BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS, Complainant, v. STEEPLE RUN ELEMENTARY SCHOOL; AND OZYNGA CONCRETE YARD #281 Respondents.	)	Case No. PCB 2023-083

APPEARANCE

NOW COMES HINSHAW & CULBERTSON LLP, and hereby enters its Appearance as counsel for Ozinga Ready Mix Concrete, Inc., which was provided a copy of a Complaint brought against a non-entity referred to as "OZYNGA CONCRETE YARD #2812", in the above-entitled cause of action.

Dated: January 27, 2023

OZINGA READY MIX CONCRETE, INC.,
an Illinois corporation

By: HINSHAW & CULBERTSON LLP

By: _____
Richard S. Porter
One of Its Attorneys

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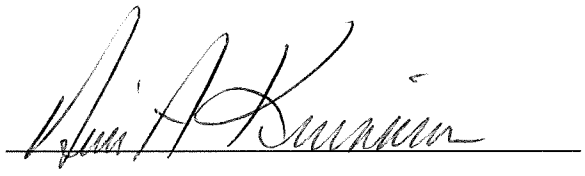
AFFIDAVIT OF SERVICE

The undersigned certifies that on January 27, 2023, she served a copy of the foregoing Appearance upon the following:

Paul Christian Pratapas
1330 E. Chicago Avenue #110
Naperville, IL 60540

by depositing a copy thereof, enclosed in an envelope, in the United States Mail at 100 Park Avenue, Rockford, Illinois 61101, proper postage prepaid, at or about the hour of 5:00 o'clock p.m., addressed as above.



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MOTION TO DISMISS COMPLAINT

NOW COMES Ozinga Ready Mix Concrete, Inc. by and through its attorneys Hinshaw & Culbertson, LLP, pursuant to 735 ILCS 5/2-301 and 35 Ill. Adm. Code 101.400, 735 ILCS 5/2-301 and 35 Ill. Adm. Code 101.400, 35 Ill. Adm. Code 103.212(b), to challenge the Complainant's service of the Complaint naming a non-entity "Ozynga Concrete yard #281" on Respondent and to attack the Complaint as frivolous, and in support thereof states as follows:

I. BACKGROUND

1. On December 29, 2022, the Complainant, Paul Christian Pratapas, filed the Complaint herein PCB 2023-083 ("Complaint") with the Illinois Pollution Control Board ("Board"). According to the Illinois Board's docketing website, between August 2022 to January of 2023, the Complainant has filed 25 separate "Citizen Complaints" against various entities pursuant to 415 ILCS 5/31(d). As pointed out in a motion to dismiss made by another respondent to one of Complainant's two dozen other Complaints, it appears the Complainant's *modus operandi* is to go to construction sites on rainy dates, take a few photographs, and then file a template complaint before this Board against the developer and various other entities, in which he alleges violations of "415 ILCS 5.12(a)", 415 ILCS 5/12(d) and sometimes also "IL Admin Code Title 35, 304.141(b)".

2. Like the other 24 Citizen Complaints filed by the Complainant in the past four months, the Complaint in this matter was drafted on a Complaint Form provided by the Illinois Pollution Control Board. The Complaint lists as Respondents "Steeple Run Elementary School; and Ozynga Concrete Yard #281." In this matter, the Complaint alleges violations of "415 ILCS 5.12(a)" and 415 ILCS 5/12(d), which, although unclear from the Complaint, are apparently alleged to have occurred on or about December 15, 2022.

3. The Illinois Pollution Control Board ("Board") has the authority to conduct proceedings upon complaints charging violations of the Illinois Environmental Protection Act ("Act"), any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. 415 ILCS 5/5(d). The Board shall hold a hearing on a Complaint, unless it determines that the Complaint is duplicative or frivolous. 35 Ill. Adm. Code 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". *Id.* Courts and the Board have held that a factually or legally deficient complaint is a frivolous complaint. *Winnetkans Interested in Protecting Environment (WIPE) v. Illinois Pollution Control Board*, 55 Ill. App. 3d 475, 370 N.E.2d 1176 (1st Dist. 1977); *Gutesha v. Johnson Concrete Co. and Elmer Larson, Inc.*, 1993 Ill. ENV LEXIS 545.

4. For the reasons set forth below, the Board should declare the Complaint frivolous, decline to accept the Complaint for Hearing, and enter an order dismissing this matter in its entirety with prejudice. *See* 35 Ill. Adm. Code 103.212(b).

