

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,)	
)	
Complainant,)	
)	
v.	)	No: PCB 2023-081
)	
Silo Bend and The Townes by Silo Bend	)	(Enforcement – Water)
by M/I Homes,)	
)	
Respondent.)	

Notice of Electronic Filing

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board **Respondent Silo Bend And The Townes By Silo Bend By M/I Homes’ Motion To Dismiss This Proceeding With Prejudice And For An Award Of Sanctions Against Complainant Paul Christian Pratapas, Memorandum in Support** and accompany **Exhibits**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

By: *David J. Scriven-Young*
David J. Scriven-Young

Date: July 24, 2023

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Certificate of Service

The undersigned, an attorney, hereby certifies that the above Notice and any attached documents were served via email transmission to the Clerk and all other parties listed below at the addresses indicated by 5:00 p.m. on July 24, 2023.

Illinois Pollution Control Board
Don Brown – Clerk of the Board
100 W. Randolph St., #11-500
Chicago, IL 60601
Email: don.brown@illinois.gov

Paul Christian Pratapas
(Complainant)
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Memphis, TN 38138
Email: paulpratapas@gmail.com

Respectfully submitted,

By: */s/ David J. Scriven-Young*
David J. Scriven-Young

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.	)	No. PCB 2023-081
)	
SILO BEND AND THE TOWNES BY SILO)	
BEND BY M/I HOMES,	)	(Enforcement – Water)
)	
Respondent.)	

**RESPONDENT SILO BEND AND THE TOWNES BY SILO BEND BY M/I HOMES’
MOTION TO DISMISS THIS PROCEEDING WITH PREJUDICE AND FOR AN
AWARD OF SANCTIONS AGAINST COMPLAINANT PAUL CHRISTIAN PRATAPAS**

NOW COMES the Respondent, SILO BEND AND THE TOWNES BY SILO BEND BY M/I HOMES (“M/I”), by and through its attorneys, Corporate Law Partners, PLLC and Peckar & Abramson, P.C., and for its Motion that the Board Dismiss this Proceeding with Prejudice and for an Award of Sanctions Against the Complainant, PAUL CHRISTIAN PRATAPAS (“Pratapas”), does hereby state as follows:

1. On June 15, 2023, the Board held that Pratapas’ Complaint is frivolous and directed Pratapas to amend his Complaint for specificity no later than July 17, 2023.
2. Pratapas failed to amend the Complaint; therefore, the operative pleading in this proceeding is a frivolous complaint.
3. Consequently, the Board should dismiss this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Adm. Code 101.800(a) & (b)(4).
4. In addition to his misconduct in this case, Pratapas also filed similarly frivolous complaints in two other cases against M/I as well as outrageous claims against respondents in other cases, such as the Illinois EPA, municipal entities, and public officials. The Board has expended

its short supply of time and resources to deal with these cases, and it appears that Pratapas may be positioning himself to file additional cases.

5. Therefore, the Board should also award sanctions against Pratapas using the Board's inherent authority to control its own docket. Moreover, the Board's procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board's procedural rules. *See* 35 Ill. Adm. Code 101.800; *Modine Manufacturing Company v. IEPA*, PCB 87-124, slip op. at 3 (November 17, 1988) *aff'd*, 192 Ill. App. 3d 511; *The Grigoleit Company v. IEPA*, PCB 89-184, slip op. at 4 (March 17, 1994).

6. This motion is supported by M/I's Memorandum of Law, which is being filed contemporaneously herewith.

WHEREFORE, Respondent SILO BEND AND THE TOWNES BY SILO BEND BY M/I HOMES respectfully request that the Board enter an order (a) dismissing this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Adm. Code 101.800(a) & (b)(4), (b) awarding sanctions against Pratapas by ordering him to pay M/I the attorney's fees that it was forced to spend to respond to his frivolous case, and (c) providing any other relief that this Board deems just.

Respectfully submitted,
SILO BEND AND THE TOWNES BY
BY SILO BEND BY M/I HOMES

/s/ David J. Scriven-Young
One of its Attorneys

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Attorneys for Respondent Silo Bend and The Townes by Silo Ben by M/I Homes

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.	)	No. PCB 2023-081
)	
SILO BEND AND THE TOWNES BY SILO BEND)	
BY M/I HOMES,	)	(Enforcement – Water)
)	
Respondent.)	

