

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MICHAEL J. KORMAN,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 20-62
	)	(Citizen Enforcement – NPDES, Water)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that today, August 5, 2020, I filed Respondent’s Demand for a Bill of Particulars in the above-referenced matter with the Clerk of the Illinois Pollution Control Board, a copy of which is attached hereto and herewith served upon you via e-mail.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF  
TRANSPORTATION

By: /s/ Arlene R. Haas  
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**CERTIFICATE OF SERVICE**

***Michael J. Korman v. Illinois Department of Transportation, PCB 20-62 (Citizen)***

I, ARLENE R. HAAS, an Assistant Attorney General, do certify that I caused a true and correct copy of the attached Respondent's Demand for a Bill of Particulars to be served by electronic mail with receipt notification requested to all the individuals listed on the attached service list, on this August 5, 2020.

*/s/ Arlene R. Haas*

ARLENE R. HAAS

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MICHAEL J. KORMAN,	)	
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Complainant,	)	
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ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**RESPONDENT’S DEMAND FOR A BILL OF PARTICULARS**

Respondent, ILLINOIS DEPARTMENT OF TRANSPORTATION (“IDOT”), through its attorney, KWAME RAOUL, Attorney General of the State of Illinois, who, pursuant to Section 2-607 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-607 (2018), hereby demands from Complainant, MICHAEL J. KORMAN, a bill of particulars, with respect to Paragraphs 5, 6, 7, and 8 of his Complaint. Respondent states as follows in support of its demand:

1. The Pollution Control Board’s (“Board”) General Rules (“General Rules”) do not provide for a demand for a bill of particulars; however, Section 101.100(b) of the General Rules, 35 Ill. Adm. Code 101.100(b)(2018), provides as follows:

The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board’s procedural rules are silent.

2. Section 2-607(a) of the Code of Civil Procedure, 735 ILCS 5/2-607(a)(2018) provides, in relevant part, as follows:

Bills of particulars. (a) Within the time a party is to respond to a pleading, the party may, if allegations are so wanting in details that the responding

party should be entitled to a bill of particulars, file and serve a notice demanding it. The notice shall point out specifically the defects complained of or the details desired. The pleader shall have 28 days to file and serve the bill of particulars, and the party who requested the bill shall have 28 days to plead after being served with the bill.

3. “The purpose of a complaint, and the test of its sufficiency, is that it inform the defendant of a valid claim under a general class of cases.” *Fanning v. Lemay*, 78 Ill. App.2d 166, 171 (5<sup>th</sup> Dist. 1966), *reversed in part*, 38 Ill. 2d 209 (1967). A party may request a bill of particulars if “the pleading does not adequately advise him of the claim against which he must defend.” *Id.*

4. Mr. Korman’s Complaint does not adequately inform IDOT of his claims because the allegations in Paragraphs 5, 6, 7, and 8 of the Complaint are significantly “wanting in details.”

5. In Paragraph 5 of his Complaint, Mr. Korman is instructed by the Board’s Formal Complaint<sup>1</sup> to “List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.” Mr. Korman alleges:

In reviewing the Notice of Intent (NOI) filed for this project it is missing the following key components as required under the NPDES Permit # ILR0AV06. This Permit was approved by the IEPA as noted on the public listing of permitting the IEPA posts. Specifically the Notice of Intent is incomplete (Part II A1) & the Signature Requirement has not been posted for the public to review (Part VI G) Additionally, the SWPPP posted is substantially non-compliant with the NPDES Permit violations of nearly every SWPPP requirement including missing plans IAW Part IV D and Certifications IAW Part VI G.

6. Paragraph 5 is insufficient because it fails to identify the specific sections of the Environmental Protection Act and Board regulations Mr. Korman is alleging IDOT has violated. Section 103.204(c)(1) of the Board’s Enforcement Rules (“Enforcement Rules”), 35 Ill. Admin.

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<sup>1</sup> The Complaint in this matter is comprised of Mr. Korman’s responses on the Formal Complaint form available on the Illinois Pollution Control Board’s website. *See* <https://pcb.illinois.gov/Resources/ComplaintForms>

Code 103.204(c)(1) (2018), states that a complaint must include: “A reference to the provision of the Act and regulations that the respondents are alleging to be violating.”

