

ILLINOIS POLLUTION CONTROL BOARD
April 1, 2021

MICHAEL J. KORMAN,)
)
 Complainant,)
)
 v.) PCB 20-62
) (Citizens Enforcement – NPDES, Water)
 ILLINOIS DEPARTMENT OF)
 TRANSPORTATION)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by A. Palivos):

On March 3, 2020, Michael J. Korman (Korman) filed a complaint against the Illinois Department of Transportation (IDOT). The complaint concerns IDOT’s construction project which will expand the Willow Road overpass over Leigh Road and the SOO Line in Glenview, Illinois. For the reasons below, the Board denies both IDOT motions to strike a bill of particulars. However, the Board finds that - considered together - the two bills do not particularize the March 3, 2020 complaint sufficiently to meet the requirements of the Act and Board regulations and do not sufficiently advise IDOT of the claim against it. Consequently, the Board directs Korman to file an amended complaint addressing these requirements by Monday, May 3, 2021. If the Board does not receive an amended complaint by that date, it will consider dismissing this case and closing the docket.

COMPLAINT

On March 3, 2020, Mr. Korman filed a *pro se* complaint (Comp.) using a sample form provided by the Board.¹ Paragraph 5 of the form asks Korman to list specific sections of the Act, Board regulations, or permit allegedly violated. In response, Korman alleges problems with the Notice of Intent (NOI). “Additionally, the SWPPP [Stormwater Pollution Prevention Plan] posted is substantially non-complaint with the NPDES permit violations of nearly every SWPPP requirement including missing plans IAW Part IV D and Certifications IAW Part VI.G.” Comp. at 2.

Paragraph 6 of the form asks Korman to describe the type of pollution alleged and the location of the alleged pollution. Here, Korman states that runoff is not being properly managed at the site. He adds that “[s]tormwater runoff from the upper roadway surface including potential

¹ In its first motion to strike a bill of particulars, IDOT states that Korman improperly served the complaint and that it did not become aware of the complaint until approximately June 22, 2020. The Board’s procedural rules provide the address at which IDOT must generally be served. 35 Ill. Adm. Code 101.304(g)(5).

fuel, road salt and other pollutants are entering nearby Lake Glenview & Chicago River.” Comp. at 2.

Paragraph 7 of the form asks Korman to describe the duration and frequency of the alleged pollution as specifically as he reasonably can. Here, Korman describes his personal observations of the site, but does not specify duration or gravity of violations.

Paragraph 8 of the form asks Korman to describe any negative effects the alleged pollution “has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity.” Comp. at 3. Here, Korman states there are two animal habitats along the West Fork of the North Branch of the Chicago River that may experience degradation. He adds that “[b]oth the very nearby Kent Fuller Air Station Prairie Preserve and Lake Glenview would be impacted by a lack of proper controls.” Comp. at 3. However, Korman does not specify bad effects.

BILLS OF PARTICULARS

IDOT’s Demand for a Bill of Particulars

On August 5, 2020, IDOT filed a Demand for Particulars (Demand). IDOT stated that the Complaint does not adequately inform IDOT of Korman’s claims because the allegations are significantly “wanting in details.” Demand at 2. Specifically, IDOT claims Paragraphs 5, 6, 7, and 8 of the Complaint are insufficient. *Id.*

IDOT claims Paragraph 5 is insufficient because it does not identify the specific sections of the Environmental Protection Act (Act) and Board Regulations that Korman is alleging IDOT violated. Demand at 2. Furthermore, IDOT argues that Paragraph 5 lacks details because it fails to identify which provisions of the National Pollution Discharge Elimination System (NPDES) Permit IDOT allegedly violated. *Id.* IDOT argues that it is unable to defend itself until Korman specifies which specific sections of the Act, Board regulations, and NPDES permit violations IDOT allegedly violated. *Id.* at 3.

Similarly, IDOT claims Paragraph 6 of the Complaint is insufficient because it fails to identify specific types of pollution that Korman alleges IDOT has caused. *Id.* Furthermore, the paragraph does not provide any critical details about that pollution. *Id.* Thus, IDOT cannot determine what types of pollution Korman is alleging. *Id.* at 4.

IDOT also claims Paragraph 7 fails to identify the duration and frequency of the pollution Korman alleges. Demand at 4. IDOT states that Korman only provides the approximate dates of the project and the frequency of his own trips past the project. *Id.*

Furthermore, IDOT argues that Paragraph 8 only describes general locations that “could” or “will” be impacted by alleged pollution. *Id.* at 5. Thus, IDOT claims this “complete lack of details” leaves it to guess about the precise bad effects of the alleged violations. *Id.*

Korman’s Response

On August 17, 2020, Korman filed a response to IDOT's Demand for Particulars (BoP 1). In this filing, Korman moves the Board to hear the Complaint through the hearing process "as an Appeal of an Illinois Environmental Protection Agency ("IEPA") decision to issue a permit for the project." BoP 1 at 1.

Korman claims that his Complaint fully conforms to the Board's Citizens' Guide to the Illinois Pollution Control Board. BoP 1 at 1. Korman primarily focuses on IEPA National Pollutant Discharge Elimination System ("NPDES") Permit approval. *Id.* Korman then lists specific problems with the permit approval. *Id.* at 2. This list includes claims that the application is missing its site map; details and drawings that show proper installation of controls and BMPs; and missing IAW Parts IV D.2.f, D.2.h. and V F. *Id.*

Korman also alleges specific types of water pollution at the project site. Specifically, Korman alleges that when it rains, stormwater "washes over the loose soil on a construction site." BoP 1 at 3. As a result of this flow, Korman claims stormwater picks up pollutants and transports them into nearby storm sewers or directly into rivers and lakes. *Id.* Furthermore, Korman gives information regarding the locations impacted by pollution.

Korman argues that IDOT's Demand is an effort to over-burden a citizen complainant. BoP 1 at 3. He further argues that IEPA is ill-equipped or understaffed in its review process regarding Notices of Intent. *Id.* Finally, Korman states his qualifications as they relate to stormwater pollution prevention and asks the Board to allow the original Complaint to proceed to hearing. *Id.* at 3-4.

IDOT's Motion to Strike

On September 11, 2020, IDOT filed a Motion to Strike Korman's Bill of Particulars (Mot.). IDOT first argues that Korman's Bill of Particulars does not identify which paragraphs of the complaint he is referring to when stating allegations. Mot. at 3. IDOT claims it is unable to align the allegations in the Bill of Particulars with allegations in the complaint, which makes it difficult to identify which parts of the complaint Korman seeks to particularize. *Id.* IDOT argues that a bill of particulars, even in a citizen enforcement case, should identify which complaint paragraphs it is particularizing and that it should be written in a clear and organized form. *Id.* at 4 (citations omitted). Thus, IDOT argues the Board should strike Korman's Bill of Particulars because it does not respond to IDOT's Demand and lacks coherent form. *Id.* at 5.

Next, IDOT argues that the Board lacks jurisdiction over the cause of action in the Bill of Particulars. Mot. at 5. Specifically, IDOT argues that Korman's cause of action challenging IEPA's administration of an NPDES permit must be brought under federal law and that the Board lacks jurisdiction over these claims. *Id.* at 6. Furthermore, IDOT argues that Korman's allegations regarding IEPA's deficiencies of its NPDES administration state a cause of action against IEPA rather than IDOT. *Id.*

Additionally, IDOT argues that Korman's Bill of Particulars contains allegations that are immaterial. *Id.* Specifically, IDOT claims that Korman's discussion of his personal

qualifications; tools available to IDOT regarding erosion and sediment control; and procedural matters are immaterial and should be stricken from the complaint. *Id.*

Korman's Second Bill of Particulars

On September 24, 2020, Korman filed a second bill of particulars (BoP 2). It first describes background information such as the location of the Site, NPDES permit issued, and provisions of the Act and Board regulations. BoP 2 at 1–5. It then alleges five counts against IDOT.

The first count alleges IDOT violated 35 Ill. Adm. Code 309.103, and Sections 12(a) and (f) (415 ILCS 5/12(a) and (f) (2018)) of the Act by discharging stormwater pollution without an NPDES Permit between the dates of May 20, 2019 and June 17, 2019. BoP 2 at 5–6.

The second count alleges that the NPDES permit application submitted to IEPA is deficient in nine ways. First, the General NPDES Permit for Storm Water Discharges from Construction Site Activities is not posted at the site in a prominent place for public viewing. *Id.* at 8. Second, the Stormwater Pollution Prevention Plan (SWPPP) plan submission to IEPA lacks “a site map indicating drainage patterns...” *Id.* Third, the Permit is missing details or drawings that show proper installation of controls and best management practices. *Id.* at 9. Fourth, storm inlets were not installed on Patriot Boulevard and storm inlets on Willow Road are either missing or improperly maintained. *Id.* Fifth, the Permit is noncompliant on parts IV D.2.f and IV D.2g. *Id.* Sixth, Part IV D.2.h is missing in its entirety. BoP 2 at 9. Seventh, Part IV F.1 is missing in its entirety. *Id.* Eighth, Part IV D.2.f. is missing. *Id.* at 10. Finally, IDOT failed to submit a copy of the signed NOI and fee to IEPA. *Id.*

The third count alleges that IDOT failed to perform inspections. *Id.* at 11. The fourth count alleges improper notice of the project. *Id.* at 13. The fifth count alleges specific types of stormwater pollution at the project site. *Id.* at 15.

IDOT's Second Motion to Strike

On October 7, 2020, IDOT filed a motion to strike (IDOT Second Mot.) Korman's second bill of particulars. IDOT claims that Korman's second Bill of Particulars remains unresponsive to IDOT's demands. IDOT Second Mot. at 3. IDOT argues that Korman did not particularize Paragraphs 5, 6, 7, and 8 of the complaint as IDOT requested. *Id.* Instead, Korman introduces entirely new allegations and requests for relief. *Id.* at 4. Because of new information and allegations, IDOT argues that both the first and second Bill of Particulars are vehicles for introducing new allegations and requests for relief. *Id.* at 5.

Further, IDOT argues that Korman's second Bill of Particulars is drafted as an amended complaint or an entirely new complaint. *Id.* Korman has not filed a motion for leave to amend the Complaint in this matter. *Id.* at 6.

DISCUSSION

The Board denies both IDOT motions to strike a bill of particulars. However, for the reasons below the Board finds that the two bills considered together do not particularize the March 3, 2020 complaint sufficiently to meet the requirements of the Act and Board regulations and do not sufficiently advise IDOT of the claim against it.

Both the “Act and the Board’s procedural rules ‘provide for specificity in pleadings’ ... and ‘the charges must be sufficiently clear and specific to allow preparation of a defense.’” United City of Yorkville v. Hamman Farms, PCB 08-96, slip op. at 11 (Oct. 16, 2008) (citations omitted); *see* 415 ILCS 5/31(c) (2018); 35 Ill. Adm. Code 103.204(c).

A party may request a bill of particulars if “the pleading does not adequately advise him of the claim against which he must defend.” Fanning v. Lemay, 78 Ill. App. 2d 166, 171 (5th Dist. 1966), *reversed in part*, 38 Ill. 2d 209 (1967). Furthermore, “a bill of particulars is deemed to be part of a complaint which it particularizes.” City of Chicago v. Hertz Commercial Leasing Corp., 38 Ill. App. 3d 835, 839 (1st Dist. 1976).

Although the Board’s procedural rules do not address bills of particulars, the Board “may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board’s procedural rules are silent.” 35 Ill. Adm. Code 101.100(b) (2018). Additionally, “[t]he Board has often looked to the Illinois Civil Practice for guidance when considering motions to strike or dismiss pleadings.” United City of Yorkville, 2008 WL at ¶ 12. Furthermore, in order for a pleading to be “clear and specific” Section 2-603(b) of the Code of Civil Procedure provides “each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs and numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation.” 735 ILCS 5/2-603(b) (2018).

The Board finds that Korman’s first Bill of Particulars lacks specificity in clarifying the complaint and does not allow IDOT to prepare a defense. First, Korman does not identify which parts of the complaint he is elaborating on when stating allegations in the Bill of Particulars. Specifically, IDOT’s Demand for Bill of Particulars requested Korman particularize paragraphs 5, 6, 7, and 8 of the complaint. However, Korman does not specifically refer to these paragraphs. In fact, Korman’s Bill of Particulars includes numbered paragraphs, but these paragraphs do not clearly connect to or particularize the numbered allegations in his complaint. Though the Board recognizes Korman proceeds *pro se*, the pleading must be clear, specific, and allow the opposing party to respond. *See* Lloyd A. Fry Roofing Co. v. PCB, 20 Ill. App. 3d 301, 3015 (1st Dist. 1974). Also, Korman characterizes his complaint as “an Appeal of an Illinois Environmental Protection Agency (“IEPA”) decision to issue a permit for the project.” Korman’s complaint did not name IEPA as a respondent, and he has not moved to join IEPA as a respondent.

The Board also finds that his second bill of particulars lacks specificity in clarifying the complaint and does not allow IDOT to prepare a defense. First, the second bill of particulars does not respond to IDOT’s request to particularize specific allegations of the complaint. As discussed above, a Bill of Particulars must be clear, specific, and allow for IDOT to defend itself.

Here, Korman does not particularize Complaint paragraphs 5, 6, 7, and 8 as IDOT requested. IDOT Second Mot. at 3. Instead of particularizing the original Complaint, Korman introduces new allegations and request for relief throughout his second Bill of Particulars. In fact, Korman's second Bill of Particulars is drafted similarly to an amended complaint or a new complaint entirely. To amend a complaint by adding additional counts, Korman must file a motion for leave to amend the Complaint, and he has not done so. *See* 35 Ill. Adm. Code 103.206(d). It is well settled Illinois law that *pro-se* litigants must follow proper procedures of the court in which they are filing. Specifically, the Illinois Supreme Court has stated that "*pro se* litigants are presumed to have full knowledge of the applicable court rules and procedures." Steinbrecher v. Steinbrecher, 197 Ill 2d 514, 528 (Ill. 2001).

CONCLUSION

Above, the Board denied IDOT's motion to strike Korman's bills of particulars. However, because both bills of particulars are insufficient, the Board directs Korman to file an amended complaint on or before May 3, 2021. If the Board does not receive an amended complaint by that date, it will consider dismissing the case and closing the docket. Alternatively, Korman may file a motion to dismiss this case and file another complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 1, 2021, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board