

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF GLENVIEW, Illinois)	
a municipal corporation, and)	
SOLID WASTE AGENCY OF NORTHERN)	
COOK COUNTY, an Illinois statutory solid)	
waste agency,)	
)	
Complainants,)	
)	PCB No. 2023-049
v.)	(Enforcement – Water)
)	
CATHOLIC BISHOP OF CHICAGO, a)	
corporation sole, and ILLINOIS)	
ENVIRONMENTAL PROTECTION)	
AGENCY, an Agency of State of Illinois,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See the Attached certificate of service

PLEASE TAKE NOTICE that on December 13, 2022, I caused to be electronically filed with the Illinois Pollution Control Board, via the “COOL” System, **Response in Opposition to Illinois Environmental Protection Agency’s Motion to Dismiss the Complaint of the Village of Glenview and the Solid Waste Agency of Northern Cook County and Response in Opposition to Catholic Bishop of Chicago’s Motion to Dismiss the Complaint of the Village of Glenview and the Solid Waste Agency of Northern Cook County**, true and correct copies of which are attached hereto and hereby served upon you.

By: /s/ Gregory W. Jones
One of the Attorneys for Complainants

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certify that I served a copy of the attached Notice of Filing and Certificate of Service and documents upon the parties listed below, at their respective addresses, by sealing same into duly-addressed envelopes with proper first-class postage prepaid via certified mail, and depositing said envelopes in the U.S. Mail at or before the hour of 5:00 p.m. on December 13, 2022.

Catholic Bishop of Chicago
1400 S. Wolf Road
Hillside, IL 60162

Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 19276

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF GLENVIEW, an Illinois)
municipal corporation;)
and)
SOLID WASTE AGENCY OF NORTHERN)
COOK COUNTY,)
an Illinois statutory solid waste agency;)

Complainants,

PCB CASE NO. 2023-049
(Enforcement – Water)

v.

CATHOLIC BISHOP OF CHICAGO,)
A corporation sole;)
and)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
an agency of the State of Illinois;)

Respondents.

**RESPONSE IN OPPOSITION TO ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY’S MOTION TO DISMISS THE COMPLAINT OF
THE VILLAGE OF GLENVIEW AND
THE SOLID WASTE AGENCY OF NORTHERN COOK COUNTY**

Complainants, the Village of Glenview and the Solid Waste Agency of Northern Cook County, by and through their attorneys, Ancel Glink, P.C., in opposition to the Motion to Dismiss filed by the Illinois Environmental Protection Agency’s (“IEPA”) state as follows:

1. The major premise of IEPA’s Motion to Dismiss (“Motion”) —that the Complaint is an appeal by a Third Party of the Compost Permit and does not seek actionable relief from the Board against the IEPA (IEPA Motion pp. 1-2)—is false. Count I of the Complaint expressly asks the Board to enter an order (1) requiring co-Respondent Catholic Bishop of Chicago (“CBOC”) to remedy decades-long and ongoing violations of the Illinois Environmental Protection Act (“Act”) at CBOC’s landfill and (2) requiring the IEPA to fulfill its regulatory mission to actually enforce

the Act against CBOC—something IEPA has repeatedly failed to do in violation of the Act and Board rules and regulations. Count I has nothing to do with the Compost Permit. These violations would persist even had the Compost Permit been denied.

2. For example, Paragraph 4 states: “As detailed below, the Landfill remains in violation of the Act and in violation of the Respondent’s Permits, *and IEPA has simply failed to fulfill its regulatory mission to hold the Respondent accountable.*” (Complaint ¶4, emphasis added).

3. The Complaint details CBOC’s violations at CBOC’s Landfill and also alleges IEPA’s deliberate indifference to enforce the requirements placed upon CBOC in the Act and even in the permits IEPA issued. Specifically, Count I of the Complaint sets forth the CBOC’s ongoing pollution of ground and surface waters that led IEPA to establish Groundwater Contamination Zones. (*See, e.g.*, Complaint ¶ 17) Paragraphs 22 and 31 then set forth IEPA’s long-running and ongoing failure in connection with actually requiring CBOC to remedy this ground and surface water pollution:

22. Moreover, Respondent’s IEPA Operating Permit requires the operator to submit an evaluation of the effectiveness of the groundwater extraction trench based on groundwater monitoring results over time. Ignoring the actual data, the Respondent has claimed every year since 2005 (without any supporting basis in fact) that the concentrations measured through groundwater monitoring have peaked and that the concentrations will eventually diminish with the continued operation of the trench. But the data reported demonstrates that the trench has been ineffective in preventing leachate contaminated groundwater migration and containing leachate to the legally defined site limits. Furthermore, the leachate head has increased near Well R121 from 1998 to at least 2017, indicating that leachate migration in this area will continue to be an issue based on current operations.

(Complaint pp. 7-8)

31. The continuing exceedance and increasing trend in dissolved chloride concentrations in both Well G127 and Well G134 are empirical proof that the Respondent’s remedial actions are not effectively preventing a release of leachate through groundwater in this area. ...

(Complaint p. 10)

4. Because IEPA is allowing the ongoing and repeated violations of the Act, the Administrative Regulations, and the Permits by the CBOC, the IEPA is – as alleged in Count I, Paragraph 36 – violating all of the following:

- 415 ILCS 5/12 (a) - No person shall: (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.
- 415 ILCS 5/12 (d) - No person shall: (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.
- 415 ILCS 5/21 (d)(1) and (2) - No person shall: (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation: (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit..., (2) in violation of any regulations or standards adopted by the Board under this Act; or...
- 415 ILCS 5/21 (o)(2) and (3) - No person shall: (o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions: ... (2) leachate flows entering waters of the State; (3) leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency)
- Title 35 Illinois Administrative Code Section 807.313 - No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act. (see 415 ILCS 5/12 (a))
- Title 35 Illinois Administrative Code Section 807.315 - No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill.