**RESPONDENT’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION TO DISMISS THIS PROCEEDING WITH PREJUDICE AND
FOR AN AWARD OF SANCTIONS AGAINST COMPLAINANT**

INTRODUCTION

Respondent’s Motion presents two straightforward and easy questions for the Board to answer. First, Respondent’s request that the Complaint be dismissed with prejudice clearly should be granted. On June 15, 2023, the Board held that Complainant Paul Christian Pratapas’ (“Pratapas”) Complaint is frivolous and directed Pratapas to amend his Complaint for specificity no later than July 17, 2023. (6/15/23 Order, attached hereto as Exhibit 1.) Pratapas failed to amend the Complaint; therefore, the operative pleading in this proceeding is a frivolous complaint. Consequently, the Board should dismiss this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Adm. Code 101.800(a) & (b)(4).

Second, Respondent asks the Board to sanction Pratapas for his abuse of the Board’s docket, wasting both the Board’s and Respondent’s time and resources. Pratapas is a serial filer who has, since July 2022, filed twenty-five similar complaints before this Board against developers, environmental consultants, municipal entities, an elementary school, and the Illinois EPA alleging water pollution violations at construction sites in the western suburbs of Chicago. Three of those complaints were filed against entities associated with developments built by M/I

Homes (including the Respondent in this action, Silo Bend and the Townes by Silo Bend by M/I Homes (“M/I”). (See PCB Case Nos. 2023-057, 2023-075, and 2023-081.) The Board has ruled that all of Pratapas’ Complaints against M/I are frivolous. (Ex. 1; 4/6/23 Order in PCB Case No. 2023-057, attached hereto as Ex. 2; 6/1/23 Order in PCB Case No. 2023-075, attached hereto as Ex. 3.) It has also dismissed the Complaint against M/I in PCB Case No. 2023-057 and closed its docket for that proceeding due to Pratapas’ failure to timely amend his frivolous complaint by the date ordered by the Board, just as he has failed to comply in this case. (6/1/23 Order in PCB Case No. 2023-057, attached hereto as Ex. 4.)

In cases where the Board has found deficiencies in Pratapas’ filings, the Board has provided Pratapas with the opportunity to correct the problems with his pleadings and service. Despite the directions of the Board, Pratapas has failed to correct those problems. The Board *sua sponte* dismissed Pratapas’ complaints against Earthworks Environmental (see PCB Case Nos. 2023-058 and 2023-059) for Pratapas’ failure to complete proper service after being given leave to do so by the Board. In PCB Case No. 2023-058, Pratapas flouted the Board’s procedural rules and filed a sworn affidavit stating that personal service of the complaint would be made; instead, he only sent the complaint via email (which does not comply with the Board’s service requirements). Moreover, in two cases where the Board allowed Pratapas’ complaint to move past the pleading stage, the dockets reflect that Pratapas has abandoned his cases by failing to appear for status hearings and to conduct discovery. (See PCB Case Nos. 2023-013 and 2023-014.)

Since the time that he began filing cases before the Board, Pratapas has followed a frivolous course of conduct that has wasted the time and resources of the Board and the parties involved. For these reasons, the Board must award sanctions against Pratapas to end this harassment and allow the Board to get back to its traditional and legitimate functions.

ARGUMENT

I. Because Pratapas Failed To Comply With The Board's Order Directing Him To Amend His Frivolous Complaint For Specificity, This Proceeding Should Be Dismissed With Prejudice.

On June 15, 2023, the Board adopted an Order that among other things granted M/I's motion to dismiss for frivolousness. (Ex. 1.) Specifically, the Board ruled in relevant part:

The Board's procedural rules require complaints to include "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas' complaint alleges that the violation occurred on December 18, 2022, at 1:48 PM. Comp. at 2. However, the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations, such as toxic concrete washout making contact with soil and dirty mixed with snow on site. *Id.*

(*Id.* at p. 2.) Thus, the Board granted M/I's motion to dismiss for frivolousness and directed Pratapas to amend his Complaint for specificity no later than July 17, 2023. (*Id.* at p. 3.) The Board further stated that "[i]f the board does not receive an amended complaint curing this deficiency, it may dismiss the case and close the docket." (*Id.*)

Pratapas failed to amend the Complaint. Consequently, the Board should dismiss this proceeding with prejudice for two reasons. First, as the Board recognized in its Order, the Illinois Environmental Protection Act authorizes the Board to dismiss complaints that are frivolous. (*Id.* at p. 1 (citing 415 ILCS 5/31(d)(1)).) Second, the Board is authorized to dismiss a proceeding with prejudice as a sanction for a person's failure to comply with an order entered by the Board as to claims asserted in a pleading to which that issue is material. 35 Ill. Adm. Code 101.800(a) & (b)(4). Because the operative pleading before the Board is frivolous and Pratapas failed to comply with the Board's order to amend the Complaint for specificity, this proceeding should be dismissed with prejudice.

