

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, October 7, 2020, I filed Respondent's 2-615 Motion to Strike Second Complainant's Response to Demand for 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 copy of the foregoing Notice of Filing and Respondent's 2-615 Motion to Strike Second Complainant's Response to Demand for 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 October 7th, 2020.

/s/ Arlene R. Haas _____

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RESPONDENT’S 2-615 MOTION TO STRIKE
SECOND COMPLAINANT RESPONSE TO DEMAND
FOR BILL OF PARTICULARS

NOW COMES RESPONDENT, the Illinois Department of Transportation (“IDOT”), through its attorney, KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Section 101.500 of the Pollution Control Board’s General Provisions, General Rules (“Procedural Regulations”), 35 Ill. Adm. Code 101.500 (2018) and Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2 615 (2018), and hereby moves the Pollution Control Board (“Board”) to strike Complainant, Michael Korman’s (“Complainant” or “Korman”) Second Complainant Response to Demand for Bill of Particulars. In support of its Motion to Strike, IDOT states as follows:

I. INTRODUCTION

Korman filed the Complaint against IDOT on March 3, 2020, a citizen enforcement action, and improperly served IDOT. Section 101.304(g)(5) of the Procedural Regulations, 35 Ill. Adm. Code 101.304(g)(5) (2018), provides that IDOT must be served at:

Office of the Chief Counsel
DOT Administration Building

2300 S. Dirkesen Parkway, Room 300
Springfield, IL 62764

Instead, Korman served the Complaint on IDOT's district office in Shaumburg, IL, and thus, IDOT's Chief Counsel did not become aware of Korman's Complaint until approximately June 22, 2020. On July 15, 2020, the Office of the Attorney General received a request from IDOT for representation in this matter.

The Complaint concerns National Pollutant Discharge Elimination System ("NPDES") permit coverage for IDOT's construction project which will expand the Willow Road overpass that flies over Lehigh Road and the Soo Line in Glenview, Illinois, IDOT Contract 60N83. IDOT submitted a Stormwater Notice of Intent Information for Construction Activities and a Storm Water Pollution Prevention Plan ("SWPPP") for the project to the Illinois Environmental Protection Agency ("Illinois EPA"). On June 18, 2019, Illinois EPA notified IDOT that the project's storm water discharges were covered under Illinois EPA's General NPDES Permit for Storm Water Discharges From Construction Site Activities, General NPDES Permit No. ILR10.

After a review of the Complaint, IDOT filed a Demand for a Bill of Particulars on August 5, 2020, pursuant to Section 2-607(a) of the Code of Civil Procedure, 735 ILCS 5/2-607(a) (2018). The Complaint did not adequately inform IDOT of Korman's claims. Therefore, IDOT requested that Korman provide a bill of particulars for Paragraphs 5, 6, 7, and 8 of his Complaint, and IDOT identified in the Demand for a Bill of Particulars the specific defects in those paragraphs.¹

Korman improperly filed a Response to a Motion to Dismiss Complaint in response to Respondent's Demand for a Bill of Particulars. Upon the Respondent explaining to Korman that his response was procedurally incorrect, he filed his Response to Demand for a Bill of Particulars

¹ 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>

on August 17, 2020 (“Bill of Particulars”). On September 11, 2020, IDOT filed Respondent’s 2-615 Motion to Strike Complainant’s Bill of Particulars (“Motion to Strike”).

In response to the Motion to Strike, Korman filed the Second Complainant Response to Demand for Bill of Particulars (“Second Bill of Particulars”) on September 24, 2020. The Notice of Filing and Certificate of Service mistakenly state that the Second Bill of Particulars was filed and served on September 22, 2020. Additionally, the Certificate of Service lists the case number of an entirely different case that Korman also appears to have filed with the Board. The Second Bill of Particulars is drafted in the form of a complaint, indeed it is subtitled “Formal Complaint.”

IDOT respectfully requests that the Board enter an order striking all of Complainant’s Second Bill of Particulars and requiring Complainant to file a bill of particulars that fully and clearly responds to IDOT’s Demand for a Bill of Particulars or use the proper procedure to file an amended or new complaint.

