

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,	)	
	)	
Complainant,	)	
	)	
v.	)	No: <b>PCB 2024-018</b>
	)	
M/I Homes of Chicago, LLC,	)	(Enforcement – Water)
	)	
Respondent.	)	

**Notice of Electronic Filing**

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the attached **M/I Homes Of Chicago, LLC's Motion (1) That The Board Determine That The Consolidated Complaint Is Frivolous Or Duplicative And (2) For Sanctions** and **Respondent M/I Homes Of Chicago, LLC's Memorandum Of Law In Support** of same, copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

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

Date: October 17, 2023

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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 October 17, 2023.

Illinois Pollution Control Board  
Don Brown – Clerk of the Board  
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Respectfully submitted,

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

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS, )  
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 M/I HOMES OF CHICAGO, LLC )  
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 Respondent. )

**M/I HOMES OF CHICAGO, LLC’S MOTION (1) THAT THE BOARD DETERMINE THAT THE CONSOLIDATED COMPLAINT IS FRIVOLOUS OR DUPLICATIVE AND (2) FOR SANCTIONS**

NOW COMES the Respondent, M/I HOMES OF CHICAGO, LLC (“M/I”), by and through its attorneys, Corporate Law Partners, PLLC and Peckar & Abramson, P.C., and for its Motion (1) that the Board determine that the Consolidated Complaint is frivolous or duplicative and (2) for an award of sanctions against the Complainant, PAUL CHRISTIAN PRATAPAS (“Pratapas”), does hereby state as follows:

1. On September 12, 2023, Pratapas filed in this action against M/I a complaint (the “Consolidated Complaint”) purporting to allege water pollution violations related to three sites known as Chelsea Manor, Willow Run, and Silo Bend near Pratapas’ former home in Naperville, Illinois.

2. By Pratapas’ own admission, the Consolidated Complaint is simply a refile and consolidation of three previous complaints against M/I relating to the same sites, alleging the same violations, and seeking the same relief. Those previous complaints were dismissed by the Board for Pratapas’ failure to provide any details regarding the extent, duration, or strength of the alleged violations. Therefore, the Board should determine that the Complaint is duplicative and dismiss the Complaint with prejudice pursuant to 415 ILCS 5/31(d) and 35 Ill. Admin. Code § 103.212(a).

3. Pratapas also concedes that the Consolidated Complaint (just like the previous complaints) does not allege any details regarding the extent, duration, or strength of the alleged violations. Therefore, the Board should determine that the Complaint is frivolous and dismiss the Complaint with prejudice pursuant to 415 ILCS 5/31(d) and 35 Ill. Admin. Code § 103.212(a).

4. Furthermore, Pratapas willfully and unreasonably violated the Board's procedural rules by filing a complaint that he knew was both frivolous and duplicative. He has shown a pattern of bad faith by filing his fourth frivolous complaint against M/I, which is the twenty-seventh total case that he has filed with the Board since July 2022.

5. Therefore, the Board should also award sanctions against Pratapas using the Board's inherent authority to control its own docket. Moreover, the Board's procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board's procedural rules. *See* 35 Ill. Adm. Code 101.800; *Modine Manufacturing Company v. IEPA*, PCB 87-124, slip op. at 3 (November 17, 1988) *aff'd*, 192 Ill. App. 3d 511; *The Grigoleit Company v. IEPA*, PCB 89-184, slip op. at 4 (March 17, 1994).

6. This motion is supported by M/I's Memorandum of Law, which is being filed contemporaneously herewith.

WHEREFORE, Respondent M/I HOMES OF CHICAGO, LLC respectfully requests that the Board enter an order (a) determining that the Consolidated Complaint is frivolous or duplicative and dismissing this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Admin. Code § 103.212(a), (b) awarding sanctions against Pratapas by ordering him to pay M/I the attorney's fees that it was forced to spend to respond to his frivolous case, and (c) providing any other relief that this Board deems just.