II. The Board Should Award Sanctions Against Pratapas.

It is well-established that courts possess the inherent authority to control their own dockets and the course of litigation, including the authority to prevent undue delays in the disposition of cases caused by abuses of the litigation process. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007). This inherent authority includes the ability to monetarily sanction serial litigants who file frivolous papers; the sanctions available to the court can include a fine and payment of the defendant's attorney's fees and costs. *Gillard v. Northwestern Mem. Hosp.*, 2019 IL App (1st) 182348, ¶ 68. This authority exists even in a situation where a statute or procedural rule does not contain a monetary sanction penalty for misconduct. *Id.* See also *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) (courts may as a matter of law resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct, no matter if the conduct at issue is covered by a sanctioning rule or statute); *Claiborne v. Wisdom*, 414 F.3d 715, 724 (7th Cir. 2005) ("the court retains inherent power to impose sanctions when the situation is grave enough to call for them and the misconduct has somehow slipped between the cracks of the statutes and rules covering the usual situations").

When deciding an adjudicatory proceeding, such as the instant enforcement matter, the Board acts in a quasi-judicial nature. 35 Ill. Adm. Code 101.202. The Board has routinely recognized in enforcement proceedings that it has an inherent authority to control its own docket. See, e.g., *Rockford Prods. Corp. v. Ill. EPA*, PCB No. 91-31, *1 1992 Ill. ENV LEXIS 335 (May 07, 1992) (rejecting argument that the Board lacks the authority to control its own docket); *Heico Inc. v. Ill. EPA*, PCB No. 90-196, 1992 Ill. ENV LEXIS 325, *1 (Apr. 23, 1992) (same); *Modine Mfg. v. Ill. EPA*, 1988 Ill. ENV LEXIS 120, *4 (Nov. 17, 1988) ("The Board needs to control its docket. . .").

Furthermore, the Board's procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board's

procedural rules. *See* 35 Ill. Adm. Code 101.800; *Modine Manufacturing Company v. IEPA*, PCB 87-124, slip op. at 3 (November 17, 1988) aff'd, 192 Ill. App. 3d 511; *The Grigolet Company v. IEPA*, PCB 89-184, slip op. at 4 (March 17, 1994).

In this case, Pratapas filed a frivolous complaint, which caused M/I to expend time and resources to respond through its motion to dismiss. Pratapas failed to correct his errors even after directed to do so by the Board. He also filed similarly frivolous complaints in two other cases against M/I as well as outrageous claims against respondents in other cases, such as the Illinois EPA, municipal entities, and public officials.¹ The Board has expended its short supply of time and resources to deal with these cases.

Either Pratapas does not understand the seriousness of these proceedings or is intentionally harassing M/I (and the other respondents) and wasting the time and resources of the Board. Either way, the Board has the ability to control its docket and end harassing behavior by sanctioning Pratapas and ordering him to pay the attorney's fees that M/I was forced to spend responding to his frivolous case. In addition, the Board should consider other sanctions as it deems appropriate, such as a monetary fine to allow the Board to recoup its costs related to Pratapas' misconduct.

CONCLUSION

For these reasons, M/I's Motion to Dismiss this Proceeding with Prejudice and for an Award of Sanctions Against Complainant should be granted.

¹ At least twenty complaints filed by Pratapas before the Board (including a complaint filed against Naperville mayor Steve Chirico in PCB Case No. 2023-077) also allege that the respondents "likely" committed "fraud" associated with "inspection reports and contractor certifications" as well as "[f]raudulent submission/approval of boiler plate [sic] SWPPP with no intent ability to comply...."

