

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

VILLAGE OF GLENVIEW, an Illinois,	)	
a municipal corporation, and	)	
SOLID WASTE AGENCY OF	)	
NORTHERN COOK COUNTY, an	)	
Illinois statutory solid waste agency	)	PCB NO.: 2023-049
	)	(Enforcement - Water)
Complainants,	)	
	)	
v.	)	
	)	
CATHOLIC BISHOP OF CHICAGO,	)	
a corporation sole, and	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
an Agency of the State of Illinois,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

**TO: Attached Service List Via Email**

PLEASE TAKE NOTICE THAT today I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the "COOL" System, the following Respondent, Illinois Environmental Protection Agency's, Motion to Dismiss Village of Glenview and Solid Waste Agency of Northern Cook County's Complaint, true and correct copies of which are attached hereto and hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

by KWAME RAOUL, Attorney  
General of the State of Illinois

By: /s/ Kevin Garstka  
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November 16, 2022

**SERVICE LIST**

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**CERTIFICATE OF SERVICE**

I, Kevin Garstka, an Assistant Attorney General, caused to be served on this 16<sup>th</sup> day of November, 2022, true and correct copies of the Notice of Filing and Respondent, Illinois Environmental Protection Agency's, Motion to Dismiss Village of Glenview and Solid Waste Agency of Northern Cook County's Complaint, upon the persons listed on the Service List via electronic mail with return receipt.

/s/Kevin Garstka

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

VILLAGE OF GLENVIEW, an	)	
Illinois municipal corporation;	)	
and SOLID WASTE AGENCY OF	)	
NORTHERN COOK COUNTY,	)	
an Illinois statutory solid waste agency;	)	
	)	
Complainants,	)	
	)	
v.	)	PCB No. 23-49
	)	
CATHOLIC BISHOP OF CHICAGO,	)	
a corporation sole, and ILLINOIS	)	
ENVIRONMENTAL PROTECTION	)	
AGENCY, an agency of the State of Illinois;	)	
	)	
Respondents.	)	

**RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S, MOTION TO DISMISS VILLAGE OF GLENVIEW AND SOLID WASTE AGENCY OF NORTHERN COOK COUNTY'S COMPLAINT**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through the Attorney General of the State of Illinois, KWAME RAOUL, and pursuant to Sections 2-615 and 2-619(a)(1) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615 and 5/2-619(a)(1) (2020), and Sections 101.506 and 103.212(b) of the Illinois Pollution Control Board (“Board”) Procedural Rules, 35 Ill. Adm. Code 101.506 and 103.212(b), hereby moves for the dismissal of VILLAGE OF GLENVIEW and SOLID WASTE AGENCY OF NORTHERN COOK COUNTY’s Complaint (the “Complaint”). In support of this Motion, Illinois EPA states as follows:

**I. INTRODUCTION**

On October 25, 2019, Illinois EPA issued supplemental permit 2018-090-SP (“Landfill Permit”) to Respondent, Catholic Bishop of Chicago (“CBOC”), as owner and operator, to modify the post-closure care plan for its Des Plaines Sexton landfill (“the Landfill”) to allow for the construction of a compost facility at the site. Additionally, on October 25, 2019, Illinois EPA issued permit 2018-471-DE/OP to CBOC, as owner, and Patriot Acres LLC, as operator,

authorizing the development and operation of a landscape waste compost facility at the Landfill (“Compost Permit”).

On October 12, 2022, Complainants filed a two-count complaint with the Board. The Complaint was received by the Illinois EPA on October 17, 2022. Although the Complaint is against two respondents, most allegations therein are directed at a singular “Respondent”, which is identified by Complainants as CBOC. Complaint at p. 1. As a result, it is unclear which allegations are directed at Illinois EPA. Specifically, Count I does not request any relief from the Board against Illinois EPA.

Moreover, neither Count I nor Count II of the Complaint alleges a cause of action against Illinois EPA. Complainants allege that Illinois EPA “should have never issued” the Compost Permit to CBOC and Patriot Acres LLC to develop and operate a landscape waste compost facility at the Landfill and “doing so is a direct violation of the Act and therefore beyond IEPA’s powers.” Complaint at p. 16. Complainants proceed to request that the Board declare the three-year-old Illinois EPA Compost Permit “void.” *Id.* However, there is no legal remedy available to Complainants against Illinois EPA for a “wrongfully” issued permit. Landfill, Inc. v. Pollution Control Bd., 74 Ill. 2d 541, 556 (1978). Therefore, as a matter of law, Illinois EPA respectfully requests that the Board issue an order dismissing the Complaint against Illinois EPA with prejudice, pursuant to Sections 2-615 and 2-619 of the Code of Civil Procedure, 735 ILCS 5/2-615 and 2-619 (2020), and Sections 101.506 and 103.212(b) of the Board Procedural Rules, 35 Ill. Adm. Code 101.506 and 103.212(b).