Respectfully submitted,

M/I HOMES OF CHICAGO, LLC

/s/ David J. Scriven-Young  
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Attorneys for Respondent M/I Homes of Chicago, LLC

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 M/I HOMES OF CHICAGO, LLC, )  
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**RESPONDENT M/I HOMES OF CHICAGO, LLC'S MEMORANDUM OF LAW IN  
SUPPORT OF ITS MOTION (1) THAT THE BOARD DETERMINE THAT THE  
CONSOLIDATED COMPLAINT IS FRIVOLOUS OR DUPLICATIVE  
AND (2) FOR SANCTIONS**

**INTRODUCTION**

Since July 2022, Complainant Paul Christian Pratapas (“Pratapas”) has filed twenty-seven complaints against developers, contractors, and municipal entities and officials alleging water pollution violations at construction sites near his former home in Naperville. Pratapas filed three of those complaints against Respondent M/I Homes of Chicago, LLC (“M/I”) related to the Chelsea Manor, Willow Run, and Silo Bend sites. The Board granted M/I’s motions to dismiss each of those cases on the grounds that the complaints were frivolous because they lacked any details describing the extent, duration, or strength of the alleged violations. Since the dates of those dismissals, Pratapas moved to Memphis, Tennessee. Therefore, he no longer has a connection with the State of Illinois other than, apparently, his interest in continuing to harass M/I and similar companies.

On September 12, 2023, Pratapas filed in this action against M/I a complaint (the “Consolidated Complaint”) that, by Pratapas’ own admission, is simply a refile and consolidation of his three previous complaints against M/I. Furthermore, Pratapas concedes that the Consolidated Complaint does not allege any additional details regarding the extent, duration,

or strength of the alleged violations. Therefore, the Board should determine that the Complaint is frivolous and/or duplicative and dismiss the Complaint with prejudice pursuant to 415 ILCS 5/31(d) and 35 Ill. Admin. Code § 103.212(a).

M/I also requests that the Board issue an order of sanctions against Pratapas. Given Pratapas' acknowledgment that the Consolidated Complaint is both frivolous and duplicative, it is obvious that Pratapas knew that the Consolidated Complaint flagrantly violated the Board's rules when he filed it. Therefore, the Board should order sanctions against Pratapas for his unreasonable and willful violations of the Board's rules, and to stop what has now become a pattern of bad faith and deliberate noncompliance with the Board's rules.

### **ARGUMENT**

The Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (the "Act"), authorizes citizens to file complaints before the Board, alleging violations of the Act or Board regulations. Section 31(d) of the Act, 415 ILCS 5/31(d), provides that the Board should not schedule a hearing when citizen complaints are frivolous or duplicative.<sup>1</sup> *See also* 35 Ill. Admin. Code § 103.212(a) ("When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing"). In this case, Pratapas' Consolidated Complaint should be dismissed because it is both frivolous and duplicative: (1) the Consolidated Complaint is frivolous because, like the other complaints Pratapas filed against M/I, it lacks any details describing the extent, duration, or strength of the alleged violations; and (2) the Consolidated Complaint is duplicative of the previous complaints Pratapas filed against M/I. In

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<sup>1</sup> Under 35 Ill. Admin. Code § 103.212(b), motions "made by respondents alleging that a citizen's complaint is duplicative or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent." On October 6, 2023, Pratapas filed in this case a "Certified Mail Receipt showing September 18, 2023 date of delivery." Thus, M/I's motion was timely filed on or prior to October 18, 2023.

fact, Pratapas admits that the Consolidated Complaint is both frivolous and duplicative. Additionally, because Pratapas willfully and unreasonably violated the Board's procedural rules by filing a complaint that he knew was both frivolous and duplicative, the Board should order sanctions against Pratapas.

**I. The Consolidated Complaint Should Be Dismissed as Frivolous**

Under the Board's rules, a complaint is frivolous when it "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Admin. Code § 101.202. To state a cause of action upon which the Board can grant relief, the complaint "shall specify the provision of the Act or the rule or regulation ... under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation ...." 415 ILCS 5/31(c). The Act and the Board's procedural rules "provide for specificity in pleadings". *Rocke v. PCB*, 78 Ill. App. 3d 476, 481 (1st Dist. 1979). Because Illinois is a fact-pleading state, the complainant must "set out the ultimate facts which support his cause of action." *People v. Blick's Constr. Co.*, PCB No. 13-43, 2013 Ill. ENV LEXIS 151 \*18 (May 16, 2013). "[L]egal conclusions unsupported by allegations of specific facts are insufficient." *La Salle Nat'l Trust, N.A. v. Vill. of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993). *See also Foxfield Realty v. Kubala*, 287 Ill. App. 3d 519, 522 (2d Dist. 1997) ("a motion to dismiss does not admit conclusions of law or of fact that are not supported by allegations of specific facts which form the basis for such conclusions"). When ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all inferences from them in favor of the non-movant. *Maracic v. TNT Logistics N. Am. Inc.*, PCB No. 05-212, 2007 Ill. ENV LEXIS 106, \*6 (Mar. 15, 2007). Dismissal is proper when it is clear that no set of facts could be proven that would entitle complainant to relief. *Id.*