Respectfully submitted,

SILO BEND AND THE TOWNES BY SILO
BEND BY M/I HOMES

/s/ David J. Scriven-Young
One of its Attorneys

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Attorneys for Respondent Silo Bend and the Towne by Silo Bend by M/I Homes

ILLINOIS POLLUTION CONTROL BOARD

June 15, 2023

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.	)	PCB 23-81
	)	(Citizen's Enforcement - Water)
SILO BEND AND THE TOWNES BY SILO)	
BEND BY M/I HOMES,)	
)	
Respondents.)	

ORDER OF THE BOARD (by M. Gibson):

On December 19, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen's complaint (Comp.) against Silo Bend and the Townes by Silo Bend by M/I Homes (M/I). The complaint concerns M/I's residential construction located at 16646 South Sun Meadow Drive, Lockport, Will County. On January 12, 2023, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and a motion to dismiss the complaint by other affirmative matter avoiding the legal effect of or defeating the claim. (Mot.)

The Board first addresses the proper name of the respondent. Next, the Board addresses M/I's motion to dismiss the complaint on the grounds of frivolousness and then the motion to dismiss the complaint on the grounds of other affirmative matter. The Board grants M/I's motion to dismiss for frivolousness but gives Mr. Pratapas time to amend his complaint; strikes one of Mr. Pratapas' requests for relief; and denies M/I's motion to dismiss the complaint on the grounds of other affirmative matter.

NAMED RESPONDENT

As filed, Mr. Pratapas named "Silo Bend and the Townes By Silo Bend by M/I Homes" as the respondent in this complaint. The proper name for respondent is "M/I Homes." The Board corrects the caption in this order and directs the Clerk to correct the respondent's name in the docket of this case.

MOTION TO DISMISS: FRIVOLOUS

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. "Frivolous" is defined in the Board's rules as, "any request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202(b). M/I argues that the complaint is frivolous because it fails to state a cause of action and requests relief that the Board does not have the authority to grant. Mot. at 2-5.

The Board's procedural rules require complaints to include "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas' complaint alleges that the violation occurred on December 18, 2022, at 1:48 PM. Comp. at 2. However, the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations and conclusions, such as toxic concrete washout making contact with soil and dirty mixed with snow on the site. *Id.*

Additionally, complaints must request relief that the Board has the ability to grant. 35 Ill. Adm. Code 101.202(b). In his complaint, Mr. Pratapas requests that the Board:

1. Find that respondent violated its permit;
2. Assess a civil penalty of \$50,000 and an additional civil penalty of \$10,000 per day for each violation;
3. Investigate fraudulent SWPPP inspection reports and contractor certifications;
4. Void the permit for the site until the builder "ceases to pollute the surrounding groundwater and surface water;"
5. Order SWPPP plans for concrete washout areas with standards from the Illinois Urban Manual. Comp. at 3.

The Board has broad statutory authority to grant relief; however, some of the requests from Mr. Pratapas in this complaint are beyond that authority. Specifically, the Board cannot investigate fraudulent SWPPP inspection reports and contractor certifications. *See* 35 Ill. Adm. Code 101.106(b). Therefore, the Board strikes the third request for relief listed above. The Board will allow Mr. Pratapas 30 days to amend his complaint as to the specificity of the violations and his request for relief. If the board does not receive an amended complaint curing this deficiency, it may dismiss the case and close the docket.

MOTION TO DISMISS: OTHER AFFIRMATIVE MATTER

A defendant may file a motion to dismiss on the grounds that the plaintiff's claim is barred by other "affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (2020). Because the allegations of the complaint are taken as true, the "affirmative matter" presented by the defendant must do more than just refute a well-pleaded fact in the complaint. Doe v. Univ. of Chi. Med. Ctr., 2015 IL App (1st) 133735, P39. Illinois courts describe the difference between proper and improper "affirmative matter" motions as the difference between "yes but" and "not true" motions. *Id.* at 40. A "yes but" motion admits that the complaint states a cause of action and that the allegations are true, but argues that a defense exists that defeats the claim. *Id.* In contrast, a "not true" motion only contradicts the allegations and is simply an answer to the complaint. *Id.* A "not true" motion is not a basis for dismissal and is better suited for the trial stage of litigation instead.

