

ILLINOIS POLLUTION CONTROL BOARD
May 2, 2024

VILLAGE OF GLENVIEW, an Illinois)	
municipal corporation, and SOLID WASTE)	
AGENCY OF NORTHERN COOK)	
COUNTY, an Illinois statutory solid waste)	
agency,)	
)	
Complainants,)	
)	
v.)	PCB 23-49
)	(Enforcement – Water, Land)
CATHOLIC BISHOP OF CHICAGO, a)	
corporation sole, and ILLINOIS)	
ENVIRONMENTAL PROTECTION)	
AGENCY, an agency of the State of Illinois,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by M. Gibson):

The Village of Glenview (Village) and the Solid Waste Agency of Northern Cook County (SWANCC) (collectively, Complainants) filed a two-count complaint against the Catholic Bishop of Chicago (Catholic Bishop) and the Illinois Environmental Protection Agency (IEPA or Agency) (collectively, Respondents) concerning Catholic Bishop’s landfill. The landfill, referred to by the parties as variations of the “Des Plaines Landfill” or the “Des Plaines Sexton Landfill,” is located in unincorporated Cook County, generally north of Central Road and east of the Des Plaines River.

In their complaint, the Village and SWANCC allege that Catholic Bishop caused or allowed leachate to leak from the closed landfill, contaminating groundwater and surface water. The complaint also alleges that IEPA violated the Environmental Protection Act (Act) (415 ILCS 5 (2022)) by issuing permits to Catholic Bishop authorizing the development and operation of a compost facility at the landfill. Both Respondents filed motions to dismiss the complaint on various grounds. Today, the Board rules on those motions.

The Board grants IEPA’s motion to dismiss the complaint as to IEPA for lack of standing and dismisses IEPA from this proceeding with prejudice. The complaint’s provisions challenging IEPA’s permit issuance are stricken with prejudice. The Board denies Catholic Bishop’s motion to dismiss the complaint as to Catholic Bishop for lack of standing. The Board grants Catholic Bishop’s motion to dismiss the complaint’s allegations of permit violations as insufficiently pled, but the Board strikes those allegations without prejudice. In addition, on its own motion, the Board strikes, without prejudice, the remainder of Count II of the complaint as insufficiently pled and strikes, with prejudice, Count I’s request for litigation costs, including attorney fees. The Board denies Catholic Bishop’s motion to dismiss the complaint as being

duplicative. Finally, the Board accepts for hearing the complaint, as modified by this order, and gives Catholic Bishop 60 days from receipt of this order to file an answer.

In this opinion, the Board first describes the procedural background of the case. Next, the Board states the standards it applies when considering motions to dismiss. The Board then discusses and rules on the motions to dismiss the complaint for lack of standing, for frivolousness, and for being duplicative. The Board concludes the opinion by directing the hearing officer to proceed expeditiously to hearing. The order following this opinion specifies the provisions of the complaint that the Board strikes.

PROCEDURAL BACKGROUND

On October 12, 2022, the Village and SWANCC filed a complaint against Catholic Bishop and IEPA. This is a citizen’s complaint as it was filed with the Board by someone other than the Illinois Attorney General or State’s Attorney. *See* 415 ILCS 5/31(d)(1) (2022). The complaint alleges violations of the Act and Board regulations, as well as permit violations.

On November 16, 2022, Catholic Bishop and IEPA filed their respective motions to dismiss the complaint (Catholic Bishop Mot.) (IEPA Mot.). On December 13, 2022, Complainants filed responses opposing Catholic Bishop’s motion (Resp. to Catholic Bishop) and IEPA’s motion (Resp. to IEPA).

On December 27, 2022, Catholic Bishop and IEPA each filed a motion for leave to file a reply to Complainants’ respective responses. Each motion for leave attached a reply (Catholic Bishop Reply) (IEPA Reply). The Board grants both unopposed motions for leave and accepts the replies.