II. ARGUMENT

A. The Complainant has Failed to Properly Serve the Respondent

5. As set forth in the Complainant's "Proof of Service", it is uncontested that the Complainant, a party to this action attempted to personally serve Respondent Ozinga with the

Complaint in this matter. While the Board Rules allow for personal service, they are silent on who may effectuate personal service. 35 Ill. Adm. Code 101.304. Pursuant to 35 Ill. Adm. Code 101.100, in such instances the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance.

6. The Rules of Civil Procedure are clear and unambiguous, a private person making service cannot be a party to the action. *Gocheff v. Breeding*, 53 Ill. App. 3d 608, 609, 368 N.E.2d 982, 983 (5th Dist. 1977). 735 ILCS 5/2-202. When service is carried out in a manner inconsistent with the statute, the service is invalid and no jurisdiction over the defendant is acquired. *Id.*

7. Here, the record is abundantly clear, the Complainant is a private person and party to the action. The Complainant's sworn statement establishes that he attempted to personally effectuate service upon Respondent. This method of service is contrary to the applicable law and thus invalid. 735 ILCS 5/2-202. The Board therefore has no authority to grant the relief requested and this Board must enter an order in which it finds the Complaint frivolous and declines to accept the Complaint for hearing.

8. Further, and in the alternative, in 35 Ill. Adm. Code § 101.304(d) provides that a proceeding is subject to dismissal and sanctions for failure to comply with service requirements. Section 101.304(b)(1) specifically provides that service of a complaint must be made upon a person authorized by law to receive service on behalf of the party. *Id.* In Illinois, service upon a corporation must be made upon a registered agent or other individual authorized to receive the complaint. *See* 35 Ill. Adm. Code § 101.100(b) (applying the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules when the Board's procedural rules are silent). The Complainant's "Notice of Service" is improper and fails to supply required information necessary to give this Board jurisdiction over this matter or the Complainant's Complaint.

9. With regards to "Ozynga Concrete Yard #281" the Complainant's Notice of Service states that he served "Ron at Ozynga Concrete Yard #281"[1]. According to the Illinois Secretary of State, "Ron at Ozynga Concrete Yard #281" is not a registered agent for the "Ozynga Concrete Yard #281" (which is not a legal entity). Had the Complainant exercised any due diligence prior to filing his Complaint, he could have easily determined that the Illinois Secretary of State shows that "Ron at Ozynga Concrete Yard #281" is also not the registered agent for Ozinga Ready Mix Concrete, Inc.. "Ron at Ozynga Concrete Yard #281" is also not a person authorized to accept service on behalf of the Respondent.

10. Because there was no proper service on Respondent, the Board should not accept Complainant's Complaint.

B. <u>The Defendant Failed to Sue a Person (or Actual Legal Entity)</u>

11. The Illinois Environmental Protection Act ("Act") and the Board's rules provide that a Complainant "may file with the Board a complaint, <u>against any person</u> allegedly violating the Act, any rule or regulation, any permit or any Board order." 415 ILCS 5/31(d) (emphasis added); 35 Ill. Adm. Code 103.200 ("Under Section 31 of the Act, an enforcement proceeding may be commenced by any person."); 35 Ill. Adm. Code 103.106.

12. The Illinois Environmental Protection Act defines the term "person" as "any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns." 415 ILCS 5/3.315.

13. The Act and the Board's Rules further provide that the Board shall set a complaint for hearing unless the Board determines that the Complaint is duplicative or frivolous. 415 ILCS

[1] The Complainant lists the address for the "Ozynga" as 515 Spring Street, Naperville, IL. However, he has failed to provide any allegations in support of his contention that the concrete in question came from this location. In fact, Ozinga staff have confirmed that the concrete delivered to the Steeple Run Elementary School on the dates in question did not come from the 515 Spring Street facility.

5/31(d)(1); 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." 35 Ill. Adm. Code 101.202.

14. Pursuant to the records of the Illinois Secretary of State's Office, "Ozynga Concrete Yard #281" is not a corporation or partnership registered to do business in the State of Illinois. Accordingly, there is no legal entity by the name of "Ozynga Concrete Yard #281" and such is not a "person" as defined under the Act or Board Rules. 415 ILCS 5/3.315.

15. As an administrative agency, the Board is subject to the limitations imposed upon it by the Act. 415 ILCS 5/5. Section 5(d) of the Act provides the Board authority to conduct hearings on complaints brought by any person against any other person. *Id.* "Ozynga Concrete Yard #281" is not a person. The Board therefore has no authority to grant any relief as it relates to any of the Complainant's allegations against "Ozynga Concrete Yard #281". Accordingly, the Board must find that it does not have jurisdiction over this matter and that the Complaint is frivolous and refuse to accept the Complaint for hearing. 415 ILCS 5/31(d)(1)

C. The Complaint Fails to State a Claim Upon Which Relief Can be Granted by the Board

16. When reviewing a Complaint in light of a motion to dismiss, the Board follows the principle that "Illinois is a fact-pleading state which requires the pleader to set out the ultimate facts which support his cause of action." *People v. Blick's Constr. Co.* PCB No. 13-43, 2013 Ill. ENV LEXIS 151 *18. (May 16, 2013). This means that legal conclusions which are unsupported by allegations of specific facts are insufficient to state a cause of action upon which relief can be granted. *Id.* Of particular relevance to this matter, the Board has also held that "a complaint's failure to allege facts necessary to recover may not be cured by liberal construction or argument." *Id.* at *18 (internal citations and quotations omitted). When ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all inference from them in favor of the non-

movant. *Id.* at *17. "Well-pled facts are specific allegations that bring a complaint within a recognized cause of action; mere conclusory allegations unsupported by specific facts will not suffice." *Primax Recoveries, Inc. v. Atherton,* 365 Ill. App. 3d 1007, 851 N.E.2d 639 (5th Dist. 2006)

17. The Board's minimum pleading requirements for Complaints require factual specificity rather than mere conclusions. *See* 35 Ill. Adm. Code 103.204(c). Section 103.204(c) provides that a Complaint must contain:

> a. A reference to the provision of the Act and regulations which the respondents are alleged to be violating;
>
> b. The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
>
> c. A concise statement of the relief that the complainant seeks.

35 Ill. Adm. Code 103.204(c).

18. At the outset it should be noted that, with respect to Section 103.204(c)(1), Complainant failed to meet this standard as he erroneously alleged a violation of "415 ILCS 5.12(a)" which is not a proper citation to any Illinois statute this Board has the authority to enforce.

19. Next, while the Complaint appears to assert a location of the alleged violations (the Steeple Run Elementary School, 6S151 Steeple Run Drive, Naperville, Illinois 60540), the date upon which the putative violations allegedly occurred is far from certain. At Paragraph 6, the Complainant states "Photographed: 12/15/2022, 11:50a (sic) burying washout and doing a secondary rinse on the playground." The Complainant attached 14 photographs to his Complaint marked as "A" through "M". According to the Complainant, photographs "D", "E", and "F" were taken on 12/15/22, but none of the photographs appear to even depict the violations alleged to have occurred on 12/15/22. Next, the Complaint states "Photographed: 12/22/2022S (sic), sediment and

trackout (sic) accumulating." According to the Complaint, photographs "G" through "L" are alleged to document these "violations". However, no Ozinga vehicles or employees are shown in these photographs and no facts are alleged to even assert that Ozinga was present on the site that day or had any ties to whatever it is that is depicted in photographs "G" through "L". The final date alleged in the Complaint is December 28, 2022. With respect to this date, the Complaint states: "Photographed: 12/28/2022, Ozynga pouring concrete again". Photographs "M" and "N" are alleged to document the site on this particular date. Photograph M appears to depict an Ozinga Ready Mix Concrete Truck in the process of pouring concrete at the site. However, there are no allegations of how Ozinga's presence at the site this day caused or threaten to cause water pollution. Due to uncertainty of such a basic fact as the date of occurrence, it can hardly be said that the Complaint meets the specificity standards of 35 Ill. Adm. Code 103.204(c).

20. Further, the Complaint fails to adequately plead a cause of action under Section 103.204(c) as it lacks any specifics as to the extent, duration, or strength of the alleged violations. 35 Ill. Adm. Code 103.204(c). For instance, at Paragraph 5 of the Board's Form Complaint, the Complainant was directed to "Describe the type of pollution that you alleged (e.g., air, odor, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution." In response to this direction, the Complainant provided the following conclusory and vague allegation:

> Water and Safety. Ozynga washed out their trucks on the ground of a public elementary school playground while the kids were on recess. This was after burying [sic] Additionally, track out is not being managed leading to sediment laden water entering the offsite inlet set to receive rainwater from the construction area. Trackout also on public roads creating a safety issue for residents.

Compl. at ¶5.

21. In sum, the allegations specific to Ozinga in the Complaint appear to consist of the claim that "Ozynga washed out their trucks on the ground of a public elementary school while the

kids were on recess. This was after burying (sic)." First, the allegations are so vague and undeveloped that it should not be considered "well-pled", and this Board should therefore not take it as true nor draw any inferences from it. *Dorothy v. Flex-N-Gate Corporation*, 2005 Ill. ENV LEXIS 599; *Tarkowski v. Belli*, 976 Ill. ENV LEXIS 621, (April 8, 1976) (Striking unsupported legal conclusions contained in Complaint). Second, even if true, this allegation provides the Board with no basis to conclude that such conduct was violative of any statute, law, rule, permit, or regulation nor would such an undeveloped statement constitute water pollution as it is defined under the Act. 415 ILCS 5/3.545. Moreover, Photograph "D", "E", and "F", by no means help to corroborate the Complainant's claims against Ozinga because it is unclear what is even depicted in these images. Further, there are no allegations – factual or otherwise – that link Ozinga's alleged conduct to the mismanagement of "track out" at the site which is somehow causing "sediment laden water" to enter an "offsite inlet." These allegations are not well-pled as they fail to link any of the alleged conduct to water pollution and should not be taken as true by the Board. *See Primax Recoveries, Inc. v. Atherton,* 365 Ill. App. 3d 1007. In other words, the Complaint fails to state a cause of action upon which the Board may grant relief.

22. At Paragraph 7 of the Complaint, the Complainant goes on to "describe any bad effects" that he believes the alleged pollution has or 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. In response to this directive, the Complainant provided the following statements, which highlight the Complainant's true and improper motivation behind his filing of this Complaint:

> The negative environmental impacts of concrete washout are widely known and the reason for the regulations. Leaving this toxic materials on the ground of an active elementary school playground with no regulatory signs, but with many no trespassing and security related signs is a direct threat to children.
>
> Ongoing overcrowding of this school from unchecked residential construction has led to the downfall in the quality of the neighborhood and the project which led to the pollution noted in this complaint. The school did a previous project on their

> parking lot and received an approved traffic flow plan for parents picking up their children.
>
> Instead of following this plan, the school administration allowed every car to instead turn into my parents' court to turn around. There is clear signage indicating this is not allowed. And there was an official approved traffic plan. This continues to put infant and pet safety at risk on my parents' court as the school and DuPage sheriff have both refused to address the issue despite multiple interventions.
>
> There is a sheriff deputy and school teacher at the point the cars begin who both watch the vehicles violate the approved traffic plan and teach kids breaking laws is OK. The sheriff has on multiple occasions argued with complainant, saying he doesn't have to enforce the law. This was after he tried saying the street signs were invalid.
>
> The school teacher Mr. Miller has also been observed on multiple occasions standing on the opposite street corner form (sic) the school with his back to the crosswalk so he could talk to mothers who decided to stay after dropping their kids off. This area is about 20 ft from where the sheriff parks to provide "safety".
>
> This has all occurred after the school district was notified by complainant of a teacher who molested female students for decades at a junior high this elementary school sends some of the students to. The lack of an ability to guarantee the safety and appropriate basic education of children continues.
>
> Compl. at ¶ 7.

23. These largely indecipherable and vague allegations are not well-pled and completely fail to state a cause of action for water pollution. 35 Ill. Adm. Code 103.204(c); 415 ILCS 5/12(a); 415 ILCS 5/12(d). Moreover, the Complainant's ramblings make clear that the Complainant brought this action to improperly seek redress for his own personal squabbles with the school, rather than to address legitimate claims of environmental pollution. Further, the claim that "the negative environmental impacts of concrete washout are widely known and the reason for the regulations" is comprised solely of legal conclusions, which provide no specific facts in support of the claims and therefore should not be treated as well-pled facts. *La Salle National Trust, N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 616 N.E.2d 1297 (2nd Dist. 1993); *Tarkowski v. Belli*, 976 Ill. ENV LEXIS 621. Likewise, even if true, the allegations completely

fail to establish how the alleged conduct threatened or caused pollution to the waters of this state. 415 ILCS 5/3.545; 415 ILCS 5/12(a); 415 ILCS 5/12(d).

24. Again, the Complainant's case is comprised of an open ended conclusion the negative impacts are "widely known" which is wholly unsupported by any facts or evidence. The Complaint's vague and unsupported conclusions fail to provide the Respondent with notice of "the nature, extent, duration and strength of discharges or emissions and consequences" of its alleged violations as required under 35 Ill. Adm. Code 103.204(c). Section 103.204(c) of the Board's Rules require a complaint to provide sufficient details to inform "respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense." *Id.* Clearly the Complaint fails to meet that standard. Even under the lessened pleading standards for administrative proceedings, a complaint based on conclusions alone, such as this one, is insufficient to state a cause of action. *See City of Des Plaines v. Pollution Control Board*, 60 Ill. App. 3d 995, 377 N.E.2d 114 (1st Dist. 1978). The Complaint is therefore factually deficient and should be dismissed by the Board as frivolous. 1993 Ill. ENV LEXIS 545

25. Furthermore, it is well settled that a claim brought under 415 ILCS 5/12(a) or (d) must allege water pollution. *People ex rel. Ryan v. Stonehedge, Inc.*, 288 Ill. App. 3d 318 (2nd Dist. 1997); *People v. Professional Swine Management, LLC et al*, PCB 10-84, 2012 Ill. ENV LEXIS 55 (holding that a Complaint must reference "waters of the state" to assert a valid claim under Section 12.); *Tri-County Landfill Co. v. Illinois Pollution Control Board*, 41 Ill. App. 3d 249, 353 N.E.2d 316 (2nd Dist. 1976); 415 ILCS 5/3.550. The term "water pollution" is defined under the Act as "the discharge of any contaminant into Illinois waters as will or is likely to create a nuisance or render such waters harmful to public health, safety, or welfare." *Western Springs v. Pollution Control Board*, 107 Ill. App. 3d 864, 865, 438 N.E.2d 458, 459 (1st Dist. 1982). Relatedly, when interpreting the Clean Water Act, the United States Supreme Court has

determined that the term "waters" is not a reference to water in general, but is specifically limited to "relatively permanent, standing or flowing bodies of water and does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall." *Rapanos v. United States*, 547 U.S. 715, 719 (2006).

26. Therefore, to bring an action under 415 ILCS 5/12(a) or (d), a Complainant must identify a permanent body of water within the State that has or will become unusable as a result of the acts or omissions of the respondent. *Central Illinois Public Service Co. v. Pollution Control Board*, 116 Ill. 2d 397 (1987). The Complaint makes no mention or reference to any waters of the state, whatsoever. Therefore, even if the allegations were to be proven, the Complaint fails to state a cause of action upon which relief could be granted as it fails to identify any waters of the state that were impacted, let alone polluted or threatened with pollution, by the alleged acts or omissions of the Respondent. *Protecting Environment (WIPE)*, 55 Ill. App. 3d 475 (1st Dist. 1977) (holding that a complaint which fails to state the manner in which and the extent to which a person violated the Act or rules constitutes a frivolous complaint.); *Gutesha v. Johnson Concrete Co. and Elmer Larson, Inc.*, 1993 Ill. ENV LEXIS 545 (Holding "a complaint is frivolous if it is either legally or factually deficient, or fails to state a cause of action upon which relief can be granted.")

27. As it relates to the management of the site, the Complainant has failed to assert any facts to establish that Ozinga had the authority, contractual obligation, ownership or control to provide for the management of the waters or discharges from the site. Since Ozinga has no ownership or control of the premises or its "sediment laden water" it would not be proper for the Board to find Ozinga at fault for any violations resulting from the management of same. *See People v. The Highlands LLC*, 2005 Ill. ENV LEXIS 393. These claims are completely irrelevant to Ozinga and should be stricken from the Complaint as against Ozinga. Further, the Complainant has provided no support for his conclusion that water leaving the site is "sediment laden". Such an

allegation is not a well-pled fact and the Board should not take it as true nor draw any inferences from it. *Id.*

28. Likewise, the alleged "safety issue" is a completely undeveloped conclusion that is unsupported by any facts. This allegation fails to provide the Board and the Respondent any guidance on what, if any, statutes or regulations the Respondents have allegedly violated or how the alleged actions caused the alleged violations. These undeveloped and unclear allegations clearly fail to meet the specificity required under 35 Ill. Adm. Code 103.204(c). The Complaint's reference to roadway safety – an area outside the Board's authority to regulate – is yet another example of the Complaint's complete failure to state a cause of action upon which the Board may grant relief. *See* 415 ILCS 5/5(d) (Board's authority is limited to violations of the Act and regulations, permits and orders issued thereunder.)

