaint, without alleging any violations of the Act or Board regulations. *See generally* Complaint. Mr. Korman's complaint alleges that "adjacent neighbors may suffer catastrophic flooding," and that "the municipal infrastructure could be damaged." *Id.* at 3 (emphasis added). As the motion states, Mr. Korman admits that no pollution existed at the time the complaint was filed and is asking the Board to "mitigate future potential flooding." *See Mot.* at 1, *see also* Complaint at 3.

Absent any alleged violations of rules and regulations that the Board has jurisdiction to enforce, the Board must find the complaint frivolous because it fails to state a cause of action on which the Board can grant relief. In addition, the Board cannot grant injunctive relief. Clean the Uniform Co.-Highland v. Aramark Uniform & Career Apparel, Inc., PCB 03-21 at 3 (Nov. 7, 2002), *citing* 415 ILCS 5/43 (2000).

Mr. Korman admits in his response to the motion to dismiss that the “complaint seeks to review the IEPA permit approval.” Resp. at 1. Mr. Korman may have had standing had he filed a third-party permit appeal rather than an enforcement action.¹ However, Mr. Korman did not list IEPA as a co-respondent in the caption, nor did he pay the required filing fee for permit appeals under the Act. *See* 415 ILCS 5/40(e)(3); *see also* 415 ILCS 5/7.5. Additionally, Mr. Korman did not file the complaint within the 35-days from the Agency decision as required by the Act. *See* Mot. Exh. B (permit issued May 13, 2020); Comp. (filed July 24, 2020); *see also* 415 ILCS 5/40(e)(1). As a result, the Board did not review, and makes no comment on, the additional demonstrations required in a third-party permit appeal. *See* 415 ILCS 5/40(e)(2).

The Board grants the motion and dismisses the complaint as frivolous. *See* 35 Ill. Adm. Code 101.202. While the Board finds the complaint *legally* frivolous, it does not - as might be suggested by the more common meaning of the term - discount Mr. Korman’s allegations as unimportant.

CONCLUSION

For the reasons above, the Board grants GW’s motion to dismiss, dismisses the complaint as frivolous and closes the docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2018); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

¹ The Board notes that PCB 20-62, Korman v. Ill. Dep’t. of Transp., and PCB 21-16, Korman v. Ill. Env’tl. Protection Agency, are still pending.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Michael J. Korman 2306 Sundrop Drive Glenview, Illinois	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
GW Glenview, LLC Attn: Jay S. Berlin & Shawn C. Clancy 111 W. Washington, Suite 900 Chicago, IL 60602 jberlin@jaffeberlin.com selancy@jaffeberlin.com	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 18, 2021, by a vote of 4-0.



Don A. Brown
Don A. Brown, Clerk
Illinois Pollution Control Board