

and order, Westmont Citgo has not filed any answer or responsive pleadings to the complaint or responded to the motion to deem facts admitted and for summary judgement.

COMPLAINT

Count I of the complaint alleges that Westmont Citgo violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C), by failing to submit decommissioning reports; failing to timely decommission its vapor collection and control system; and causing, threatening, or allowing emission of volatile organic compounds into the environment so as to violate Board regulations. Comp. at 4.

MOTION TO DEEM FACTS ADMITTED

The People's motion requests the Board deem the material allegations in their complaint to be admitted by Westmont Citgo. Mot. at 12. Under the Board's procedural rules, "the respondent must file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer." 35 Ill. Adm. Code 103.204(d).

Westmont Citgo failed to answer the complaint within 60 days after service, *i.e.*, by November 22, 2021. Therefore, by rule, Westmont Citgo admits all material allegations of the complaint. *See* Ill. Adm. Code 103.204(d). And because Westmont Citgo failed to respond to the People's motion, Westmont Citgo waives objection to the Board granting it. *See* 35 Ill. Adm. Code 101.500(d). The Board grants the People's motion and deems admitted the material allegations in the People's complaint.

FACTS

Westmont Citgo is an Illinois corporation. Comp. at 2. Westmont Citgo owns and operates a gasoline dispensing facility located at 27 East Ogden Avenue in Westmont, DuPage County (facility). *Id.* Westmont owns and operates gasoline pumps at the facility that emit volatile organic compounds (VOCs) into the environment. *Id.*

Westmont Citgo has a vapor collection and control system. Comp. at 4. Westmont Citgo did not decommission its vapor collection and control system by December 31, 2016, and has not submitted a decommissioning checklist, certification, and test results to the Illinois Environmental Protection Agency (Agency) by the date of the People's complaint. *Id.*

MOTION FOR SUMMARY JUDGMENT

The People seek summary judgment against Westmont Citgo. A party has 14 days from receipt of the motion for summary judgment to respond. 35 Ill. Adm. Code 101.516(a). If no response is filed, "the party waives objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill.

Adm. Code 101.500(d); *see People v. Env'tl Health and Safety Svcs., Inc.*, PCB 05-51, slip op. at 13 (July 23, 2009). Westmont Citgo has not responded to the People's motion or filed a motion to extend the time to respond. The Board finds that by failing to respond to the People's motion for summary judgment, Westmont Citgo has waived any objection to the Board granting the motion for summary judgment.

The People argue that the facts deemed admitted contain all material facts necessary to establish that Westmont Citgo violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C). Mot. at 3. The People assert there are no genuine issues of fact, and that the People are entitled to judgment as a matter of law. *Id.*

Next, the Board sets forth the relevant statutory and regulatory provisions and standards for considering motions for summary judgment, and then decides the motion.

Statutory and Regulatory Background

Section 9(a) of the Act states no person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act. 415 ILCS 5/9(a) (2020).

Section 3.315 of the Act defines "person" as "any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns." 415 ILCS 5/3.315 (2020).

Section 3.165 of the Act defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165 (2020).

Section 218.586(c) of the Board air pollution regulations states:

No owner or operator of a gasoline dispensing operation subject to the requirements of subsection (b) shall cause or allow the dispensing of motor vehicle fuel at any time from a motor fuel dispenser unless the dispenser is equipped with and utilizes a vapor collection and control system which is properly installed and operated as provided in this subsection. 35 Ill. Adm. Code 218.586(c).

Section 218.586(a)(7) of the Board air pollution regulations defines "gasoline dispensing operation" as "any operation where motor vehicle fuel is dispensed into motor vehicle fuel tanks or portable containers from a storage tank with a capacity of 2176 liters (575 gallons) or more." 35 Ill. Adm. Code 218.586(a)(7).

Section 218.586(a)(11) of the Board air pollution regulations defines “owner” or “operator” as “any person who owns, leases, operates, manages, supervises or controls (directly or indirectly) a gasoline dispensing operation.” 35 Ill. Adm. Code 218.586(a)(11).

Section 218.586(b) of the Board air pollution regulations states:

The provisions of subsection (c) shall apply to any gasoline dispensing operation which dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month. Compliance shall be required and demonstrated in accordance with the schedule provided in subsection (d). 35 Ill. Adm. Code 218.586(b).

Section 218.586(d)(1) of the Board air pollution regulations states:

Gasoline dispensing operations that operate at any time prior to January 1, 2014 shall comply with subsection (c) until decommissioning is allowed and commenced in accordance with subsections (i)(1) and (i)(2)(B). 35 Ill. Adm. Code 218.586(d)(1).

Section 218.586(i)(1)(B) of the Board air pollution regulations states:

No later than December 31, 2016, an owner or operator of a gasoline dispensing operation shall complete the decommissioning of all vapor collection and control systems in accordance with all of the provisions specified in subsection (i)(2). 35 Ill. Adm. Code 218.586(i)(1)(B).

Section 218.586(i)(2)(C) of the Board air pollution regulations states:

The owner or operator of a gasoline dispensing operation and the contractors that performed the decommissioning shall complete and sign a decommissioning checklist and certification, provided by the Agency, documenting the decommissioning procedures performed. Within 30 days after completion of the decommissioning procedures specified by subsection (i)(2)(B), the owner or operator shall provide the completed checklist and certification and the test results to the Agency. 35 Ill. Adm. Code 218.586(i)(2)(C).

Standards for Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. V. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). When determining whether a genuine issue of material fact exists, the record “must be construed strictly against the movant and liberally in

favor of the opponent.” Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). “It is well established that in deciding a motion for summary judgment the court may draw inferences from undisputed fact.” Makowski v. City of Naperville, 249 Ill. App. 3d 110, 119, 617 N.E. 2d 1251 (1993); Loyola Academy v. S & S Roof Maintenance, Inc., 146 Ill. 2d 263, 272, 586 N.E.2d 1211 (2d Dist. 1992). “However, where reasonable persons could draw divergent inferences from undisputed facts, the trier of fact should decide the issues and the summary judgment motion should be denied.” Makowski, 249 Ill. App. 3d at 119; Pyne v. Witmer, 129 Ill. 2d 351, 358, 543 N.E.2d 1304.

Ruling on Motion for Summary Judgment

Westmont Citgo is the owner and operator of a gasoline dispensing facility that emits VOCs, which is a contaminant as defined in the Act. 415 ILCS 5/3.165 (2020). Board air pollution regulations require a gasoline dispensing operation to have vapor collection and control systems if it dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month. 35 Ill. Adm Code 218.586(b), (c), (i). The People alleged that Westmont Citgo’s gasoline dispensing facility is a “gasoline dispensing operation” but did not allege that Westmont Citgo dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month. Comp. at 3; 35 Ill. Adm. Code 218.586(a)(7).

However, the facts deemed admitted include that Westmont Citgo has a vapor collection and control system. Comp. at 4. A reasonable person would infer from this undisputed fact that Westmont Citgo dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month and therefore was required to install the vapor collection and control system. Makowski, 249 Ill. App 3d at 119. Accordingly, the facts deemed admitted establish that Westmont Citgo was required by Section 218.586(i)(1)(B) to decommission its vapor collection and control system by December 31, 2016, and required by Section 218.586(i)(2)(C) to submit a decommissioning checklist, a certification, and test results to the Agency within 30 days after completing decommissioning procedures.

On summary judgment, to determine whether a genuine issue of material fact exists, the Board must construe the record strictly against the People as movant and liberally in favor of Westmont Citgo as non-movant. *See supra* p. 4. Doing so, the Board finds no genuine issue of material fact. The facts deemed admitted establish that Westmont Citgo violated Section 218.586(i)(1)(B) by failing to timely decommission its vapor collection and control system and that Westmont Citgo violated Section 218.586(i)(2)(C) by failing to submit a decommissioning checklist, certification, and test results to the Agency. By violating these Board regulations, Westmont Citgo caused, threatened, or allowed the discharge or emission of VOCs into the environment so as to violate regulations adopted by the Board, and thereby violated Section 9(a) of the Act. Accordingly, the Board finds that the People are entitled to judgment as a matter of law.

Therefore, the Board grants the People’s motion for summary judgment, finding Westmont Citgo violated Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board’s air pollution regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C), thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

REMEDY

The People ask the Board to require Westmont Citgo to: decommission its vapor collection and control system; submit a decommissioning checklist, a certification, and test results to the Agency; and pay a civil penalty of at least \$10,000 for the violations. Mot. at 8-9.

Having found Westmont Citgo violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C), the Board must now determine an appropriate remedy including any penalties. In evaluating the record to determine what Westmont Citgo must do to correct on-going violations and whether to impose a civil penalty on Westmont Citgo, the Board considers the factors of Section 33(c) of the Act, 415 ILCS 5/33(c) (2020). If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on Westmont Citgo, then the Board considers the factors of 42(h) of the Act, 415 ILCS 42(h) (2020), to determine the appropriate amount of civil penalty.

Section 33(c) of the Act states:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance. 415 ILCS 5/33(c) (2020).

The People provided brief statements regarding each of the above factors: 1) human health and the environment were threatened by emissions from the facility and Westmont Citgo's violations hindered the Agency's information gathering responsibilities; 2) there is social and economic benefit to the facility; 3) operation of the facility was and is suitable for the area in which it is located; 4) timely decommissioning of its vapor collection and control system, and timely submitting a decommissioning checklist, a certification, and test results to the Agency are both technically practicable and economically reasonable; and 5) Westmont Citgo has not subsequently complied with the Act or Board regulations. Mot. at 5.

The Board finds that Westmont Citgo's failure to timely decommission its vapor collection and control system and submit a decommissioning checklist, a certification, and test results threatened human health and the environment and impaired the Agency's ability to gather information. This first Section 33(c) factor weighs against Westmont Citgo.

Westmont Citgo's gasoline dispensing facility is suitable for the area in which it is located, and its facility has social and economic value. *Id.* Factors (2) and (3) therefore weigh in favor of Westmont Citgo.