II. ARGUMENT

A. **THE SECOND BILL OF PARTICULARS IS UNRESPONSIVE TO IDOT’S DEMAND FOR A BILL OF PARTICULARS**

Korman fails to identify in the Second Bill of Particulars which of the Complaint’s paragraphs he is elaborating on when stating the allegations in the Second Bill of Particulars. IDOT’s Demand for a Bill of Particulars specifically requested that Korman particularize Complaint Paragraphs 5, 6, 7, and 8. Nowhere in the Second Bill of Particulars does Korman refer to these paragraph numbers of his Complaint. As with Korman’s original Bill of Particulars, IDOT is left to guess what parts of the Complaint Korman is seeking to particularize in his Second Bill of Particulars.

Instead of particularizing Korman's Complaint, the Second Bill of Particulars introduces entirely new allegations and requests for relief. For example, Korman alleges that IDOT discharged without an NPDES Permit in the Second Bill of Particulars. Second Bill of Particulars, Count 1, ¶ 4. There is nothing in the original Complaint that this allegation particularizes. Similarly, in the Second Bill of Particulars, Korman seeks penalties and requests that Respondent file an Incident of Non-compliance. Second Bill of Particulars, Count 1, ¶¶ 4, 5, & 6. However, in the Complaint, Korman's requested relief does not indicate any of the relief stated in the Second Bill of Particulars. Rather, Korman requests in the Complaint that IDOT:

partner with the Village of Glenview to immediately establish a fully compliant Notice of Intent and Stormwater Pollution Prevention Plan . . . Finally, I would ask that a review take place on a selection of other Illinois Department of Transportation projects throughout the State of Illinois.

Complaint, ¶ 9. In the first Bill of Particulars, Korman also changed his requested relief by asking that the Board consider having the United States Environmental Protection Agency take over NPDES compliance in Illinois. Bill of Particulars, Bottom Final Page.

IDOT filed its Demand for a Bill of Particulars because Korman's Complaint did not adequately inform IDOT of his claims. IDOT sought information about the claims in the Complaint, not new claims. Therefore, the Second Bill of Particulars fails to inform IDOT of Korman's original claims against it. "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 (5th 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.* "A bill of particulars is deemed to be part of a complaint which it particularizes." *City of Chicago v. Hertz Commercial Leasing Corp.*, 38 Ill. App.3d 835, 839, 349 N.E.2d 902,

905 (1st Dist. 1976), *aff'd*, 17 Ill. Dec. 1, 375 N.E.2d 1285 (Ill. 1978), *cert. denied*, 439 U.S. 929 (1978).

Rather than adding clarity, Korman used the Bill of Particulars and Second Bill of Particulars as vehicles to introduce new allegations and requests for relief. This makes it impossible for IDOT to prepare a defense and defeats the purpose of a bill of particulars. The Board stated upon review of a motion to strike in *United City of Yorkville v. Hamman Farms*, 2008 WL 4742379 (PCB 08-96) that in pleadings: “the charges must be sufficiently clear and specific to allow preparation of a defense.” *Id.* at ¶ 11 (*citing Roche v. PCB*, 78 Ill. App. 3d 476, 481, 397 N.E.2d 51, 55 (1st Dist. 1979); *Lloyd A. Fry Roofing Co. v. PCB*, 20 Ill. App. 3d 301, 305, 314 N.E.2d 350, 354 (1st Dist. 1974)). Given Korman’s changing allegations and requests for relief, the charges against IDOT are still not “sufficiently clear.”

The Board should strike, pursuant to Section 2-615 of the Code of Civil Procedure, all of Korman’s Second Bill of Particulars because it fails to respond to Respondent’s Demand for a Bill of Particulars.

B. THE SECOND BILL OF PARTICULARS IS AN IMPROPERLY FILED AMENDED OR NEW COMPLAINT

The Second Bill of Particulars is drafted as an amended or new complaint titled Formal Complaint and contains five new counts. In addition to introducing entirely new allegations and requests for relief, the Second Bill of Particulars uses a new format that does not align with Korman’s original Complaint.