STANDARDS FOR MOTIONS TO DISMISS

In ruling on a motion to dismiss, the Board takes all well-pled allegations of fact as true and draws all reasonable inferences from those alleged facts in favor of the non-movant. *See, e.g., Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8; *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). “[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.” *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 584-85 (2003); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997) (“[T]he trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party.”). “To see if a cause of action has been stated the whole complaint must be considered, rather than taking a myopic view of a disconnected part.” *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 438 (1989), *quoting People ex rel. William J. Scott v. College Hills Corp.*, 91 Ill. 2d 138, 145 (1982).

LACK OF STANDING

Both Respondents move to dismiss the complaint for lack of standing. The Board discusses the arguments connected to IEPA’s motion before discussing the arguments connected

to Catholic Bishop’s motion. The Board then rules on Complainants’ standing to bring this complaint.

IEPA’s Motion

IEPA argues that because Section 40(a) of the Act only allows the permit applicant to appeal an IEPA permit decision, Complainants lack standing to challenge the landfill and compost permits issued by IEPA to Catholic Bishop.¹ IEPA Mot. at 4-5, *citing* 415 ILCS 5/40(a) (2022); 35 Ill. Adm. Code 105.204; City of Elgin v. County of Cook, 169 Ill. 2d 53 (1995). IEPA contends that unlike Section 40(a), other provisions of Section 40 expressly provide a third-party right to appeal an IEPA permit determination, such as a hazardous waste disposal permit or a National Pollutant Discharge Elimination System (NPDES) permit. IEPA Mot. at 5, n. 2. IEPA further claims that the Illinois courts and the Board, based on lack of standing, have consistently rejected claims by local governments objecting to IEPA permitting decisions. IEPA Mot. at 5-6, *citing* City of Waukegan v. Ill. EPA, 339 Ill. App. 3d 963, 967, 974 (2d Dist. 2003). IEPA calls the complaint an impermissible collateral attack on its decision to grant the permits to Catholic Bishop. IEPA Reply at 5-6, *citing* Inland Steel Mortgage Acceptance Corp. V. Carlson, 154 Ill. App. 3d 890, 895 (2d Dist. 1987); City of Waukegan, 339 Ill. App. 3d at 967.

Complainants argue that the complaint is not an improper third-party permit appeal. Resp. to IEPA at 1-2. According to Complainants, the complaint’s Count I seeks to have the Board order Catholic Bishop to remedy “decades-long and ongoing violations” of the Act at the landfill and “has nothing to do with the Compost Permit.” *Id.* Complainants also argue that the complaint’s Count II “does not assert the Compost Permit was wrongfully issued in violation of IEPA authority”; according to Complainants, Count II alleges that “compliance with the Compost Permit . . . will result in further and additional (and independent) violations of the Act.” *Id.* at 4.

In its reply, IEPA argues that Complainants “egregiously” misrepresent the Illinois Supreme Court’s Landfill, Inc. decision by claiming, as its holding, what was actually the court’s summary of an ultimately rejected argument. IEPA Reply at 2. Specifically, in their response to IEPA’s dismissal motion, Complainants cite Landfill, Inc., claiming: “[t]he Illinois Supreme Court has previously held that the IEPA is a person violating the Act when it allows a permit without complying with the provisions of the Act or the applicable rules and regulations.” *Id.*, *quoting* Resp. to IEPA at ¶8.

¹ IEPA states that it issued two permits on October 25, 2019: (1) IEPA issued “supplemental permit 2018-090-SP (‘Landfill Permit’)” to Catholic Bishop, “as owner and operator, to modify the post-closure care plan for its Des Plaines Sexton landfill . . . to allow for the construction of a compost facility at the site”; and (2) IEPA issued “permit 2018-471-DE/OP [(‘Compost Permit’)]” to Catholic Bishop, as “owner, and Patriot Acres LLC, as operator, authorizing the development and operation of a landscape waste compost facility” at the Des Plaines Sexton Landfill. IEPA Mot. at 1-2.