## **II. STANDARD FOR MOTION TO DISMISS**

Pursuant to 35 Ill. Adm. Code 101.500, “the Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, this Part, or the Code of Civil

Procedure.” As such, Illinois EPA seeks dismissal of the Complaint under Section 2-619.1. “A motion under section 2-619.1 allows a party to combine a section 2-615 motion to dismiss based on insufficient pleadings with a section 2-619 motion to dismiss based on certain defects or defenses.” Atlas v. Mayer Hoffman McCann, P.C., 2019 IL App (1st) 180939, ¶25. Illinois EPA requests that the Board dismiss the Complaint pursuant to Section 2-619(a)(1), 735 ILCS 5/2-619(a)(1). Reynolds v. Jimmy John's Enterprises, LLC, 2013 IL App (4th) 120139, ¶20 (requiring combined motions to be clearly separated into parts). In addition, Illinois EPA seeks dismissal of the Complaint pursuant to Section 2-615. 735 ILCS 5/2-615.

Section 2-619(a)(1) provides for involuntary dismissal where the “court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction.” A Section 2-619 motion accepts the well-pleaded facts of the Complaint, but nonetheless challenges its legal sufficiency. Thompson v. Frank, 313 Ill. App. 3d 661, 663 (3d Dist. 2000).

A Section 2-615 motion points out the specific defects and asks for the appropriate relief. 735 ILCS 5/2-615. A section 2-615 motion only looks to the factual allegations of the pleading itself, and dismissal is warranted where “it is clearly apparent that no set of facts can be proven which will entitle a plaintiff to recover.” Ill. Graphics Co. v. Nickum, 159 Ill. 2d 469, 488 (1994).

Additionally, Illinois EPA seeks dismissal under 35 Ill. Adm. Code 101.506 and 103.212(b). All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result. 35 Ill. Adm. Code 101.506. Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). “Unless the Board determines that [the]

complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2020); 35 Ill. Adm. Code 103.212(a). 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.” Id.

### III. ARGUMENT

#### **BROUGHT PURSUANT TO 735 ILCS 5/2-619(a)(1)**

##### **A. The Act does not provide for third-party appeals of non-hazardous waste permits.**

The allegations contained in the Complaint are deficient as a matter of law pursuant to Section 2-619(a)(1) of the Code, 735 ILCS 5/2-619(a)(1), because Complainants lack standing to challenge the Illinois EPA Landfill Permit or Compost Permit. It is well established that the permit review process under Section 40 of the Act applies only to permit denials or permits granted with conditions, and the right is limited to the permittee, unless otherwise expressly provided.

The Act generally does not provide for the appeal of an Illinois EPA decision to grant a permit. City of Elgin, et al. v. County of Cook, et al., 169 Ill. 2d 53 (1995) (“An Agency decision granting a permit cannot be appealed to the Pollution Control Board, which is only authorized to hear appeals where the Agency denies a permit or grants only a conditional permit.”); *see also* Currie, *Enforcement Under Illinois Pollution Law*, 70 Nw. U.L. Rev. 389, 478 (1975)<sup>1</sup> (“The statute makes no comparable provision for review of the Agency’s grant of a permit.”).

Section 40(a) of the Act is expressly and exclusively directed to “*the applicant*” for a permit. 415 ILCS 5/40(a) (2020) (emphasis added); *see also* Section 105.204 of the Board’s

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<sup>1</sup> Currie, *Enforcement Under Illinois Pollution Law*, 70 Nw. U.L. Rev. 389, 482 (1975) available at <http://pcb.illinois.gov/documents/dsweb/Get/Document-102505>.

Procedural Regulations, 35 Ill. Adm. Code 105.204 (“If the Agency refuses to grant or grants with conditions a permit under Section 39 of the Act, *the applicant* may petition for a hearing before the Board to contest the decision of the Agency”) (emphasis added). In that circumstance, the applicant must file a petition or request an extension within 35 days of Agency’s final decision. 35 Ill. Adm. Code 105.206(a). “Under the maxim of *expressio unius est exclusio alterius*, the enumeration of an exception in a statute is considered to be an exclusion of all other exceptions.” Schultz v. Performance Lighting, Inc., 2013 IL 115738, ¶ 17. This inference is even stronger in contrast to other specific provisions of Section 40, where the legislature expressly provided a third-party right to appeal certain permits.<sup>2</sup> As the present case does not involve a hazardous waste disposal permit or an NPDES permit, the right to seek review of the Landfill Permit and Compost Permit is limited by statute to only the applicants.

**B. Courts have consistently dismissed third-party challenges to non-hazardous waste permits.**

Complainant is not the first local government to object to an Illinois EPA permitting decision, yet Illinois Courts and the Board have consistently rejected these claims for lack of standing. In City of Waukegan, Waukegan sued the North Shore Sanitary District and the Illinois EPA in Circuit Court, seeking among other things, a declaratory judgment that a proposed facility was “a ‘new pollution control facility’ that requir[ed] local siting approval before the Agency may issue permits, and (2) the Agency’s permits are void due to the District’s failure to obtain local siting approval.” 339 Ill. App. 3d 963, 967 (2d Dist. 2003). The Second District Appellate Court

