

ILLINOIS POLLUTION CONTROL BOARD
March 4, 2021

MICHAEL J. KORMAN,)
)
 Complainant,)
)
 v.) PCB 21-19
) (Citizens Enforcement - Water)
 MEDLINE INDUSTRIES, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On September 10, 2020, Michael J. Korman filed a complaint against Medline Industries, Inc. (Medline). The complaint concerns construction of Medline’s distribution facility located on Alleghany Road in Grayslake, Lake County. For the reasons below, the Board on its own motion dismisses the complaint as frivolous because it does not sufficiently show that it states a cause of action on which the Board can grant relief.

SUMMARY OF COMPLAINT

Using a sample form supplied by the Board, Mr. Korman filed a complaint (Comp.), attached to which were six exhibits (Exh. A-F). The complaint states that a 641-acre development in Grayslake includes construction of a facility for Medline, which manufactures and distributes medical supplies. Comp. at 2. Mr. Korman alleges that he sent Medline a letter requesting to review the Stormwater Pollution Prevention Plan (SWPPP) and inspection forms and reports “in accordance with IEPA NPDES Permit # ILR10AZ90 Part IV B.6.” *Id.* The complaint did not include or attach either a permit or a request from Mr. Korman to review Medline’s SWPPP or forms and reports.

Mr. Korman alleges that, while Medline “may keep the SWPPP confidential, they may not prevent the public from ‘inspection forms/reports’ at any reasonable time upon request.” Comp. at 2. The complaint states that Medline refused Mr. Korman’s request. Comp. at 2. Attached to the complaint is a letter dated September 8, 2020, from Medline’s Vice-President for Design and Construction. The letter states in pertinent part that,

[a]s some of the information you are seeking may be deemed confidential in accordance with 40 CFR Part 2 (as you mention in your letter), Medline will not forward any reports to you directly. Should you wish, I encourage you to reach out to the IEPA [Illinois Environmental Protection Agency] directly where you can submit the necessary FOIA [Freedom of Information Act] requests for the information you are seeking, as that is the proper procedure for your review of any public information. Exh. A.

Mr. Korman alleges that, because he is unable to review Medline's SWPPP and reports and forms, he is unable to determine whether Medline complies with specified elements of its permit. Comp. at 2.

The Board's sample complaint requests that the complainant "[d]escribe the type of pollution that you allege . . . and the location of the alleged pollution" as specifically as he or she reasonably can. Comp. at 2 (¶6). Mr. Korman alleges that, because he cannot determine whether Medline complies with its permit, he "is concerned that Stormwater pollution is occurring due to a general lack of awareness to US EPA, IEPA and Lake County (IL) Stormwater regulations per the 2018 NPDES permit update in Illinois." *Id.*

The Board's sample complaint also asks the complainant to "[d]escribe the duration and frequency of the alleged pollution." Comp. at 2 (¶7). Mr. Korman restated concern that stormwater pollution may be occurring. *Id.* He added that, if Medline "is not taking care to manage the project site with care it is inevitable that the Des Plaines River Watershed and the residents of Illinois will be harmed due to potential flooding and pollution." *Id.*

The Board's sample complaint also asks the complainant to "[d]escribe any bad effects that you believe the alleged pollution has or has had. . . ." Comp. at 3 (¶8). Mr. Korman responded that, "[i]f Respondent is not maximizing the opportunities to prevent stormwater pollution then the entire Des Plaines River Watershed is negatively impacted." *Id.*

The sample complaint asks the complainant to "describe the relief that you seek from the Board." Comp. at 3 (¶9). Mr. Korman requests that the Board compel Medline "to share their SWPPP, Forms and Reports for review immediately and continuing throughout the filing of the Notice of Termination." *Id.* He adds that "[i]f the IPCB rules in my favor, I would ask that the Board consider requiring Respondent to pay a civil penalty in the amount of \$5,000 to the Des Plaines River Watershed Workgroup." *Id.* Finally, if Medline "continues to refuse to allow public access I ask that the Board consider revoking the currently approved IEPA NPDES Permit IAW." *Id.* at 2 (¶5).

Finally, Mr. Korman states that he is not aware of "any identical or substantially similar case . . . brought before the Board or in another forum against this respondent for the same alleged pollution. Comp. at 3.

An enforcement proceeding begins by serving the respondent a notice and complaint through means including U.S. Mail with a recipient's signature recorded. The notice and complaint must then be filed with the Board's Clerk. 35 Ill. Adm. Code 103.204(a). The complaint includes an affidavit of service by U.S. Mail with recipient's signature recorded on delivery. Comp. at 6. It also includes proof of delivery at Medline's address on September 10, 2020, including recipient's signature. *See* Comp., Exh. A.

DISCUSSION

Any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103.200. The complaint must contain

- 1) A reference to the provision of the Act and regulation that the respondents are alleged to be violating;
- 2) 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; an
- 3) A concise statement of the relief that the complainant seeks. 35 Ill. Adm. Code 103.204(c); *see* 415 ILCS 5/31(c)(1), (d)(1).

“Unless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2018); *see also* 35 Ill. Adm. Code 103.212(a). Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). The Board has not received such a motion.

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. Nothing in the record now before the Board indicates that the complaint is duplicative. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.*

Mr. Korman's complaint effectively alleges that, by denying his request to review Medline's SWPPP and inspection forms and reports, Medline violated its NPDES Permit No. ILR10AZ90. As noted above, the complaint does not include either a permit issued to Medline or Mr. Korman's request to review the SWPPP or forms and reports.

Without documents such as these, the complaint is incomplete and is not sufficient to show that it states a cause of action on which the Board can grant relief. On its own motion, the Board dismisses the complaint as frivolous. *See* 35 Ill. Adm. Code 101.202. While the Board finds the complaint *legally* frivolous, it does not - as might be suggested by the more common meaning of the term - discount Mr. Korman's allegations as unimportant.

If Mr. Korman seeks to review documents collected under the requirements of a permit issued by IEPA, he may be able to do so through a request under FOIA. The Board stresses that it makes no determination in this opinion whether any document is subject to or exempt from disclosure under FOIA. Also, nothing in this order prevents Mr. Korman from filing another complaint, which must comply with requirements including the Board's procedural rules at 35 Ill. Adm. Code 103.204.

CONCLUSION

For the reasons above, the Board on its own motion dismisses the complaint as frivolous 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 March 4, 2021, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board