IEPA points out that this sentence of Complainants' response omits the beginning of the Landfill, Inc. sentence Complainants were purportedly paraphrasing, namely, "**It is the position of the Board and the intervenors** that the Agency is a person violating the Act when it allows a permit without complying with the provisions of the Act or the applicable rules and regulations." IEPA Reply at 2, *quoting* Landfill, Inc. v. Pollution Control Bd., 74 Ill. 2d 541, 556 (1978) (emphasis added by IEPA). IEPA asserts that as the losing argument from Landfill, Inc. is obviously not binding authority, the Board should apply the court's "accurate holding," *i.e.*, "that there is no cause of action under the Act against Illinois EPA for granting a permit." IEPA reply at 2.

Catholic Bishop's Motion

Catholic Bishop argues that Complainants lack standing because they are trying to challenge the issuance of permits by IEPA. Catholic Bishop Mot. at 4. Catholic Bishop asserts that Complainants are clear in their complaint that they are challenging IEPA's recent issuance of the compost facility permits.² *Id.* at 5. Catholic Bishop cites City of Elgin in support of its position that "third parties have no standing to challenge permits after issuance, whether they are neighboring municipalities or business competitors, even if they pretextually couch their claims as alleged violations of the Act or of the permits." *Id.*, *citing* City of Elgin, 169 Ill. 2d at 61-66. According to Catholic Bishop, Complainants "may not do an end-run around the statutory framework applicable to the Des Plaines Landfill, which limits enforcement actions to actual violations, not indirect attempts to challenge permitting decisions." Catholic Bishop Mot. at 5; *see also* Catholic Bishop Reply at 2.

In response, Complainants argue that they are seeking relief against Catholic Bishop for "long-running and ongoing violations of the Act." Resp. to Catholic Bishop at 1. Complainants assert that the complaint alleges Catholic Bishop violated numerous provisions of the Act, Board rules, and permits. *Id.* at 2. According to Complainants, the Act allows any person to file a complaint with the Board against any person for these kind of violations. *Id.* at 3. Because the complaint alleges that Catholic Bishop violated the Act, Board rules, and permits, Complainants assert that they have standing to challenge Catholic Bishop's "illegal activities." *Id.*

Board's Discussion of Standing

Under the Act's general provision for appealing a final permit determination of IEPA—Section 40(a)(1)—only the permit applicant may appeal. *See* Mahomet Valley Water Auth. v. Clinton Landfill, Inc., PCB 13-22, slip op. at 60 (Sept. 19, 2013), *citing* 415 ILCS 5/40(a)(1). A third-party right to appeal a final permit determination of IEPA only exists if the Act expressly provides that right. *See* Mahomet Valley, PCB 13-22, slip op. at 60, *citing* Landfill, Inc., 74 Ill. 2d at 557-58; Citizens Utilities Co. of Ill v. Pollution Control Bd., 265 Ill. App. 3d 773, 782 (3rd Dist. 1994); United City of Yorkville v. IEPA and Hamman Farms, PCB 08-95, slip op. at 6 (Aug. 7, 2008); City of Waukegan v. IEPA and North Shore Sanitary Dist., PCB 02-173, slip op. at 1 (May 2, 2002). The Act expressly provides a third-party right to appeal a final IEPA permit

² Catholic Bishop refers to the two permits identified in footnote 1 as "the two required permits for the construction and operation of the compost facility." Catholic Bishop Mot. at 2.

determination in only limited circumstances, including the grant of a Resource Conservation and Recovery Act (RCRA) permit for a hazardous waste disposal site, the grant or denial of an NPDES permit, and the grant of a Prevention of Significant Deterioration (PSD) permit. *See, e.g.*, 415 ILCS 5/40(b), 40(e), 40.3(a)(2)(2022).

Here, only the permit applicant or applicants could have appealed the permits issued concerning the compost facility.³ The Act does not authorize third-party appeals of IEPA determinations on sanitary landfill permits or compost permits. *See* 415 ILCS 5/40 (2022). In their motions to dismiss, IEPA and Catholic Bishop are therefore correct that Complainants have no standing to appeal the permits.

The complaint alleges that “[t]he Compost Facility currently under construction is certain to exacerbate the underlying causes of the existing violations [at the landfill] and thereby cause even greater pollution.” Comp. at 2-3. The complaint claims that IEPA “should never have issued a permit for the Compost Facility” and requests that the Board issue an order “[v]oiding the permit for the Compost Facility until such time as the Landfill ceases to pollute the surrounding groundwater and surface water and the leachate problems leading to sloughing and cover failures are fixed.” *Id.* at 16 (Count II’s request for relief No. 3).

The Board has the authority to revoke a permit as a penalty for the permit holder’s violation (415 ILCS 5/33(b) (2022)) but the complaint here explicitly challenges *IEPA’s issuance* of the compost permit. The Board finds that the complaint against IEPA is an unauthorized third-party permit appeal. *See City of Elgin*, 169 Ill. 2d at 61-62 (neighboring municipalities “are statutorily precluded from legally challenging the Agency’s decision to grant a development permit for a pollution control facility”; “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”).

The complaint is also an unauthorized enforcement action against IEPA. The complaint alleges that IEPA’s issuance of that permit “is a direct violation of the Act and therefore beyond IEPA’s powers.” Comp. at 16. The complaint asks the Board to find that “the permit issued for the Compost Facility was issued in violation of the Act and should therefore be declared void.” *Id.* (Count II’s request for relief No. 2).

In *Landfill, Inc.*, the Illinois Supreme Court held that the Act does not allow third parties to prosecute IEPA before the Board for IEPA’s alleged violations in granting a permit. *See Landfill Inc.*, 74 Ill. 2d at 559-60. There, citizen groups and individuals claimed the applicant for a sanitary landfill development permit failed to demonstrate to IEPA that the landfill would not violate prohibitions of the Act and regulations concerning air, water, noise, and land pollution. *See id.* at 548, 555-56. They alleged that by issuing the permit despite the application’s deficiencies, IEPA violated the Act. *See id.* at 555-56, *citing* Ill. Rev. Stat. 1975, ch. 111½ par. 1039(a) (now 415 ILCS 5/39(a)(2022)).

³ See footnote 1.

The Landfill, Inc. court based its holding on the Act’s enforcement scheme. *See Landfill, Inc.*, 74 Ill. 2d at 555. Because the Agency has the role of investigating potential violations, the “focus must be upon polluters who are in violation of the substantive provisions of the Act.” *Id.* at 556. According to the court, “it would be unreasonable to presume these provisions direct the Agency to investigate its own compliance with permit-granting procedures.” *Id.* Citizen complaints before the Board serve “as an additional safeguard against inadequate prosecutions” by the State, but “[p]rosecution under the Act . . . is against polluters, not the Agency.” *Id.*

Taking all well-pled allegations of fact in the complaint as true and drawing all reasonable inferences from those alleged facts in favor of Complainants, the Board finds it clear that no set of facts could be proven that would entitle Complainants to prevail against IEPA. Complainants lack standing to bring this complaint against IEPA. Therefore, the Board grants IEPA’s motion to dismiss the complaint as to IEPA with prejudice. Accordingly, the Board strikes, with prejudice, the complaint’s allegations of IEPA’s noncompliance, strikes the complaint’s challenges to and requests for relief concerning IEPA’s permit issuance, and dismisses IEPA from this proceeding. *See* ¶¶ 1 and 2 of the order following this opinion.

However, “Section 31(d)(1) of the Act allows any person to bring a complaint before the Board to enforce Illinois environmental requirements.” Mahomet Valley, PCB 13-22, slip. Op. at 60. Specifically, “[a]ny person may file with the Board a complaint . . . against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.”⁴ 415 ILCS 5/31(d)(1) (2022). The complaint here does allege violations of the Act, Board landfill rules, and permits by Catholic Bishop. Therefore, although Catholic Bishop’s dismissal motion is correct about Complainants’ lack of standing, that lack of standing requires dismissing the complaint as to IEPA, not Catholic Bishop. The Board therefore denies Catholic Bishop’s motion to dismiss the complaint as to Catholic Bishop for lack of standing.