In Smith v. Waukegan Park District, the plaintiff sued for retaliatory discharge, alleging he was fired because he filed a worker's compensation claim against the defendant, a municipal park district. 231 Ill. 2d 111 (2008). The defendant moved to dismiss, asserting statutory tort immunity as an affirmative matter to defeat the plaintiff's claim. *Id.* The court recognized that

tort immunity could, under the proper circumstances, constitute an “affirmative matter”; however, it held that a question of fact remained because the defendant simply disputed the complaint’s allegation that plaintiff was fired out of retaliation for filing a worker's compensation claim. *Id.* Therefore, the motion to dismiss was improper because the defendant only contradicted a well-pleaded allegation. *Id.*

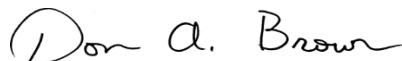
In this case, M/I argues that the complaint should be dismissed because the Silo Bend development project has a General Permit to Discharge Storm Water Associated with Construction Activities, NPDES Permit No: ILR10ZAAU, dated March 25, 2021. The NPDES Permit states that “[t]he following non-storm water discharges are prohibited by this permit: concrete and wastewater from washout of concrete (unless managed by an appropriate control).” M/I also contends that it has controls in place for concrete washout compliance and provided testimony from Jason Polakow in support of its argument. Similarly to Smith, under the proper circumstances the NPDES permit could allow concrete washout with proper controls, but whether or not M/I complied with the controls is a question of fact that M/I is only refuting. Because M/I’s argument only contradicts the allegations in the complaint, the motion is improper and the Board denies the motion.

ORDER

1. The Board directs the Clerk to correct the name of the respondent in the docket.
2. The Board grants M/I’s motion to dismiss for frivolousness in part and directs Mr. Pratapas to amend his complaint for specificity no later than July 17, 2023. If the board does not receive an amended complaint curing this deficiency, it may dismiss the case and close the docket.
3. The Board strikes one of Mr. Pratapas’ requests for relief.
4. The Board denies M/I’s motion to dismiss for other affirmative matter.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 15, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

April 6, 2023

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.	)	PCB 23-57
	)	(Citizens Enforcement - Water)
CHELSEA MANOR BY M/I HOMES,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. Gibson):

On November 15, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Chelsea Manor by M/I Homes (M/I). The complaint concerns M/I’s residential construction located at Commons Drive in Aurora, DuPage County.¹ On December 16, 2022, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and a motion to dismiss the complaint by other affirmative matter avoiding the legal effect of or defeating the claim.

The Board first addresses M/I’s motion to dismiss the complaint on the grounds of frivolousness and then the motion to dismiss the complaint on the grounds of other affirmative matter. The Board grants M/I’s motion to dismiss for frivolousness, but gives Mr. Pratapas time to amend his complaint; strikes one of Mr. Pratapas’ requests for relief; and denies M/I’s motion to dismiss the complaint on the grounds of other affirmative matter.

MOTION TO DISMISS: FRIVOLOUS

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. “Frivolous” is defined in the Board’s rules as, “any request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202(b). M/I argues that the complaint is frivolous because it fails to state a cause of action and requests relief that the Board does not have the authority to grant. Mot. at 1-2.

The Board’s procedural rules require complaints to include “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations.” 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas’ complaint alleges that the violation occurred on November 13, 2022, and at the general location of Commons Drive in

¹ The complaint does not cite the specific address of the alleged violation. Rather it states that the violation happened on Commons Drive in Aurora, Illinois because the signage was missing. Comp. at 2.

Aurora, Illinois. Comp. at 3. However, the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations, such as toxic concrete washout. *Id.* Mr. Pratapas concedes in his response (Resp.) that his complaint lacks specificity and requests that the Board require “respondents [to] furnish complainant with SWPPP book access to determine with greater accuracy the length of violations [and] total of associated fines.” Resp. at 1.

Complaints must request relief that the Board has the ability to grant. 35 Ill. Adm. Code 101.202(b). In his complaint, Mr. Pratapas requests that the Board: 1) find that M/I violated its permit; 2) assess a civil penalty of \$50,000; 3) investigate fraudulent SWPPP inspection reports and contractor certifications; 4) void M/I’s permit for the site until the alleged violations are resolved; 5) state that SWPPP plans for phasing and concrete washout cannot be implemented unless documented otherwise in the Illinois Urban Manual; and 6) guarantee access to the SWPPP book for public review. Comp. at 3. The Board has broad statutory authority to grant relief; however, it does not have the authority to investigate fraudulent SWPPP inspection reports and contractor certifications. *See* 35 Ill. Adm. Code 101.106(b). Therefore, the Board strikes this request for relief and gives Mr. Pratapas 30 days to amend his complaint as to the specificity of the violations.