5. Thus, the Complaint alleges that IEPA—by its indifference and inaction—is an entity violating the Act, rules and regulations adopted under the Act, and is violating permits or terms or conditions of a permit issued pursuant to the Act or its rules and regulations. The Act authorizes the Complainants to bring this action: 415 ILCS 5/31(d)(1); 415 ILCS 5/3.315; Title 35

IAC 101.202. IEPA's argument that there is no legal remedy available to Complainants against IEPA for a wrongfully issued permit (Motion. p. 2), is therefore irrelevant with respect to Count I.

6. With respect to Count II of the Complaint, IEPA has mischaracterized the relief being sought by erecting a straw man. The Complaint does not assert the Compost Permit was wrongfully issued in violation of IEPA authority; rather, the Complaint alleges that compliance with the Compost Permit at this time—due to the longstanding and ongoing pollution issues at the Landfill—will result in further and additional (and independent) violations of the Act. The Complaint asks the Board to find that there will be a further violation of the Act if CBOC is allowed to operate the Compost Facility at this time in accordance with the permit issued by IEPA (which should therefore be suspended or declared void). (Complaint. p. 16). There is no doubt that the Board is empowered to grant relief to prevent such violations.

7. IEPA's Motion seeking to dismiss the Complaint pursuant to Section 2-619(a) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(1), should be denied precisely because it erroneously posits that Complainants seek to appeal IEPA's authority to grant the Compost Permit. (Motion. p. 4). Again, Complainants are not appealing the Compost Permit. Instead, the Complainants allege that all actions taken by any party—even if taken in compliance with the Compost Permit as issued and allowed by the IEPA—will, at this time, due to IEPA's failure to regulate and obtain compliance on the pollution from the underlying Landfill, cause further and additional violations of the Act. The Act allows any person, including third parties, to file a complaint with the Board against any person, including the IEPA, for violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. *See*, 415 ILCS 5/31(d)(1); 415 ILCS 5/3.315; Title 35 IAC 101.202. The Act authorizes the Complainants to seek relief for such violations of the Act. *Id.*

8. The 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. *Landfill, Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 556 (1978). Allowing the Compost Permit without enforcement of the Act as concerns ongoing Landfill violations is the very definition of allowing a permit without complying with the provisions of the Act, rules, regulations and other permits.

9. IEPA's Motion seeking to dismiss the Complaint pursuant to Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, should likewise be denied because it posits the same straw man version of the Complaint to then argue that there is no cause of action available to Complainants against the IEPA for issuing the permit. (Motion. p. 6). The Act grants the Complainants the authority to bring a cause of action before the Board to prevent any person (here CBOC and the IEPA) from violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. 415 ILCS 5/31(d)(1).

10. Moreover, because the IEPA has and continues to violate 415 ILCS 5/12(a), Title 35 Illinois Administrative Code Section 807.313, Title 35 Illinois Administrative Code Section 807.315, in addition to other provisions of the Act and Board rules and regulations specified in the Complaint, the Act and Board rules and regulations expressly authorize the Complainants to bring this cause of action against the IEPA for its illegal acts and omissions.

11. Similarly, and again contrary to IEPA's mischaracterization, Complainants do not claim that there is a cause of action against the IEPA for exercising its permit duties pursuant to state law. (Motion. p. 7). Instead, the complaint is that IEPA, by allowing the ongoing violations of the Act by the CBOC, and by authorizing new actions that will allow additional violations of

the Act, the regulations, and the permits, has itself violated certain provisions of the Act and the Board's rules and regulations.

12. IEPA's Motion seeking to dismiss the Complaint pursuant to Board Procedural Rule Sections 35 Ill. Adm. Code 101.506 and 103.212(b) should also be denied because it misconstrues state law by frivolously stating that the Board does not have authority to grant the relief sought in the Complaint (Motion. pp. 7-8). Since the Act allows any Complainants to file a complaint with the Board against the IEPA for violations of the Act and Board rules and regulations specified in the Complaint, the Board has the requisite authority to grant the relief sought by Complainants. 415 ILCS 5/31(d)(1); Title 35 Illinois Administrative Code Section 807.313; Title 35 Illinois Administrative Code Section 807.313.

WHEREFORE, the Complainants respectfully request that:

- A. The Motion to Dismiss be denied and a hearing be scheduled;
- B. In the alternative, that Complainants be given leave to file an amended complaint;
- C. All costs of this action be assessed against the Respondent; and
- D. For such other relief which the Board deems equitable and just.

Respectfully submitted,

The Village of Glenview
Solid Waste Agency of Northern Cook County



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NOTICE OF FILING

To: CATHOLIC BISHOP OF CHICAGO
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board (Board) the attached RESPONSE IN OPPOSITION TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO DISMISS THE COMPLAINT OF THE VILLAGE OF GLENVIEW AND THE SOLID WASTE AGENCY OF NORTHERN COOK COUNTY, a copy of which is herewith served upon you along with this Notice of Filing.

Dated: December 13, 2022

Respectfully submitted,

THE VILLAGE OF GLENVIEW
THE SOLID WASTE AGENCY OF
NORTHERN COOK COUNTY

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One of the Attorneys for Complainants

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