

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.

CATHOLIC BISHOP OF CHICAGO, an
Illinois corporation sole; and ILLINOIS
ENVIRONMENTAL PROTECTION
AGENCY, an agency of the State of Illinois;

Respondents.

PCB Case No. 2023-049

NOTICE OF MOTION

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE THAT on December 27, 2022, I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the "COOL" System, CATHOLIC BISHOP OF CHICAGO'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF ITS MOTION TO DISMISS, true and correct copy of which is attached hereto and hereby served upon you.

CATHOLIC BISHOP OF CHICAGO

/s/ Jonathan H. Ebner

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CERTIFICATE OF SERVICE

I, Jonathan H. Ebner, certify that I have served on this 27th day of December, 2022, true and correct copies of the NOTICE OF MOTION and CATHOLIC BISHOP OF CHICAGO'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF ITS MOTION TO DISMISS upon the persons listed on the Service List via electronic mail with return receipt.

Dated: December 27, 2022

/s/ Jonathan H. Ebner

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PCB Case No. 2023-049

**CATHOLIC BISHOP OF CHICAGO'S MOTION FOR LEAVE TO FILE A REPLY
IN SUPPORT OF ITS MOTION TO DISMISS**

Respondent The Catholic Bishop of Chicago, for its Motion for Leave to File a Reply in Support of Its Motion to Dismiss, states as follows.

1. Pursuant to Section Rule 101.500(e) of the Illinois Pollution Control Board Rules ("Board Rules"), the Catholic Bishop of Chicago hereby seeks leave to file a reply to Complainants' opposition to the pending motion.
2. The proposed reply is attached hereto, and is brief (three pages), and limited to addressing two key points at issue in the Motion to Dismiss: lack of standing under Illinois Supreme Court precedent (*City of Elgin v. Cty. of Cook*, 169 Ill. 2d 53, 61-62 (1995)) and duplicative arguments under Board Rules 103.202(a) and 101.202.

3. The Catholic Bishop of Chicago believes that the Board and/or the hearing officer will be aided by the reply in their review of this matter. Complainants will suffer no prejudice if it is considered. On the other hand, if the reply is not considered, the Catholic Bishop of Chicago may suffer material prejudice as this matter continues.

CONCLUSION

For the foregoing reasons, the Defendant Catholic Bishop of Chicago respectfully requests that this Tribunal grant its Motion for Leave to file a Reply in Support of Its Motion to Dismiss, and for all such further relief as may be appropriate.

Dated: December 27, 2022

Respectfully submitted,

/s/ Jonathan H. Ebner

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*Attorneys for Respondent Catholic Bishop of
Chicago*

CERTIFICATE OF SERVICE

I, Jonathan H. Ebner, caused to be served this 27th day of December, 2022, true and correct copies of this Motion for Leave to File a Reply in Support of Its to Dismiss upon the persons listed on the Service List via electronic mail with return receipt.

/s/ Jonathan H. Ebner

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v.

CATHOLIC BISHOP OF CHICAGO, an Illinois corporation sole; and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, an agency of the State of Illinois;

Respondents.

PCB Case No. 2023-049

**CATHOLIC BISHOP OF CHICAGO'S REPLY
IN SUPPORT OF ITS MOTION TO DISMISS**

Respondent The Catholic Bishop of Chicago, for its Reply in Support of Its Motion to Dismiss, states as follows.

I. Complainants' Attempts to Avoid Their Standing Problem Fails: Despite Their Protests, They Are Challenging IEPA's Permitting Decision, Which They Cannot Do

“The Lady doth protest too much, methinks.” *Hamlet*, Act III, Line 219. Despite Complainants' repeated protests that they are **not** challenging the issuance of the permit for the Compost Facility (*see, e.g.*, Opp. Brief, ¶1: “Complainants are not challenging IEPA's issuance of the permits or seeking to appeal the Compost Permit.”), they simultaneously claim:

...the activities permitted by the Compost Permit will—due to the underlying acts of pollution and violation of the Act, regulations and permits—result in further and additional (and independent) violations of the Act...This is not a Third Party appeal of the Compost Permit but rather a claim that the compost facility, even when

operating under the terms and conditions of the Compost Permit, will cause additional violations of the Act and Regulations by the CBOC.

Opp. Brief, ¶5. On opposition, Complainants do not dispute the Illinois law does not allow a third-party challenge to a permit decision. Instead, Complainants attempt to portray their position as merely being concerned with violations of the Act, while they continue to emphasize that they are not challenging the issuance of the permit. This rings hollow. In the Complaint, Complainants allege that “IEPA should never have issued a permit for the Compost Facility...” ¶48. Perhaps more tellingly, in the relief sought section of the Complaint, Complainants request a “Finding that the permit issued for the Compost Facility was issued in violation of the Act and should therefore be declared void.” The cognitive dissonance is on full display. It is clear that Complainants are in actuality challenging IEPA’s permitting decision, which is a permitting decision that they have no standing to attack. As noted in the Motion to Dismiss, Complainants cannot rely on pretextual arguments to challenge the issuance of a permit. *City of Elgin v. Cty. of Cook*, 169 Ill. 2d 53, 61-62 (1995) (“Yet, what the plaintiff municipalities cannot do directly they attempt to do indirectly through their complaint challenging the Cook County board's zoning ordinance authorizing the siting and development of the balefill.”). Thus, Complainants’ tortured explanations about how they are not challenging the permit should be rejected, and the Complaint should be dismissed based on Complainants’ lack of standing to challenge the issuance of permits.

II. Complainants’ Have Failed to Address the Duplicative Nature of Their Allegations

In a one-paragraph response, Complainants simply claim that this matter is not duplicative of complaints made in another forum or previously before the Board, because “[t]he violations of the Act alleged by the Complainants in this Complaint are not presently before the Board or alleged in any other forum.” Opp. Brief, ¶7. This conclusory argument fails to address any of the very

specific and detailed factual allegations Complainants made during the permitting process (which Complainants simply ignore), and which the Catholic Bishop of Chicago quoted at length in its motion. Motion, pp. 6-9. As noted in the motion, these allegations of violations are the very same allegations of violations made in the Complaint. Complainants have not, and cannot, demonstrate that their current allegations of violations are not duplicative of the allegations of violations they raised during the permitting process, and the Complaint should be dismissed on this basis.

IV. CONCLUSION

For the foregoing reasons, the Defendant Catholic Bishop of Chicago respectfully requests that this Tribunal grant its Motion to Dismiss and dismiss the Complaint with prejudice, and for all such further relief as may be appropriate.

Dated: December 27, 2022

Respectfully submitted,

/s/ Jonathan H. Ebner

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