The Board's procedural rules require that a complaint must contain, among other things, the "extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations." 35 Ill. Adm. Code 103.204(c)(2). In the previous three cases filed by Pratapas against M/I, the Board found that the complaints must be dismissed based on frivolousness because they lacked any details describing the extent, duration, or strength of the alleged violations:

- In the Chelsea Manor case, the Board dismissed Pratapas' complaint based on frivolousness because "the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations, such as toxic concrete washout. (4/6/23 Order, p. 2, *Pratapas v. Chelsea Manor by M/I Homes*, Case No. PCB 23-57 (internal citations omitted).)
- In the Willow Run case, the Board dismissed Pratapas' initial complaint based on frivolousness because "the complaint lacks any details describing the extent, duration, or strength of the alleged violation and only cites general violations, such as 'toxic concrete washout water and slurry from making contact with soil and migrating to surface water or into the ground water not managed.'" (6/1/23 Order, p. 2, *Pratapas v. Willow Run Homes by M/I Homes*, Case No. PCB 23-75.)
- The Board denied Pratapas' motion to amend the complaint in the Willow Run case based on frivolousness because "the eight additional paragraphs in the motion to amend the complaint fail to cure the issues from the original complaint. Mr. Pratapas' additional filing still fails to provide specificity regarding the violations alleged, sufficient for M/I to respond. Rather, Mr. Pratapas provides his opinion on proper protections and conjecture that what M/I has in place is inadequate. Therefore, the Board finds that the information

provided in the initial complaint as well as the motion to amend the complaint do not provide adequate information as to the nature, extent, duration and strength of the discharges alleged to constitute violations.” (8/3/23 Order, pp. 3-4, *Pratapas v. Willow Run Homes by M/I Homes*, Case No. PCB 23-75.)

- In the Silo Bend case, the Board dismissed Pratapas’ complaint based on frivolousness because “the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations and conclusions, such as toxic concrete washout making contact with soil and dirty mixed with snow on the site.” (6/15/23 Order, p. 2, *Pratapas v. M/I Homes*, Case No. PCB 23-81.)

The Consolidated Complaint cites the same general violations that Pratapas previously alleged, *i.e.*, toxic concrete washout water, slurry, sediment, and sediment-laden water making contact with soil and water, failure to have required signage, etc., but it lacks any details describing the extent, duration, or strength of the alleged violations. And, just like before, Pratapas concedes that the Consolidated Complaint lacks the specificity required by the Act and the Board’s rules. In the Consolidated Complaint, when responding to the complaint form prompt to provide the frequency, severity, and duration of alleged pollution, Mr. Pratapas states: “A review of the SWPPP Book would be required to completely answer this question.” (Consolidated Compl., p. 6.) Thus, Mr. Pratapas concedes that his rehashing of the three prior complaints against M/I continues to lack the required specificity for which the prior complaints were dismissed as frivolous. He further states in the Consolidated Complaint:

M/I Homes of Chicago has refused access and did not place required regulatory signage at any of the inspected sites.<sup>2</sup> It can be *assumed* the pollution will continue for every minute of every project until regulator intervention....

The impacts on wildlife, plants and the environment cannot be appropriately assessed without viewing the SWPPP Book, but the pollution poses immediate risk to wildlife and residents of partially occupied developments.

(*Id.* (emphasis added).) Clearly, Pratapas' assumptions and conclusions are, admittedly, not supported by any specific facts, are insufficient to state a proper cause of action, and must be disregarded by the Board in ruling on M/I's motion to dismiss. *La Salle Nat'l Trust, N.A. v. Vill. of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993); *Foxfield Realty v. Kubala*, 287 Ill. App. 3d 519, 522 (2d Dist. 1997).

Given the above, Pratapas has failed to comply with 35 Ill. Admin. Code 103.204(c) by failing to adequately plead facts in support of any cause of action against M/I. Therefore, the Board should determine that the Consolidated Complaint is frivolous.

## **II. The Consolidated Complaint Should Be Dismissed as Duplicative**

Under the Board's rules, a complaint is duplicative when "the matter is identical or substantially similar to one brought before the Board or another forum." 35 Ill. Admin. Code § 101.202. The Board considers the following factors when determining whether an action is duplicative of another: "(1) the parties to the two matters are the same; (2) the proceedings are based on the same legal theories; (3) the violations alleged in the two matters occurred over the

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<sup>2</sup> Mr. Pratapas' allegations as to M/I refusal to provide him access to the SWPPP book and failure to have required signage are here again unsupported by any facts and simply untrue. Moreover, M/I's NPDES permits and related information are publicly available via the United States Environmental Protection Agency's online search function at <https://permitsearch.epa.gov/epermit-search/ui/search> and Freedom of Information Act requests. Just as it did in the three previous cases, the Board should disregard Pratapas' statements in this regard.

same time period; and (4) the same relief is sought in the two proceedings.” *Sierra Club v. Midwest Generation, LLC*, PCB No. 13-15, 2013 Ill. ENV LEXIS 294, \*64 (Oct. 3, 2013).

In the Consolidated Complaint, Pratapas admits that this new action is identical or substantially similar to the three previous cases that he filed against M/I. Specifically, he states that the previous cases have been “refiled and consolidated into this complaint”:

Previous cases dismissed without prejudice do [*sic*] to procedural error. Upon advice from The Speaker of the House of Representatives, they have been refiled and consolidated into this complaint. Errors were due in part to failures to comply with permit guidelines related to citizen enforcement actions and ILEPA’s inappropriate implementation of an unauthorized modified NPDES SWPPP program in violation of the CWA.

Pratapas then threatens that he “will be seeking an injunction and monetary damages in Federal Civil Court for violations of Civil Liberties.”

Furthermore, the four factors for duplicative actions are met here:

1. The parties are the same because the three previously filed cases were also filed by Pratapas against M/I relating to the same three sites.
2. The Consolidated Complaint is based on the following theories: violations of 415 ILCS 5.12(a), 415 ILCS 5/12(d), and 35 Ill. Admin. Code § 304.141(b), and violations of NPDES permit requirements relating to non-stormwater discharges, availability of access to and compliance with stormwater pollution prevention plans, and posting of signs. Pratapas alleges the same legal theories in the three previous cases. (*Chelsea Manor Compl., Pratapas v. Chelsea Manor by M/I Homes*, Case No. PCB 23-57; *Willow Run Compl. and Mot. to Amend Compl., Pratapas v. Willow Run Homes by M/I Homes*, Case No. PCB 23-75; *Silo Bend Compl., Pratapas v. M/I Homes*, Case No. PCB 23-81.)

3. The violations alleged in the Consolidated Complaint occurred over the same time period. Specifically, the Consolidated Complaint and the previous complaints allege violations at the Chelsea Manor site on November 13, 2022, at the Willow Run site on December 9, 2022 at 11:40 am, and at the Silo Bend site on December 18, 2022 at 1:48 pm.
4. The Consolidated Complaint seeks the same relief that Pratapas sought in the three previous proceedings, *i.e.*, findings of permit violations, civil penalties, ordering M/I to allow examination of SWPPP reports and certifications, ordering that M/I perform certain actions to comply with its permit, and pausing/discontinuing M/I's ability to conduct business under environmental permits until M/I comes into compliance.

A thorough comparison of the Consolidated Complaint with the previously filed complaints shows that this matter is identical or substantially similar to the previous matters Pratapas brought before the Board against M/I. Therefore, this case is duplicative and should be dismissed.