FRIVOLOUS

Under Section 31(d)(1) of the Act, the Board will dismiss a citizen’s complaint that is “frivolous.” 415 ILCS 5/31(d)(1) (2022); *see also* 35 Ill. Adm. Code 103.212(a). The Board’s procedural rules define “frivolous” 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).

The complaint contains two counts: Count I is entitled “[Catholic Bishop’s] Failure to Remediate the Ongoing Pollution of Ground and Surface Waters Is a Violation of the Act and [Catholic Bishop’s] Permits”; and Count II is entitled “The Compost Facility Will Cause Even Greater Pollution and Was Approved in Violation of the Act.” Comp. at 3, 13.

⁴ The Act broadly defines “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 (2022).

Frivolous for Failing to State a Cause of Action

The Board’s procedural rules require a complaint to include the “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).

In Count I of their complaint, Complainants make extensive allegations about the buildup of leachate at Catholic Bishop’s landfill, the release of leachate from the landfill, and the resulting contamination of groundwater and surface water. Comp. at 3-12. The complaint further alleges that these conditions have resulted in violations of Sections 12(a), 21(d)(1), 21(d)(2), 21(o)(2), and 21(o)(3) of the Act and Sections 807.313 and 807.315 of the Board’s landfill rules. *Id.* at 8, 10-11, 12-13, *citing* 415 ILCS 5/12(a), 21(d)(1), 21(d)(2), 21(o)(2), 21(o)(3) (2022) and 35 Ill. Adm. Code 807.313, 807.315.

The Board finds that Count I is not frivolous for failing to state a cause of action concerning these alleged violations of the Act and Board rules by Catholic Bishop. In its dismissal motion, however, Catholic Bishop argues that the complaint lacks sufficient specificity on alleged *permit* violations by Catholic Bishop. For this argument, which concerns both Counts I and II, Catholic Bishop describes the complaint as “incredibly vague on details and conclusory.” Catholic Bishop Mot. at 9-10.

Complainants respond that “[t]here is sufficient detail alleged for the Board to take action to protect the environment and enforce the permits.” Resp. to Catholic Bishop at 5. Specifically, Complainants cite the complaint’s references to Groundwater Management Zones (GMZs), the alleged ineffectiveness of Catholic Bishop’s remediation efforts, and Catholic Bishop’s alleged failure to accurately assess the effectiveness of its remediation efforts. *Id.* at 4-5.

Under Section 31 of the Act, a complaint “shall specify the provision of the Act, rule, regulation, permit, or term or condition thereof under which such person is said to be in violation, and a statement of the manner in and the extent to which such person is said to violate the Act, rule, regulation, permit, or term or condition thereof” 415 ILCS 5/31(c)(1) (2022) (emphasis added); *see also* 415 ILCS 5/31(d)(1) (2022) (a citizen complaint must “meet[] the requirements of subsection (c) of this Section”). The complaint only once explicitly identifies specific permits: “Permit Nos. 1974-24-DE and 1974-24-OP and Supplemental Permit No. 2019-356-SP.” Comp. at 1. These are not the permits identified by IEPA and Catholic Bishop as the permits issued for the construction and operation of the compost facility. *See* footnotes 1 and 2.

The complaint generally mentions permits and appears to describe some permit provisions. But, even taking all well-pled allegations of the complaint as true and drawing all reasonable inferences from those alleged facts in favor of Complainants, the Board finds that the complaint fails to identify which provision or provisions of the permit Catholic Bishop has allegedly violated and fails to include statements of the manner in and extent to which Catholic Bishop has allegedly violated the permit provision or provisions. In short, the complaint does not fairly advise Catholic Bishop of alleged permit violations to reasonably allow it to prepare a defense.

Accordingly, the complaint’s allegations that Catholic Bishop violated its permit requirements are insufficiently pled to state a cause of action. As those allegations are therefore frivolous, the Board strikes them from Counts I and II of the complaint. In doing so, the Board is not striking any of the complaint’s factual allegations but rather the claims of “permit violation,” none of which is sufficiently specific to comply with Section 31(c). The Board strikes these claims, however, without prejudice. *See* ¶ 4 of the order following this opinion. The Board cannot conclude there clearly is no set of facts that could be proven that would entitle Complainants to prevail on alleged permit violations by Catholic Bishop. Thus, Complainants may seek leave to file an amended complaint against Catholic Bishop that properly alleges permit violations.