A response to a Demand for a Bill of Particulars is not the proper vehicle for filing an amended or a new complaint. The Board’s rules provide the procedures for filing an amended or new complaint. To amend a complaint by adding counts, Section 103.206(d) of the Board’s

General Provisions, Enforcement Regulations (“Enforcement Regulations”) 35 Ill. Adm. Code 103.206(d) (2018), provides as follows:

If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for permission to file the pleading.

Korman has not filed a motion for leave to amend the Complaint in this matter.² Although Mr. Korman is a *pro se* litigant, he must still follow the proper procedures. The Illinois Supreme Court has held that: “*pro se* litigants are presumed to have full knowledge of the applicable court rules and procedures.” *Steinbrecher v. Steinbrecher*, 197 Ill.2d 514, 528 (Ill. 2001). “A *pro se* litigant is held to the same standards as a litigant represented by an attorney.” *Williams v. Dep’t. of Human Servs. Div. of Rehab. Servs.*, No. 1-18-1517, 2019 IL App (1st) 181517, ¶ 30 (Nov. 6, 2019), *appeal denied*, 140 N.E.3d 234 (Ill. 2020).

The Board has imposed sanctions on a Complainant pursuant to Section 101.800 of the General Regulations, 35 Ill. Adm. Code 101.800, due to the Complainant’s failure to properly follow the Board’s procedures for filing an amended complaint. *Dorothy v. Flex-N-Gate Corp.*, PCB No. 05-49, 2006 WL 3265962, at *11 (Nov. 2, 2006) (The Board granted a motion to sanction Complainant after they did not follow the Board’s rules and hearing officer orders, including failing to file a motion for leave to accompany the amended complaint and to properly serve the amended complaint).

Instead of an amended complaint, the Second Bill of Particulars appears closer to an entirely new complaint given its completely new form, allegations, and requests for relief. If Korman wishes to file a new complaint, the appropriate procedure would be to file a motion to

² It should be noted that the right to amend a complaint is not absolute and the Board may look to Section 2-616 of the Code of Civil Procedure 735 ILCS 5/2-616(2018), for guidance on whether to grant a motion for leave to amend a complaint. *Mayer v. Lincoln Prairie Water Co.*, PCB No. 11-22, 2013 WL 1931641, at *4 (May 2, 2013).

voluntarily dismiss this matter without prejudice pursuant to Section 101.500 of the Procedural Regulations, 35 Ill. Adm. Code 101.500 (2018). He may then file his Second Bill of Particulars as a complaint in a new case. Korman should not circumvent the Board's procedures by filing an amended or new complaint as a Second Bill of Particulars. This is just one more of a number of Korman's failures to follow the Board's procedures that began with improperly serving the Complaint.

In addition to his non-compliance with the Board's procedures, Korman's changing allegations and requests for relief in each of the three documents he has filed in this case, the Complaint, Bill of Particulars, and Second Bill of Particulars, are his version of "throwing spaghetti at the wall to see what sticks," and thereby, wastes both the Board's and Respondent's limited time and resources.

The Board should strike, pursuant to Section 2-615 of the Code of Civil Procedure, all of Korman's Second Bill of Particulars because it is an improperly filed amended or new complaint rather than a bill of particulars.

III. CONCLUSION

WHEREFORE, Respondent, ILLINOIS DEPARTMENT OF TRANSPORTATION, respectfully requests that the Board: (1) strike Complainant, MICHAEL KORMAN's, Second Complainant Response to Demand for Bill of Particulars, (2) order Complainant to fully and clearly respond Respondent's Demand for a Bill of Particulars or file an amended or new

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complaint, (3) stay Respondent's obligation to answer the allegations set forth in the Complaint until this Motion is resolved and Respondent provides a complete and proper Bill of Particulars, and (4) grant such other relief as the Board deems appropriate.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF
TRANSPORTATION

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