### **III. Pratapas Should Be Sanctioned For Filing An Obviously Frivolous And Duplicative Consolidated Complaint**

As shown above, Pratapas knew that the Consolidated Complaint was frivolous: he has conceded that, contrary to the Board's rules and prior decisions, the Consolidated Complaint lacked any details describing the extent, duration, or strength of the alleged violations. He also knew that the Consolidated Complaint was duplicative of the previously filed cases, as he readily admits and expressly states that the Consolidated Complaint was a refile and consolidation of those prior cases. The Board should order sanctions against Pratapas for willfully and unreasonably filing an obviously frivolous and duplicative complaint.

It is well-established that courts possess the inherent authority to control their own dockets and the course of litigation, including the authority to prevent undue delays in the disposition of cases caused by abuses of the litigation process. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007). This inherent authority includes the ability to monetarily sanction serial litigants who file frivolous papers; the sanctions available to the court can include a fine and payment of the defendant's attorney's fees and costs. *Gillard v. Northwestern Mem. Hosp.*, 2019 IL App (1st) 182348, ¶ 68. This authority exists even in a situation where a statute or procedural rule does not contain a monetary sanction penalty for misconduct. *Id.* See also *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) (courts may as a matter of law resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct, no matter if the conduct at issue is covered by a sanctioning rule or statute); *Claiborne v. Wisdom*, 414 F.3d 715, 724 (7th Cir. 2005) ("the court retains inherent power to impose sanctions when the situation is grave enough to call for them and the misconduct has somehow slipped between the cracks of the statutes and rules covering the usual situations").

When deciding an adjudicatory proceeding, such as the instant enforcement matter, the Board acts in a quasi-judicial nature. 35 Ill. Adm. Code 101.202. The Board has routinely recognized in enforcement proceedings that it has an inherent authority to control its own docket. See, e.g., *Rockford Prods. Corp. v. Ill. EPA*, PCB No. 91-31, \*1 1992 Ill. ENV LEXIS 335 (May 07, 1992) (rejecting argument that the Board lacks the authority to control its own docket); *Heico Inc. v. Ill. EPA*, PCB No. 90-196, 1992 Ill. ENV LEXIS 325, \*1 (Apr. 23, 1992) (same); *Modine Mfg. v. Ill. EPA*, 1988 Ill. ENV LEXIS 120, \*4 (Nov. 17, 1988) ("The Board needs to control its docket. . .").

Furthermore, the Board's procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board's

procedural rules. *See* 35 Ill. Adm. Code 101.800; *Modine Mfg. Co. v. IEPA*, PCB 87-124, slip op. at 3 (November 17, 1988) *aff'd*, 192 Ill. App. 3d 511; *The Grigoleit Co. v. IEPA*, PCB 89-184, slip op. at 4 (March 17, 1994).

As the Board is aware, M/I filed motions for sanctions in the Chelsea Manor and Silo Bend cases after Pratapas failed to file amended complaints after being ordered to do so by the Board. M/I believed that it was critical that the Board impose sanctions at that time because it was clear, given his past behavior, that he would continue to file frivolous complaints unless the Board ordered sanctions against him. The Board denied the motions because it did “not find that Mr. Pratapas’ failure to amend the complaint is a pattern of bad faith or deliberate noncompliance with its rules.” (6/1/23 Order, p. 3, *Pratapas v. Chelsea Manor by M/I Homes*, Case No. PCB 23-57; 9/7/23 Order, p. 3, *Pratapas v. M/I Homes*, Case No. PCB 23-81.)

We are now in a different situation. There is no doubt that Pratapas deliberately failed to comply with the rules by filing in this action a clearly frivolous and duplicative Consolidated Complaint. There is also no doubt that he has shown a pattern of bad faith by filing his fourth frivolous complaint against M/I, which is the twenty-seventh total case that he has filed with the Board since July 2022. Pratapas’ unreasonable and willful behavior has not stopped after his initial cases were dismissed. It would be a mistake to believe that Pratapas will stop filing complaints after the Consolidated Complaint in this case is dismissed. Apparently, the only way to end Pratapas’ purposeful continuation of unreasonable filings, which wastes the resources of both the Board and M/I, is through an order of sanctions from this Board.

#### CONCLUSION

For these reasons, M/I’s Motion (1) that the Board Determine that the Consolidated Complaint is Frivolous or Duplicative and (2) for Sanctions should be granted.

Respectfully submitted,

M/I HOMES OF CHICAGO, LLC

/s/ David J. Scriven-Young  
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