

BEFORE THE POLLUTION CONTROL BOARD

Michael J. Korman)	
)	
Complainant,)	
)	CASE NO. PCB 2021-6
v.)	
)	
GW Glenview, L.L.C.)	
)	
Respondent.)	
)	
)	
)	

NOTICE OF FILING

To:

Michael J. Korman
2306 Sundrop Drive
Glenview, Illinois, 60026

PLEASE TAKE NOTICE that on August 26, 2020, we have filed with the Office of the Clerk of the Pollution Control Board, the attached **Reply to Response to Motion to Dismiss Frivolous Complaint**.

JAFFE & BERLIN, L.L.C.

Attorneys for Respondent

/s/ Jay S. Berlin

Jay S. Berlin, Esq. (jberlin@jaffeberlin.com)
Shawn C. Clancy, Esq. (sclancy@jaffeberlin.com)
JAFFE & BERLIN, LLC
111 W. Washington, Suite 900
Chicago, IL 60602
(312) 372-1550

PROOF OF SERVICE

Jay S. Berlin deposes and states that he has served a copy of the foregoing documents upon all parties named above by federal express on the 26th day of August, 2020.

/s/ Jay S. Berlin

BEFORE THE POLLUTION CONTROL BOARD

Michael J. Korman,)	
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Complainant,)	
)	CASE NO. PCB 2021-6
v.)	
)	
GW Glenview, LLC,)	
)	
Respondent.)	
)	
)	
)	

REPLY TO RESPONSE TO MOTION TO DISMISS COMPLAINT

NOW COMES the Respondent, GW Glenview, LLC (“GW”) by and through its attorneys, Jaffe & Berlin, LLC, and for its Reply to the Response of Michael Korman to the Motion to Dismiss the Complaint filed by Michael J. Korman, hereby states as follows:

GW moved this Board for dismissal of the instant Complaint on the grounds that it is frivolous as it fails to state a cause of action upon which the Board can grant relief. The Complaint concerns a development project being undertaken by GW at the southwest corner of Willow Road and Pfungsten Road in Glenview, Illinois (“Project”). The Complaint itself acknowledges that there is absolutely no pollution present currently at the Project. While the Board’s authority would extend to order Respondent to stop polluting (and pay a penalty), to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs, the Board has no jurisdiction to act to prevent or prohibit acts that have yet to or that may never occur. Mr. Korman filed a Response, however, as will be shown below, the Motion to Dismiss should be granted.

While Mr. Korman claims that he has just recently received certain certifications, he nonetheless would like this Board, and its history of formal practices, to defer to him as the final expert and authority on this issue. Mr. Korman has been opposed to GW’s development from the start and his Response is further evidence of his intent to block this development without

legal cause or justification. Mr. Korman fails to recognize and account for the dynamic nature of the permitting and construction process and his inexperience is evidenced by his Response.

Mr. Korman fails to appreciate that the IEPA permit does not allow work to take place on its own. This permit is fully conditioned upon approval and permits from Glenview, IDOT, MWRD and other agencies that actually review plans and approve for permit issuance to allow the construction work. The IEPA permit, on its own, does not allow anything to take place on site because there is no way to discharge water or anything else without construction taking place, which cannot happen without the issuance of other permits. Glenview, for example, would not review construction plans until they see a submission for this NPDES.

In order to get approval from the other agencies, the NPDES Permit Application (NOI, SWPPP etc.) needs to be made *prior to* the other "downstream" agencies granting their review and approval. During the process, the Engineer needs to incorporate all the needs of all concerned parties and that is exactly what happened in the instant case. Exhaustive reviews by the various regulatory agencies is part and parcel of the process. The danger of publishing a faulty set of plans is unpredictable. It seems that the IEPA recognizes this and allows for updates to the SWPPP within the NPDES permit. An update to the SWPPP to the IEPA have been provided and should ultimately be available on the IEPA's website for the public review and address Mr. Korman's concerns. Therefore, the permit application to the IEPA was not faulty, but Mr. Korman was merely taking a "snap shot" of a process (and therefore finding fault in part) that by its design is intentionally allowed to evolve and improve over time as each relevant agency weighs in on the process.

Mr. Korman raises an itemized list of 15 items that he claims are violative of the permitting process. To further the point of the frivolous nature of this Complaint, attached hereto is the Notice of Intent which establishes that item numbers 3 and 4 are completely false statements by Mr. Korman. Other items raised (1, 2 and 5) are typographical errors and do not impact the substance of any substantial issue. Every other issue raised by Mr. Korman is covered by the specific construction drawings that have been submitted to the Village of Glenview and are incorporated into the permits received from IEPA and MWRD.

For these reasons stated herein, the Board should dismiss this Complaint as frivolous and for any other or further relief that the Board deems appropriate.