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<sup>2</sup> See e.g. 415 ILCS 5/40(b) (“If the Agency grants a [Resource Conservation Recovery Act] permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may . . . petition the Board for a hearing to contest the issuance of the permit.”); 415 ILCS 5/40(c) (“[a]ny party to an Agency proceeding conducted pursuant to Section 39.3” governing hazardous waste facilities may petition the Board for review.); or 415 ILCS 5/40(d) (a third party, other than the permit applicant or Agency” may petition the Board for review of a National Pollutant Discharge Elimination System (“NPDES”) permit.).



applied the Illinois Supreme Court's ruling in City of Elgin and affirmed the circuit court's ruling that Waukegan could not obtain judicial review of IEPA's permitting decision. Id. at 974; *see also Williamson County ex rel. Garnati v. IEPA*, PCB No. 08-93 (July 10, 2008)<sup>3</sup> ("There currently are no third-party rights to appeal this non-hazardous waste permit under Section 40 of the Act; Section 40(a)(1) grants appeal rights solely to the permit applicant."). Thus, the Complainants lack standing to collaterally attack the permit as a matter of law, and the Board should dismiss with prejudice the Complaint against Illinois EPA.

**BROUGHT PURSUANT TO 735 ILCS 5/2-615**

**C. There is no cause of action available to Complainants against Illinois EPA for issuing the Permit.**

Complainants do not properly allege a cause of action in their Complaint against Illinois EPA and cannot as a matter of law. Therefore, the Complaint should be dismissed with prejudice pursuant to Section 2-615 of the Code, 735 ILCS 5/2-615. Ill. Graphics Co., 159 Ill. 2d at 488 (dismissal warranted where no set of facts would entitle plaintiff to relief). Complainants base their claims against Illinois EPA on allegations that Illinois EPA should have never granted the Compost Permit. However, there is no cause of action under the Act against Illinois EPA for granting a permit. Landfill, Inc., 74 Ill. 2d at 556 ("Prosecution under the Act . . . is against polluters, not the Agency."). Mere disagreement with an Illinois EPA determination is not enough to support a claim that Illinois EPA lacks authority to issue a permit. City of Waukegan, 339 Ill. App. 3d at 976. In addition, as explained further in Section III.B., above, there is no third-party appeal for non-hazardous waste permits under the Act. For these reasons, Complainant has not, and cannot plead a cause of action for which relief can be granted, and the Complaint against Illinois EPA should be dismissed with prejudice pursuant to Section 2-615 of the Code.

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<sup>3</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-61759>.

**D. Illinois EPA does not violate the Act when it issues permits.**

At the heart of Complainants' claims against Illinois EPA is the legally invalid claim in Count II that "IEPA should have never issued the Compost Permit for the Landfill and doing so is a direct violation of the Act and therefore beyond IEPA's powers." Compliant at p. 16, ¶48. Illinois EPA has the duty to issue permits "upon proof by the applicant that the facility . . . will not cause a violation of this Act or of regulations hereunder. . . ." 415 ILCS 5/39(a) (2020). While the Complaint is ambiguous as to which Section(s) of the Act Complainants allege Illinois EPA specifically violated, that pleading deficiency is overshadowed, because there is no cause of action under the Act against Illinois EPA for the exercise of its permit duties. Landfill, Inc., 74 Ill. 2d at 556 ("[p]rosecution under the Act . . . is against polluters, not the Agency."); see also Mahomet Valley Water Authority v. Clinton Landfill, Inc., PCB No. 13-22 (Sept. 19, 2013)<sup>4</sup> ("it is well-established that the Board lacks jurisdiction to consider allegations that a landfill permit determination by the Agency violates the Act."). Therefore, Complainants' claims based on this fallacy are legally deficient on their face, and the Complaint against Illinois EPA should be dismissed with prejudice.

**BROUGHT PURSUANT TO 35 ILL. ADM. CODE 101.506 and 103.212(b)**

**E. The Complaint is frivolous, as it seeks relief the Board cannot grant.**

Additionally, Illinois EPA seeks dismissal under Board Procedural Rule Sections 35 Ill. Adm. Code 101.506 and 103.212(b). 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. As stated in Illinois EPA's 735 ILCS 5/2-619.1 argument above, the Act and caselaw interpreting it unequivocally demonstrate that Complainants cannot

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<sup>4</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-81674>.

appeal CBOC's Illinois EPA-issued Landfill Permit or Compost Permit to the Board. Therefore, the Board must determine that the Complaint against Illinois EPA is frivolous under Sections 35 Ill. Adm. Code 103.212(b), because of the overwhelming Board precedent finding that it does not have the authority to grant relief in third-party appeals of Illinois EPA non-hazardous waste permits.

**IV. Conclusion**

For the reasons enumerated above, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, respectfully requests that the Board dismiss Complainants', VILLAGE OF GLENVIEW and SOLID WASTE AGENCY OF NORTHERN COOK COUNTY's, Complaint against Illinois EPA challenging the Illinois EPA's permit decision(s) with prejudice, pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619.1, and Sections 101.506 and 103.212(b) of the Board Procedural Rules, 35 Ill. Adm. Code 101.506 and 103.212(b), and for such other relief as the Board deems appropriate.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* KWAME RAOUL,  
Attorney General of the State of Illinois

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