Next, the Board, on its own motion, strikes the remainder of Count II as frivolous for failing to state a cause of action. According to Count II, the compost facility will interfere with implementing the remediation that Complainants claim is necessary to address the violations at the landfill alleged in Count I. Comp. at 14-15. Count II fails to allege how the compost facility violates any provision of the Act, a Board rule, or a permit. Count II’s other primary allegation—that compost facility plans conflict with each other—suffers from the same flaw. *Id.* at 15.

Again, taking all well-pled allegations of fact in the complaint as true and drawing all reasonable inferences from them in favor of Complainants, these allegations do not reasonably inform Catholic Bishop by factually setting forth the elements necessary to state a cause of action. The Board therefore strikes the remainder of Count II, including its request for relief. The Board does so, however, without prejudice. *See* ¶ 5 of the order following this opinion. The Board cannot conclude there clearly is no set of facts that could be proven that would entitle Complainants to prevail on alleged violations by Catholic Bishop’s compost facility. Thus, Complainants may seek leave to file an amended complaint against Catholic Bishop that cures these deficiencies in Count II.

Finally, if Complainants file an amended complaint to cure Count II, it must not merely “second-guess” IEPA’s decision to issue the compost permit. City of Elgin, 169 Ill. 2d at 79. IEPA may issue a permit *only if* the applicant demonstrates to IEPA that the applied-for facility “will not cause a violation of this Act or of regulations hereunder.” 415 ILCS 5/39(a) (2022). Accordingly, IEPA’s issuance of the compost permit signifies that IEPA was satisfied the compost facility “will not cause a violation of this Act or of regulations hereunder.” *Id.* Thus, although “[t]he grant of a permit does not insulate violators of the Act or give them a license to pollute[,] a citizen’s statutory remedy is a new complaint against the polluter, not an action before the Board challenging the Agency’s performance of its statutory duties in issuing a permit.” Landfill, Inc., 74 Ill. 2d at 559-60.

Frivolous for Requesting Relief that the Board Lacks the Authority to Grant

As noted, the Board’s procedural rules define “frivolous” in part as “any request for relief that the Board does not have the authority to grant.” 35 Ill. Adm. Code 101.202(b). In Count I of the complaint, Complainants request, among other things, that the Board “[a]ssess all costs

against Catholic Bishop and in favor of the Complainants, including expert witness, consultant, and attorney fees.” Comp. at 13, No. 4.

The Board has the authority to award attorney fees and costs in enforcement cases only when the Illinois Attorney General or State’s Attorney is the complainant, not when a citizen brings the enforcement action. *See, e.g., Charter Hall Homeowner’s Ass’n. v. Overland Transp. Sys., Inc.*, PCB 98-81, slip op. at 2 (Jan. 22, 1998); *Dayton Hudson Corp. v. Cardinal Indus., Inc.*, PCB 97-134, slip op. at 7-8 (Aug. 21, 1997); *2222 Elston LLC v. Purex Indus., Inc.*, PCB 03-55, slip op. at 12 (June 19, 2003). Because Complainants have filed a citizen complaint, the request for litigation costs, including attorney fees, is beyond the Board’s authority to grant and therefore frivolous. Accordingly, the Board, on its own motion, strikes, with prejudice, request for relief No. 4 from Count I. *See* ¶ 6 of the order following this opinion. The same request was made in Count II’s request for relief (at No. 6), but the Board has already stricken Count II in its entirety.

DUPLICATIVE

Under Section 31(d)(1) of the Act, the Board will dismiss a citizen’s complaint that is “duplicative.” 415 ILCS 5/31(d)(1) (2022); *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202.