MOTION TO DISMISS: OTHER AFFIRMATIVE MATTER

A defendant may file a motion to dismiss on the grounds that the plaintiff’s claim is barred by other “affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (2020). Because the allegations of the complaint are taken as true, the “affirmative matter” presented by the defendant must do more than just refute a well-pleaded fact in the complaint. *Doe v. Univ. of Chi. Med. Ctr.*, 2015 IL App (1st) 133735, P39. Illinois courts describe the difference between proper and improper “affirmative matter” motions as the difference between “yes but” and “not true” motions. *Id.* at 40. A “yes but” motion admits that the complaint states a cause of action and that the allegations are true, but argues that a defense exists that defeats the claim. *Id.* In contrast, a “not true” motion only contradicts the allegations and is simply an answer to the complaint. *Id.* A “not true” motion is not a basis for dismissal and is better suited for the trial stage of litigation instead.

In *Smith v. Waukegan Park District*, the plaintiff sued for retaliatory discharge, alleging he was fired because he filed a worker's compensation claim against the defendant, a municipal park district. 231 Ill. 2d 111 (2008). The defendant moved to dismiss, asserting statutory tort immunity as an affirmative matter to defeat the plaintiff’s claim. *Id.* The court recognized that tort immunity could, under the proper circumstances, constitute an “affirmative matter”; however, it held that a question of fact remained because the defendant simply disputed the complaint’s allegation that plaintiff was fired out of retaliation for filing a worker's compensation claim. *Id.* Therefore, the motion to dismiss was improper because the defendant only contradicted a well-pleaded allegation. *Id.*

In this case, M/I argues that the complaint should be dismissed because the Chelsea Manor development project holds a General Permit to Discharge Storm Water Associated with Construction Activities, NPDES Permit No: ILR10ZBGE dated April 1, 2022. The NPDES

Permit states that “[t]he following non-storm water discharges are prohibited by this permit: concrete and wastewater from washout of concrete (unless managed by an appropriate control).” M/I also contends that it has controls in place for concrete washout compliance and provided testimony from Jason Polakow in support of its argument. Similarly to Smith, under the proper circumstances the NPDES permit could allow concrete washout with proper controls, but whether or not M/I complied with the controls is a question of fact that M/I is only refuting. Because M/I’s argument only contradicts the allegations in the complaint, the motion is improper and the Board denies the motion.

ORDER

1. The Board grants M/I’s motion to dismiss for frivolousness in part and directs Mr. Pratapas to amend his complaint for specificity no later than May 8, 2023.
2. The Board grants M/I’s motion to strike Mr. Pratapas’s requests to “investigate into fraudulent SWPPP inspection reports and contractor certifications.”
3. The Board denies M/I’s motion to dismiss for other affirmative matter.

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 6, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

June 1, 2023

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.	)	PCB 23-75
	)	(Citizen's Enforcement - Water)
WILLOW RUN HOMES by M/I HOMES,)	
)	
Respondent.)	

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

On December 12, 2022, Paul Christian Pratapas (Mr. Pratapas) filed a citizen's complaint (Comp.) against Willow Run Homes by M/I Homes (M/I). The complaint concerns M/I's residential construction located at South Drauden Road and Lockport Street in Plainfield, Will County¹. On January 10, 2023, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and fails to state a claim, and a motion to dismiss the complaint by other affirmative matter avoiding the legal effect of or defeating the claim (Mot.). On the same day, M/I also filed a memorandum in support of its motion (Memo).

The Board first addresses M/I's motion to dismiss the complaint on the grounds of frivolousness and then addresses the motion to dismiss the complaint on the grounds of other affirmative matter. The Board grants M/I's motion to dismiss for frivolousness, in part, but gives Mr. Pratapas time to amend his complaint; strikes two of Mr. Pratapas' requests for relief; and denies M/I's motion to dismiss the complaint on the grounds of other affirmative matter.

MOTION TO DISMISS: FRIVOLOUS

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. "Frivolous" is defined in the Board's rules as, "any request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202(b). M/I argues that the complaint is frivolous because it fails to state a cause of action and requests relief that the Board does not have the authority to grant. Mot. at 1-2.

The Board's procedural rules require complaints to include "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas' complaint alleges that the violation occurred on December 9, 2022, and at the general location of South Drauden Road and

¹ The complaint does not cite the specific address of the alleged violation. Rather, it states that the violation happened at the intersection of South Drauden Road and Lockport Street in Plainfield. Comp. at 2.

Lockport Street in Plainfield, Illinois. Comp. at 2. However, the complaint lacks any details describing the extent, duration, or strength of the alleged violation and only cites general violations, such as “toxic concrete washout water and slurry from making contact with soil and migrating to surface water or into the ground water not managed.” Comp. at 2.

Complaints must request relief that the Board has the ability to grant. 35 Ill. Adm. Code 101.202(b). In his complaint, Mr. Pratapas requests that the Board: 1) find that M/I violated its permit; 2) assess a civil penalty of \$50,000; 3) investigate fraudulent Storm Water Pollution Prevention Plan [SWPPP] inspection reports and contractor certifications; 4) void M/I’s permit for the site until the alleged violations are resolved; 5) issue an order requiring that SWPPP plans for phasing and concrete washout cannot be implemented unless documented otherwise in the Illinois Urban Manual; and 6) issue an order requiring M/I to place SWPPP signage; and 7) issue an order prohibiting M/I from conducting future business in the State of Illinois. Comp. at 3. The Board has broad statutory authority to grant relief; however, it does not have the authority to investigate fraudulent SWPPP inspection reports and contractor certifications. See 35 Ill. Adm. Code 101.106(b). The Board also does not have the authority to bar an entity from conducting business in the State of Illinois. *Id.* Therefore, the Board strikes these requests for relief and gives Mr. Pratapas 30 days to amend his complaint as to the specificity of the violations.

MOTION TO DISMISS: OTHER AFFIRMATIVE MATTER

A defendant may file a motion to dismiss on the grounds that the plaintiff’s claim is barred by other “affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (2020). Because the allegations of the complaint are taken as true, the “affirmative matter” presented by the defendant must do more than just refute a well-pleaded fact in the complaint. Doe v. Univ. of Chi. Med. Ctr., 2015 IL App (1st) 133735, P39. Illinois courts describe the difference between proper and improper “affirmative matter” motions as the difference between “yes but” and “not true” motions. *Id.* at 40. A “yes but” motion admits that the complaint states a cause of action and that the allegations are true, but argues that a defense exists that defeats the claim. *Id.* In contrast, a “not true” motion only contradicts the allegations and is simply an answer to the complaint. *Id.* A “not true” motion is not a basis for dismissal and is better suited for the trial stage of litigation instead.

In Smith v. Waukegan Park District, the plaintiff sued for retaliatory discharge, alleging he was fired because he filed a worker's compensation claim against the defendant, a municipal park district. 231 Ill. 2d 111 (2008). The defendant moved to dismiss, asserting statutory tort immunity as an affirmative matter to defeat the plaintiff’s claim. *Id.* The court recognized that tort immunity could, under the proper circumstances, constitute an “affirmative matter”; however, it held that a question of fact remained because the defendant simply disputed the complaint’s allegation that plaintiff was fired out of retaliation for filing a worker's compensation claim. *Id.* Therefore, the motion to dismiss was improper because the defendant only contradicted a well-pleaded allegation. *Id.*

In this case, M/I argues that the complaint should be dismissed because the Willow Run development project holds a General Permit to Discharge Storm Water Associated with Construction Activities, NPDES Permit No: ILR10ZAQS dated July 15, 2021. The NPDES

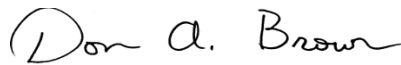
Permit states that “[t]he following non-storm water discharges are prohibited by this permit: concrete and wastewater from washout of concrete (unless managed by an appropriate control).” M/I also contends that it has controls in place for concrete washout compliance and provided testimony from Jason Polakow in support of its argument (Ex. B). Similarly to Smith, under the proper circumstances the NPDES permit could allow concrete washout with proper controls, but whether or not M/I complied with the controls is a question of fact that M/I is only refuting. Because M/I’s argument only contradicts the allegations in the complaint, the motion is improper and the Board denies the motion.