D. The Board Does not Have the Authority to Grant the Relief Requested Because the Complaint Alleges a Wholly Past One-Time "Violation"

29. Relatedly, because there is a complete lack of factual allegations to support a finding that any law or regulation has been violated by Respondent, the Board has no authority to grant the relief request by the Complainant. The Board's Rules provide that a complaint which seeks relief that the Board does not have the authority to grant, such as this one, is a frivolous complaint that shall not be set for hearing. 35 Ill. Adm. Code 103.212(a).

30. Further, the Complainant brought this action under the citizen complaint provision of 415 ILCS 5/31(d) in which he alleges a single one time incident that he frames as a violation of the Section 5/12(a) and (d) of the Act. This alleged violation consists of a wholly past, one-time violation, limited exclusively to December 15, 2022.

31. However, the law is clear that a citizen, such as the Complainant, lacks standing to bring enforcement actions for wholly past, one time violations of the Act. *See Gwaltney of Smithfield v. Chesapeake Bay Foundation*, 484 U.S. 49 (1987). The framework of the Act and

Board regulations are designed to enforce standards in a manner consistent with the Clean Water Act. *See* 415 ILCS 5/39. In *Gwaltney*, the United States Supreme Court held that with respect the Clean Water Act, "the harm sought to be addressed by the citizen suit lies in the present or the future, not in the past." 484 U.S. 49, 52 (1987) (holding that the Clean Water Act "does not confer jurisdiction over citizen suits for wholly past violations".)

32. The Complainant's authority to bring an action is strictly limited to those allowed and authorized by the Act and its regulations. *Glisson v. City of Marion*, 188 Ill. 2d 211 (1999). The plain language of Section 103.204(c) is consistent with the Court's ruling in *Gwaltney* as it requires a Complainant to identify *ongoing* violations of the Act or its regulations. At Section 103.204(c) the Board's Rules require a Complainant to reference "the provisions of the Act that Respondents are alleged to be *violating*." (Emphasis added). 35 Ill. Adm. Code 103.204(c)(1). The Board's use of the term "violating" makes clear that any violations must be of a "continuous or intermittent" nature, which is consistent with the law set forth in *Gwaltney*. 484 U.S. 49, 52 (1987).

33. The Complaint does not reference or allege any continuing violations of the Act, or any rule, permit or order issued thereunder. For such violations, the State has the authority to bring enforcement actions, but the Complainant, as a citizen, does not. *See Modine Manufacturing Co. v. Pollution Control Board*, 193 Ill. App. 3d 643 (2nd Dist. 1990) (approving the State's action to impose and recover fines for wholly past violations.). Accordingly, because the Complainant lacks standing, the Board lacks authority to grant the relief request, making the Complaint frivolous.

III. CONCLUSION

34. The Complaint clearly meets the Board's definition of "frivolous" as it is legally and factually deficient and fails to state a cause of action upon which relief may be granted. 35 Ill. Adm. Code 103.212(a). As such, the Board's regulations proscribe the Board from setting the Complaint for hearing and require the Board to issue an order declining to accept the Complaint

for hearing and declaring the Complaint frivolous. 35 Ill. Adm. Code 103.212(b); *City of Des Plaines*, 60 Ill. App. 3d 995; *Winnetkans Interested in Protecting Environment (WIPE) v. Illinois Pollution Control Board*, 55 Ill. App. 3d 475, 370 N.E.2d 1176 (1st Dist. 1977).

WHEREFORE for the foregoing reasons, Ozinga Ready Mix Concrete, Inc., moves the Illinois Pollution Control Board for an order in which it declines to set the Complaint for hearing and dismisses the Complaint as frivolous.

Dated: January 27, 2023

OZINGA READY MIX CONCRETE, INC.,
an Illinois corporation

By: HINSHAW & CULBERTSON LLP

By: _____
Richard S. Porter
One of Its Attorneys

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