“A complaint would be [duplicative] if another action was pending between the same parties, alleging substantially the same violations, before another tribunal with power to grant the same relief as the Board.” *Mather Inv. Props., LLC v. Illinois State Trapshooters, Ass’n., Inc.*, PCB 05-29, slip op. at 11 (July 21, 2005), *citing* *Lake County Forest Preserve Dist. v. Neil Ostro*, PCB 92-80, slip op. at 2 (July 30, 1992). “The Board may dismiss any complaint as [duplicative] that raises claims identical or substantially similar to another action.” *Ostro*, PCB 92-80, slip op. at 2, *citing* *WIPE v. Pollution Control Board*, 55 Ill. App. 3d 475, 480 (1st Dist. 1977). The Board has previously considered “a variety of factors in determining whether or not a complaint is duplicative, including (1) whether the two complaints are based on different theories, (2) whether the two actions involved the same time frame, and (3) whether the relief requested in Board and court proceedings differed.” *People v. Freeman United Coal Mining Co.; Environmental Law and Policy Ctr. v. Freeman United Coal Mining Co., LLC*, PCB 10-61, PCB 11-2 (consol.), slip op. at 37 (July 15, 2010); *see* *United City of Yorkville v. Hamman Farms*, PCB 08-96, slip op. at 5-6 (Apr. 2, 2009).

Here, Catholic Bishop argues that the complaint is duplicative because Complainants were “heavily involved” in the recent IEPA permitting process for the compost facility, making arguments “substantially similar, if not identical, to the claims made here.” Catholic Bishop Mot. at 6. Specifically, Complainants claimed during permitting that Catholic Bishop’s Des Plaines Landfill operation was in violation of the Act and the proposed compost facility would “exacerbate those violations.” *Id.*

In response, Complainants contend the complaint is not duplicative because “violations of the Act alleged by the Complainants in this Complaint are not presently before the Board or

alleged in any other forum.” Resp. to Catholic Bishop at 4. Furthermore, Complainants argue that raising concerns during a permitting process should not be “an absolute bar against bringing any action related to that property in the future.” *Id.*

The Board “has consistently held that ‘another forum’ means an adjudicatory proceeding before a tribunal, either administrative or judicial.” Sierra Club v. Midwest Generation, LLC, PCB 13-15, slip op. at 61-62 (Oct. 3, 2013); *see also, e.g., Finley v. IFCO ICS-Chicago, Inc.*, PCB 02-208, slip op. at 9 (Aug. 8, 2002) (USEPA violation notice was not another forum because it did not “purport to commence, or to be the product of, an adjudicatory proceeding by a tribunal, either administrative or judicial”); UAW v. Caterpillar, Inc., PCB 94-240, slip op. at 5 (Nov. 3, 1994) (Agency’s voluntary cleanup program not another forum; issues before Board were not being litigated before any other “judicial forum” with jurisdiction to resolve the issues; the Agency is not a duplicative forum to the Board in the context of adjudication of environmental enforcement cases); White v. Van Tine, PCB 94-150, slip op. at 2 (June 23, 1994) (investigation by Agency or local law enforcement does not preclude matter from being brought before Board); Revision of the Board’s Procedural Rules, R00-20, slip op. at 6 (Mar. 16, 2000) (definition of “duplicative” refers to “another forum” because State may bring enforcement proceedings in circuit court, and citizen may file third-party claim in circuit court). “[T]his authority nonetheless makes clear that the statutory pre-enforcement process, from issuance of VNs [Violation Notice] to adoption of CCAs [Compliance Commitment Agreements] or referral to environmental enforcement authorities, does not constitute a proceeding in another forum within the meaning of ‘duplicative.’” Sierra Club, PCB 13-15, slip op. at 62.

The Board finds that IEPA’s permitting process is not “another forum” within the meaning of “duplicative.” *See* 35 Ill. Adm. Code 101.202. During the permitting process, IEPA is not “another tribunal with power to grant the same relief as the Board.” Nor is IEPA’s permitting process “an adjudicatory proceeding.” *See Mather Inv.*, PCB 05-29, slip op. at 11; Sierra Club, PCB 13-15, slip op. at 61-62. Therefore, even if allegedly similar violations were heard in the IEPA permitting process, that does not render the complaint duplicative.

