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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,	)	
	)	
Complainant,	)	
	)	
v.	)	No: <b>PCB 2023-057</b>
	)	
Chelsea Manor by M/I Homes,	)	(Enforcement – Water)
	)	
Respondent.	)	

**Notice of Electronic Filing**

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board **RESPONDENT CHELSEA MANOR BY M/I HOMES’ MOTION FOR PERMISSION TO FILE A REPLY IN FURTHER SUPPORT OF ITS MOTION THAT THE BOARD DETERMINE THAT THE FORMAL COMPLAINT IS FRIVOLOUS OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT PURSUANT TO 735 ILCS 5/2-619(a)(9)**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

By: */s/ David J. Scriven-Young*  
David J. Scriven-Young

Date: December 21, 2022

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**Certificate of Service**

The undersigned, an attorney, hereby certifies that the above Notice and any attached documents were served via email transmission to the Clerk and all other parties listed below at the addresses indicated on December 21, 2022.

Illinois Pollution Control Board  
Don Brown – Clerk of the Board  
100 W. Randolph St., #11-500  
Chicago, IL 60601  
Email: [don.brown@illinois.gov](mailto:don.brown@illinois.gov)

Paul Christian Pratapas  
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Respectfully submitted,

By: */s/ David J. Scriven-Young*  
David J. Scriven-Young



to the Complaint show clear evidence that M/I is using best management practices onsite and, therefore, contradict the material allegations of the Complaint. Third, the Complaint relies solely on legal conclusions that are not based upon any facts contained in the Complaint. Fourth, the Complaint seeks relief that the Board does not have authority to grant.

4. M/I's Motion also argued, in the alternative, that the Board should dismiss the Complaint pursuant to 35 Ill. Admin. Code § 101.500 and 735 ILCS 5/2-619(a)(9) because Pratapas's claims are barred by affirmative matter avoiding the legal effect of or defeating the claims. Specifically, the concrete washout is "managed by appropriate control" in compliance with the NPDES permit and negates any possible finding of a violation of 35 ILCS 304.141(b). The undisputed facts, including Pratapas' own photographs attached to the Complaint, clearly evidence that no concrete wash water, slurry sediment, or sediment laden water was discharged on November 13, 2022 (the only date, according to Pratapas, on which a violation allegedly occurred), or created a water pollution hazard in violation of 415 ILCS 5/12(a) and (d).

5. M/I's Motion was supported by M/I's Memorandum of Law and Jason Polakow's Affidavit and exhibits thereto.

6. On December 16, 2022, Pratapas electronically filed two documents – one identified as "Complainant response to motion to dismiss" and a second identified as "Amended Response to Motion to motion to dismiss".

7. On December 19, 2022, Pratapas electronically filed a notice explaining the apparent difference between the two versions of his response:

One of the pictures in the first version of the complaint filed was the incorrect version. The image with the date circled above the concrete washout container. That picture was a screenshot. iPhone photos are too high resolution for quick emailing, so I screen shot them sometimes. If a picture isn't fitting in the frame on Instagram, screenshotting and uploading that picture fixes that as well. The

amended response is exactly the same, except the picture described above was replaced with the original from the date referenced in the complaint.

8. Pratapas also filed on December 19th an exhibit relating to a SWPPP certification, although it is not clear whether this document relates to his Complaint or his response to M/I's Motion.

9. 35 Ill. Admin. Code 101.500(e) provides that "[t]he moving person will not have the right to reply, except as the Board or the hearing officer permits to prevent material prejudice. A motion for permission to file a reply must be filed with the Board within 14 days after service of the response." The Board routinely finds that material prejudice may result and that allowing a reply is appropriate in cases where the response to the motion "contains multiple factual and legal misrepresentations" (*People v. NACME Steel Processing, LLC*, PCB No. 13-12, 2013 Ill. ENV LEXIS 157, \*4-5 (June 6, 2013)), mischaracterizes the movant's arguments so there is the prospect of resulting prejudice absent formal reply (*City of Quincy v. Ill. EPA*, PCB No. 08-86, 2010 Ill. ENV LEXIS 213, \*5 (June 17, 2010)) or contains "substantial arguments" (*Sierra Club v. Ameren Energy Medina Valley Cogen, LLC*, PCB No. 14-134, 2014 Ill. ENV LEXIS 489, \*8 (Nov. 6, 2014)).

10. Pursuant to this authority, M/I should be granted permission to file a reply in further support of its Motion for three reasons.

11. First, Pratapas' response contains multiple factual and legal misrepresentations concerning (a) the approved washout area, (b) a new allegation that washout water on the ground is "frozen", (c) a new allegation that the "washout area is combined with vehicle storage in violation of the permit", (d) a new allegation concerning a receptacle or container, and (e) a new allegation concerning a "channel along the silt fence".

12. Second, Pratapas seeks to add numerous requests for relief through his response: (a) “an order requiring respondent furnish complainant with SWPPP book access to determine with greater accuracy the length of violations so a total of associated fines can be calculated per violation, per day”, (b) an additional fine and voiding of M/I’s permit as a result of “statements in respondent’s motion, especially by the PE who has ethics requirements, [that] deny responsibility for clear violations”, (c) having “any governing board for PEs notified of the ethics breach by the PE claiming the site is compliant and BMPs implemented properly”, (d) “an order stating that [the PE] be denied access to the site until this issue is addressed under certification guidelines for understanding and accepting SWPPP Rules/Responsibilities”, and (e) “[a]nyone who certified to response from respondent be penalized for knowingly certifying to false statements in violation of the permit”.

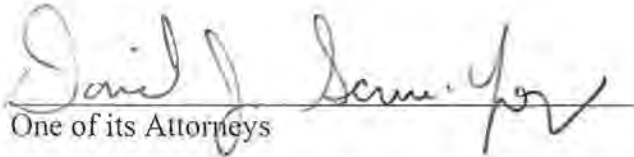
13. Third, Pratapas’ response mischaracterizes the arguments made in M/I’s Motion as relying “on attempts to manipulate and mislead The Board.”

14. Thus, the response contains multiple factual and legal misrepresentations, improperly attempts to add new allegations and requests for relief, and mischaracterizes M/I’s arguments so there is the prospect of resulting prejudice absent formal reply. Because Pratapas’ response has caused material prejudice, M/I should be granted permission to file a reply in further support of its Motion.

WHEREFORE, Respondent CHELSEA MANOR BY M/I HOMES respectfully requests that the Board enter an order (a) granting M/I permission to file a reply in further support of its Motion that the Board Determine That the Formal Complaint is Frivolous or, in the Alternative, to Dismiss the Complaint Pursuant to 735 ILCS 5/2-619(a)(9), and (b) providing any other relief that the Board deems just.

Respectfully submitted,

CHELSEA MANOR BY M/I HOMES

  
One of its Attorneys

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