The Board finds that timely decommissioning of the vapor collection and control system and submittal of a decommissioning checklist, a certification, and test results are both technically practicable and economically reasonable. Westmont Citgo has not subsequently complied with the Act or Board regulations by decommissioning its vapor collection and control system and submitting decommissioning reports. Factors (4) and (5) therefore weigh against Westmont Citgo.

Despite compliance being practicable and economically feasible, Westmont Citgo has still not come into compliance, which threatens human health and the environment and hinders the Agency's ability to gather information. The Board finds that the Section 33(c) factors favor requiring Westmont Citgo to decommission its vapor collection and control system and submit decommissioning reports and pay a civil penalty.

Having concluded that a penalty is appropriate under the Section 33(c) factors, the Board next applies the factors of Section 42(h) to consider the \$10,000 civil penalty requested by the People against Westmont Citgo. Section 42(h) of the Act states:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), (b) (5), (b) (6), or (b) (7) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), (5), (6), or (7) of subsection (b) of this Section, the Board shall ensure, in all cases, 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. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2020).

The People provided brief statements regarding each of the above factors: 1) Westmont Citgo’s violations continued for over five years; 2) Westmont Citgo failed to timely decommission its vapor collection and control system or submit decommissioning reports; 3) the \$10,000 requested penalty includes any economic benefit that Westmont Citgo may have accrued as a result of noncompliance; 4) the requested penalty will deter further violations and encourage future compliance by Westmont Citgo and others similarly situated; 5) Westmont Citgo has no previously adjudicated violations; 6) self-disclosure was not at issue in this matter; 7) Westmont Citgo did not offer to perform a supplemental environmental project; and 8) a Compliance Commitment Agreement was not at issue in this matter. Mot. at 8-9.

Westmont Citgo’s violations of the Act and Board regulations began over five years ago and have continued through the filing of the People’s complaint. The duration of the violation is extensive. Westmont Citgo’s violations threatened human health and the environment and hindered the Agency’s ability to gather information. Westmont Citgo showed a lack of diligence in attempting to comply with the requirements of the Act and Board regulations. *Id.* The first two Section 42(h) factors weigh against Westmont Citgo.

The Board finds that the requested civil penalty of \$10,000 includes any economic benefit that Westmont Citgo may have accrued as a result of its noncompliance. The Board also

finds that the suggested \$10,000 penalty will deter further violations by Westmont Citgo and ensure voluntary compliance with the Act and Board air pollution regulations. Factors (3) and (4) therefore weigh against Westmont Citgo and support the People's requested penalty.

Westmont Citgo has no previously adjudicated violations. This factor weighs in favor of Westmont Citgo. Neither self-disclosure, nor a Compliance Commitment Agreement were at issue in this matter. Westmont Citgo did not propose, or perform, a supplemental environmental project. The Board does not weigh any of these last three factors as mitigating or aggravating of a penalty amount.

Based on this record and the statutory factors, the Board finds that the People's requested civil penalty is appropriate given the length of the violations and the resulting threat to human health and the environment. The requested penalty amount will serve to encourage future compliance by Westmont Citgo and others similarly situated and recoup any economic benefit Westmont Citgo may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$10,000.

CONCLUSION

The Board grants the People's unopposed motion to deem facts admitted. Given the facts admitted, the Board finds that there is no genuine issue of material fact and that the People are entitled to judgment as a matter of law. The Board accordingly grants the People's motion for summary judgment against Westmont Citgo. The Board finds that Westmont Citgo violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C), as alleged in the People's complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act, 415 ILCS 5/33(c) and 42(h) (2020), the Board enters an order requiring Westmont Citgo to decommission its vapor collection and control system and submit decommissioning reports to the Agency, and pay a \$10,000 civil penalty, as requested by the People.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board grants the unopposed motion to deem facts admitted and for summary judgment filed by the Office of the Attorney General, on behalf of the People, and finds that Westmont Citgo violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C).
2. Westmont Citgo must pay a civil penalty of \$10,000 no later than Monday, May 23, 2022, which is the first business day after 30 days from the date of this order. Payment must be made by certified check or money order payable to the Environmental Protection Trust Fund. The case number, case name, and

Westmont Citgo’s federal employer identification number must be included on the respective certified check or money order.

3. Westmont Citgo must send the certified check or money order to:

Illinois Environmental Protection Agency
 Fiscal Services Division
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2020)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2020)).
5. Westmont Citgo must decommission its vapor collection and control system and submit a decommissioning checklist, a certification, and test results to the Illinois Environmental Protection Agency no later than Monday, June 20, 2022, which is the first business day after 60 days from the date of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2020); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Illinois Attorney General’s Office Attn: Kevin Garstka Assistant Attorney General Environmental Bureau 69 W. Washington St., Suite 1800 Chicago, Illinois 60602 Kevin.Garstka@ilag.gov	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 don.brown@illinois.gov

Westmont Citgo, Inc. Attn: Akram Zanayed, Registered Agent 8550 S. Harlem Avenue, Suite G Bridgeview, Illinois 60455	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 21, 2022, by a vote of 5-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board