HEARING AND ANSWER

Based on the information in this record, the Board finds that the complaint, as amended by this order, is neither duplicative nor frivolous and accepts the modified complaint for hearing. Under the Board’s procedural rules, a respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the respondent to have admitted the allegation. 35 Ill. Adm. Code 103.204(d). Catholic Bishop’s filing of the motion to dismiss stayed the 60-day period for filing an answer to the complaint, which stay ends today with the Board’s ruling on the motion. *See* 35 Ill. Adm. Code 103.204(e). Catholic Bishop therefore has 60 days from receipt of this order to file an answer to the complaint, as amended by today’s rulings.

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be

held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2022). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon the "lowest cost alternative for achieving compliance"; the need to deter further violations by the respondent and others similarly situated; and whether the respondent "voluntarily self-disclosed" the violation. 415 ILCS 5/42(h) (2022). Section 42(h) requires the Board to ensure that the penalty is "at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship." *Id.* Such penalty, however, "may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *Id.*

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent's economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

CONCLUSION

As explained above and detailed below, today's rulings strike provisions of the complaint, some with prejudice and some without prejudice. First, the Board dismisses IEPA and strikes related provisions of the complaint. The Board does so with prejudice. Second, the Board strikes, without prejudice, the complaint's allegations of permit violations and Count II, all for being insufficiently pled to state a cause of action and therefore frivolous. Third, the Board strikes, with prejudice, Count I's request for attorney fees and costs as being beyond the Board's authority to grant and therefore frivolous.

The Board finds the complaint, so modified, neither frivolous nor duplicative and accepts it for hearing. Any answer to the complaint, as amended, must be filed within 60 days after Catholic Bishop receives this order. Nothing in this order's rulings precludes Complainants from seeking leave to file an amended complaint against Catholic Bishop that cures the pleading deficiencies stricken today without prejudice. Any amended complaint must exclude the provisions of the original complaint stricken with prejudice by this order.

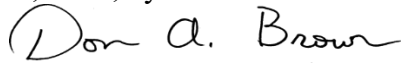
ORDER

1. The Board grants IEPA's motion to dismiss the complaint as to IEPA for lack of standing and therefore dismisses IEPA from this case with prejudice. The Board directs the Clerk to make the corresponding change to the case's docket. Future filings in this case must exclude IEPA from the caption.
2. The Board strikes, with prejudice, the complaint's allegations of IEPA's noncompliance, challenges to IEPA's permit issuance, and the requests for relief concerning IEPA's permit issuance. *See* Comp. at 13 (portion of Count II's title concerning approval in violation of the Act); *id.* at 16 (¶ 48 and Count II's requests for relief Nos. 2 and 3).
3. The Board denies Catholic Bishop's motion to dismiss the complaint as to Catholic Bishop for lack of standing.
4. The Board grants Catholic Bishop's motion to dismiss the complaint's allegations of permit violations as frivolous for failing to state a cause of action. The Board strikes those allegations without prejudice. *See* Comp. at 2 (portion of ¶ 4 concerning permit violations); *id.* at 3 (portion of Count I's title concerning permit violations); *id.* at 11 (portion of title concerning permit violation); *id.* at 15 (portion of ¶ 43 concerning permit violation).
5. On its own motion, the Board strikes without prejudice, the remainder of Count II of the complaint as frivolous for failing to state a cause of action. *See* Comp. at 13-16.
6. On its own motion, the Board strikes, with prejudice, the complaint's request for litigation costs, including attorney fees, as frivolous for being beyond the Board's authority to grant. *See* Comp. at 13 (Count I's request for relief No. 4).

7. The Board denies Catholic Bishop's motion to dismiss the complaint as duplicative of IEPA's permitting process.
8. The Board accepts for hearing the complaint as amended by this order.
9. Catholic Bishop has 60 days from receipt of this order to file an answer to the complaint as amended by this order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 2, 2024, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board