7. Paragraph 5 is also lacking in details because it fails to identify which specific provisions of the National Pollutant Discharge Elimination Systems (“NPDES”) Permit Mr. Korman is alleging IDOT has violated. Mr. Korman only provides examples of some “components” of the NPDES Permit he believes are improper.

8. It is impossible for IDOT to defend itself until Mr. Korman provides which specific sections of the Environmental Protection Act, Board regulations, and NPDES permit provisions he is alleging IDOT violated.

9. In Paragraph 6 of his Complaint, Mr. Korman is instructed by the Board’s Formal Complaint to “Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution.” Mr. Korman alleges:

Stormwater runoff is not being actively managed at this project site. I recently drove through the entirety of the site and there do not appear to be any Best Management practices one would expect to see including complete Slit Fence, Vehicle washout area, a properly engineered construction entrance. I recently filed a complaint with the Village of Glenview, asking them to ask the General Contractor to be more vigilant about dust control, roadway debris and detritus. Stormwater runoff from the upper roadway surface including potential fuel, and other pollutants are entering nearby Lake Glenview & Chicago River.

10. Paragraph 6 fails to identify the specific types of pollution Mr. Korman is alleging IDOT has caused and does not provide any critical details about that pollution. Instead, the paragraph primarily describes management practices.

11. Section 103.204(c)(2) of the Enforcement Rules, 35 Ill. Admin. Code 103.204(c)(2) (2018), provides that a complaint must include:

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.

12. As Paragraph 6 is currently drafted, IDOT cannot determine what types of pollution Mr. Korman is alleging resulted from IDOT's actions. In Paragraph 6, Mr. Korman must clearly state the specific types of pollution he is alleging IDOT has caused that constitute violations of the Act and Board regulations as well as the pollution's precise location, nature, and extent.

13. In Paragraph 7 of his Complaint, the Board's Formal Complaint instructs Mr. Korman to "Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known)." Mr. Korman alleges:

According to the Village of Glenview website the project began on March 19, 2019 and is anticipated to be completed in late 2020. I drive through this site under Willow Road nearly every day and similarly I drive over the Willow Road bridge several times per day. I have noticed dirt filled roadways since early days of the project. I have been concerned about the lack of complete Silt Fence at this site, which has a significant amount of dirt/soil disturbance, since the beginning of the project. With Winter upon us I have noticed an increase of road/rock salt on the upper roadway that has not been cleaned

14. Paragraph 7 fails to identify the duration and frequency of the pollution Mr. Korman is alleging IDOT has caused. Mr. Korman only states in Paragraph 7 the approximate dates of the project and the frequency of his own trips past the project. In order for IDOT to properly defend itself, Mr. Korman must specify the duration and frequency of the particular pollution Mr. Korman alleges has occurred in violation of the Act and Board regulations.

15. In Paragraph 8 of his Complaint, the Board's Formal Complaint instructs Mr. Korman to "Describe any bad effects that you believe the alleged pollution has or has 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.” Mr. Korman alleges:

There are two areas which could see significant impact to nearby (sic) waterways. There are animal habitats along the West Fork of the North Branch of the Chicago River which are within sight of this project. I feel confident in stating that the lack of any substantial Stormwater Best Management Practices (BMP) and the lack of a SWPPP plan created using Good Engineering Practices (NPDES Permit # ILR10AV06 Part IV) will contribute to the degradation (sic) of these habitats. Both the very nearby Kent Fuller Air Station Prairie Preserve and Lake Glenview would be impacted by a lack of proper controls.

16. Mr. Korman only describes in Paragraph 8 very general locations that “could” or “will” be impacted by the alleged pollution. There is a complete lack of details about the type of actual pollution and its bad effects. IDOT is left to guess what the precise bad effects are of any alleged violations.

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17. According to Section 103.204(c)(2) of the Enforcement Rules, 35 Ill. Admin. Code 103.204(c)(2) (2018), Mr. Korman must identify the “consequences alleged to constitute violations of the Act and regulations.” Thus, Mr. Korman must specify in Paragraph 8 the precise bad effects of the alleged pollution so IDOT may properly respond.

WHEREFORE, Respondent, the ILLINOIS DEPARTMENT OF TRANSPORTATION, hereby demands that Complainant, MICHAEL J. KORMAN, provide a bill of particulars for Paragraphs 5, 6, 7, and 8 of his Complaint.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF  
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