ORDER

1. The Board grants M/I’s motion to dismiss for frivolousness in part and directs Mr. Pratapas to amend his complaint for specificity no later than July 3, 2023.
2. The Board grants M/I’s motion to strike Mr. Pratapas’ requests to investigate into fraudulent SWPPP inspection reports and contractor certifications and to bar M/I from doing business in Illinois.
3. The Board denies M/I’s motion to dismiss for other affirmative matter.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 1, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

June 1, 2023

PAUL CHRISTIAN PRATAPAS,)	
)	
Complainant,)	
)	
v.	)	PCB 23-57
	)	(Citizens Enforcement - Water)
CHELSEA MANOR BY M/I HOMES,)	
)	
Respondent.)	

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

On November 15, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Chelsea Manor Homes by M/I Homes (M/I). The complaint concerns M/I’s residential construction located at Commons Drive in Aurora, DuPage County.

ORDER TO FILE AMENDED COMPLAINT

On December 16, 2022, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and a motion to dismiss the complaint by other affirmative matter avoiding the legal effect of or defeating the claim. On April 6, 2023, the Board struck one of Mr. Pratapas’ requests for relief; denied M/I’s motion to dismiss the complaint on the grounds of other affirmative matter; granted M/I’s motion to dismiss for frivolousness; but directed Mr. Pratapas to file an amended complaint no later than May 8, 2023, or face dismissal of the complaint. *See* 415 ILCS 5/31(d)(1)(2020), 35 Ill. Adm. Code 101.202(b).

MOTION TO DISMISS WITH PREJUDICE

On May 17, 2023, M/I filed a motion to dismiss with prejudice and for sanctions against Mr. Pratapas (Mot.) as well as memorandum in support of its motion (Memo.). M/I argues that because Mr. Pratapas failed to amend his complaint per the Board’s April 6, 2023, order, the Board should dismiss the complaint with prejudice. Memo at 3-4. “Because the operative pleading before the Board is frivolous and Pratapas failed to comply with the Board’s order to amend the Complaint for specificity, this proceeding should be dismissed with prejudice.” *Id.* at 4.

MOTION FOR SANCTIONS

Legal Background

Section 101.202 Definitions for Board's Procedural Rules

“Sanction” means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. 35 Ill. Adm. Code 101.202.

The Board's rules on sanctions are found at 35 Ill. Adm. Code Section 101.800.

Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders

a) If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a party.

b) Sanctions include the following:

4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;

c) In deciding what sanction to impose, the Board will consider factors including: the relative severity of the refusal or failure to comply; the history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith by the offending party or person.

35 Ill. Adm. Code 101.800

Board Discussion and Findings

M/I argues that the Board should sanction Mr. Pratapas for his “abuse of the Board’s docket wasting both the Board’s and Respondent’s time and resources.” Memo. at 1. M/I asks that the Board, “consider other sanctions, including a monetary fine to allow the Board to recoup its costs related to Pratapas’ misconduct, as well as setting up a protocol that Pratapas must follow in the event he files additional cases, *i.e.*, respondents are not required to respond to future complaints until Pratapas has received leave from the Board to file additional complaints.” *Id.* at 5-6.

The Board’s procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board’s procedural rules. *See* 35 Ill. Adm. Code 101.800.

The Board has on rare occasions issued sanctions. For repeated failure to timely file an initial brief, the Board granted an IEPA motion for sanctions that requested to dismiss the proceeding with prejudice. Modine Manufacturing Company v. IEPA, PCB 87-124, slip op. at 3 (November 17, 1988) aff'd, 192 Ill. App. 3d 511. On remand from the Fourth District Appellate Court, the Court directed the Board to issue sanctions in the form of awarding attorney fees in an air permit appeal. The Grigoleit Company v. IEPA, PCB 89-184, slip op. at 4 (March 17, 1994).

The Board has broad discretion in determining the imposition of sanctions. See *IEPA v. Celotex Corp.*, 168 Ill. App. 3d 592, 597 (3d Dist. 1988); Modine Manufacturing Co. v. PCB, 192 Ill. App. 3d 511, 519 (2d Dist. 1989). In exercising this discretion, the Board considers such factors as “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c).

In this matter, the Board does not find that Mr. Pratapas' failure to amend the complaint is a pattern of bad faith or deliberate noncompliance with its rules. The remedy for the failure to amend is dismissal of the complaint. The Board denies M/T's motion for sanctions and motion to dismiss with prejudice. Because Mr. Pratapas failed to timely file an amended complaint, the Board dismisses this case and closes the docket.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 1, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board