ILLINOIS POLLUTION CONTROL BOARD
June 18, 2020

MICHAEL J. KORMAN,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 20-62
	)	(Citizens Enforcement – NPDES, Water)
ILLINOIS DEPARTMENT OF TRANSPORTATION	)	
	)	
	)	
Respondent.		

ORDER OF THE BOARD (by A. Palivos):

On March 3, 2020, Michael J. Korman (Korman) filed a complaint against the Illinois Department of Transportation (IDOT). The complaint concerns IDOT's construction project which will expand the Willow Road overpass that flies over Leigh Road and the SOO Line in Glenview, Illinois.[1] For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2014); 35 Ill. Adm. Code 103. In this case, Korman alleges that IDOT violated its NPDES permit by filing an incomplete notice of intent. Specifically, the notice of intent is incomplete, and the signature requirement has not been posted for the public to review. Additionally, Korman alleges that the Stormwater Pollution Prevention Plan (SWPPP) is substantially non-compliant and stormwater runoff is not being actively managed at the site. Korman asks the Board to order IDOT to establish a fully compliant Notice of Intent and SWPPP. Korman also asks that "a review take place on a selection of other Illinois Department of Transportation projects throughout the State of Illinois." Comp. at ¶9. The Board finds that the complaint meets the content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 103.204(c), (f).

Section 31(d)(1) of the Act provides that "[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing." 415 ILCS 5/31(d)(1) (2014); *see also* 35 Ill. Adm. Code 103.212(a). 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. 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.* 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). IDOT has filed no motion to dismiss this case as duplicative or frivolous. However, the Board on its own motion dismisses

[1] For specificity, the coordinates for this site are as follows: Lat: 42.105556; Long: -87.814417. *See* Comp. at ¶4.

the requested relief to the extent that it seeks an order to examine all counties in the state for potential violations. This requests relief which the Board does not have the authority to grant.

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d)(1) (2014); 35 Ill. Adm. Code 103.212(a). IDOT must file with the Board an answer to the complaint by August 3, 2020, which is the sixtieth day from the date of this order. IDOT's failure to file an answer by this date may have severe consequences. Generally, if IDOT fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider IDOT to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2014). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

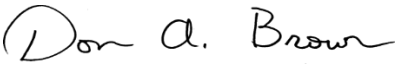
If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon the "lowest cost alternative for achieving compliance"; the need to deter further violations by the respondent and others similarly situated; and whether the respondent "voluntarily self-disclosed" the violation. 415 ILCS 5/42(h) (2014). Section 42(h) requires the Board to ensure that the penalty is "at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship." *Id*. Such penalty, however, "may be off-set in

whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *Id*.

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent's economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 18, 2020, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board