Respectfully Submitted,

Jaffe & Berlin, LLC

By: /s/ Jay S. Berlin

Jay S. Berlin, Esq. (jberlin@jaffeberlin.com)
Shawn C. Clancy, Esq. (sclancy@jaffeberlin.com)
JAFFE & BERLIN, LLC
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(312) 372-1550



Illinois Environmental Protection Agency

1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

Division of Water Pollution Control Notice of Intent (NOI) for General Permit to Discharge Storm Water Associated with Construction Site Activities

This fillable form may be completed online, a copy saved locally, printed and signed before it is submitted to the Permit Section at the above address.

For Office Use Only

OWNER INFORMATION

Company/Owner Name: GW GLENVIEW LLC

Permit No. ILR10 _____

Mailing Address: 2211 N. ELSTON, SUITE 304 Phone: 773-382-0445

City: CHICAGO State: IL Zip: 60614 Fax: _____

Contact Person: MITCH GOLTZ E-mail: MITCH@GWPROPERTIES.COM

Owner Type (select one) Private

CONTRACTOR INFORMATION

MS4 Community: Yes No

Contractor Name: DCS MIDWEST LLC/MATT FRIEDMAN

Mailing Address: 2211 N. ELSTON, SUITE 304 Phone: 847-885-8300

City: CHICAGO State: IL Zip: 60614 Fax: _____

CONSTRUCTION SITE INFORMATION

Select One: New Change of information for: ILR10 _____

Project Name: PFINGSTON & WILLOW COMMERCIAL DEVELOPMENT County: Cook

Street Address: 2660 PFINGSTON ROAD City: GLENVIEW IL Zip: 60026

Latitude: 42 06 13 Longitude: -87 50 82 20 42N 12W
(Deg) (Min) (Sec) (Deg) (Min) (Sec) Section Township Range

Approximate Construction Start Date Feb 1, 2020 Approximate Construction End Date Dec 1, 2021

Total size of construction site in acres: 8.55

If less than 1 acre, is the site part of a larger common plan of development?
 Yes No

Fee Schedule for Construction Sites:
Less than 5 acres - \$250
5 or more acres - \$750

STORM WATER POLLUTION PREVENTION PLAN (SWPPP)

Has the SWPPP been submitted to the Agency? Yes No

(Submit SWPPP electronically to: epa.constilr10swppp@illinois.gov)

Location of SWPPP for viewing: Address: 2211 N. ELSTON, SUITE 304 City: CHICAGO

SWPPP contact information: Inspector qualifications: _____

Contact Name: MARK CHERTOW P.E. _____

Phone: 312-5020-0570 Fax: _____ E-mail: MCHERTOW@COMCAST.NET

Project inspector, if different from above Inspector qualifications: _____

Inspector's Name: _____

Phone: _____ Fax: _____ E-mail: _____

This Agency is authorized to require this information under Section 4 and Title X of the Environmental Protection Act (415 ILCS 5/4, 5/39). Failure to disclose this information may result in: a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues (415 ILCS 5/42) and may also prevent this form from being processed and could result in your application being denied. This form has been approved by the Forms Management Center.

TYPE OF CONSTRUCTION (select one)

Construction Type Commercial

SIC Code: _____

Type a detailed description of the project:

Develop an improved 8.55 Acre site to contain four (4) commercial buildings with at grade parking, a storm water detention pond and serviced by a newly constructed water main, sanitary and storm sewers.

HISTORIC PRESERVATION AND ENDANGERED SPECIES COMPLIANCE

Has the project been submitted to the following state agencies to satisfy applicable requirements for compliance with Illinois law on:

Historic Preservation Agency Yes No

Endangered Species Yes No

RECEIVING WATER INFORMATION

Does your storm water discharge directly to: Waters of the State or Storm Sewer

Owner of storm sewer system: ILLINOIS DEPARTMENT OF TRANSPORTATION

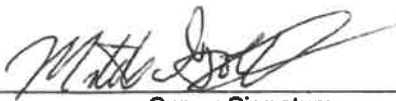
Name of closest receiving water body to which you discharge: West Fork North Branch Chicago River

Mail completed form to: Illinois Environmental Protection Agency
Division of Water Pollution Control
Attn: Permit Section
Post Office Box 19276
Springfield, Illinois 62794-9276
or call (217) 782-0610
FAX: (217) 782-9891

Or submit electronically to: epa.constilr10swppp@illinois.gov

I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a storm water pollution prevention plan and a monitoring program plan, will be complied with.

Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent offense after conviction is a Class 3 felony. (415 ILCS 5/44(h))



Owner Signature:

1-6-20

Date:

Mitch Gotz

Printed Name:

Principal

Title: