

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by KWAME ROAUL, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 2023-009
	)	(Enforcement – Air)
La Fox BP, Inc.,	)	
a dissolved Illinois corporation, and	)	
FOX RIVER PETRO, LLC,	)	
an Illinois Limited Liability company	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: Persons on Attached Service List

PLEASE TAKE NOTICE that I have today caused to be filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following, Motion to Deem Facts Admitted and for Summary Judgment against La Fox BP, Inc. and Motion to Deem Facts Admitted and for Summary Judgment against Fox River Petro, LLC, on behalf of the People of the State of Illinois, a true and correct copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
KWAME RAOUL, Attorney General of the State of Illinois

By: /s/ Jason Clark  
Jason Clark  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General’s Office  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(773) 590-6964  
[Jason.Clark@ilag.gov](mailto:Jason.Clark@ilag.gov)

Date: October 30, 2023

Service List

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren, Suite 630  
Chicago, IL 60605  
Brad.Halloran@illinois.gov  
(Via Email)

Waqar Quereshi  
Agent and President La Fox BP, Inc.  
La Fox BP, Inc.  
994 Reading Street  
Bartlett, IL 60103  
WQloans@gmail.com  
(Via Email)

Mohammed Hussain, Registered Agent  
FOX RIVER PETRO, LLC  
117 S. Cook, Suite 195  
Barrington, IL 60010  
(Via U.S. Mail)

**CERTIFICATE OF SERVICE**

I, Jason Clark, an Assistant Attorney General, certify that on the 30th day of October, 2023, I caused to be served the foregoing, Motion to Deem Facts Admitted and for Summary Judgment against La Fox BP, Inc. and Motion to Deem Facts Admitted and for Summary Judgment against Fox River Petro, LLC, on behalf of the People of the State of Illinois on the parties named on the attached Service List by methods described.

/s/ Jason Clark  
Jason Clark  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(773) 590-6964  
[Jason.Clark@ilag.gov](mailto:Jason.Clark@ilag.gov)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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by KWAME RAOUL, Attorney	)	
General of the State of Illinois,	)	
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v.	)	PCB No. 23-09
	)	(Enforcement - Air)
LA FOX BP, INC.,	)	
a dissolved Illinois corporation, and	)	
FOX RIVER PETRO, LLC, an Illinois	)	
limited liability company,	)	
	)	
Respondent.	)	

**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT**  
**AGAINST RESPONDENT LA FOX BP INC.**

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Sections 103.204 and 101.516 of the Illinois Pollution Control Board’s Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and hereby moves for the entry of an order deeming all material facts in Complainant’s First Amended Complaint as admitted against Respondent LA FOX BP, INC. as to Count I of the First Amended Complaint. Further, Complainant moves this Illinois Pollution Control Board (“Board”) for Summary Judgment as to Count I of the First Amended Complaint against Respondent LA FOX BP, INC. In support thereof, Complainant states as follows:

1. On July 21, 2022, the Board accepted Complainant’s Complaint against Respondent LA FOX BP, INC. for alleged violations that occurred at its gasoline dispensing facility located at 380 N. La Fox Street, South Elgin, Kane County, Illinois (“Facility”). Complainant alleged that LA FOX BP, INC. failed to timely decommission its vapor collection and control system and submit reports in violation of Section 9(a) of the Illinois Environmental

Protection Act (“Act”), 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), and 218.586(i)(2)(C).

2. On July 27, 2022, Complainant filed its Proof of Service of the July 21, 2022, Complaint with the Board.

3. The Proof of Service indicated that LA FOX BP, INC. had been served with the Complaint on July 27, 2022. A true and correct copy of the Proof of Service is attached hereto as Exhibit 1.

4. On November 15, 2022, Complainant filed a Motion for Leave to file a First Amended Complaint to name FOX RIVER PETRO, LLC, who acquired the Facility on or about February 20, 2020, is the current owner and operator of the Facility, as a Respondent in this matter. The First Amended Complaint was attached as an exhibit to Complainant’s Motion for Leave.

5. On December 15, 2022, the Board accepted Complainant’s First Amended Complaint against LA FOX BP, INC. and FOX RIVER PETRO, LLC, for alleged violations that occurred at its Facility. Complainant alleged that LA FOX BP, INC., prior to the sale of the Facility to FOX RIVER PETRO, LLC, failed to timely decommission its vapor collection and control system and submit reports in violation of Section 9(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

6. As of the date of filing of this Motion, LA FOX BP, INC. has not filed an Answer, nor otherwise pled, to the First Amended Complaint.

7. Sections 103.204(d) and (e) of the Board’s Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), provide as follows:

- (d) Except as provided in subsection (e), 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, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

- (e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

8. By failing to answer the First Amended Complaint on or before February 13, 2023, and by failing to file a motion staying the 60-day period in which to file an Answer as required by Sections 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), LA FOX BP, INC. has admitted the material allegations asserted in the First Amended Complaint.

9. Complainant therefore requests that the Board enter an order finding that pursuant to Sections 103.204(d) and (e), 35 Ill. Adm. Code 103.204(d) and (e), LA FOX BP, INC. has admitted all material allegations asserted in the First Amended Complaint.

10. Complaint's First Amended Complaint sufficiently states facts establishing the following violations of the Act and Board Air Pollution Regulations against LA FOX BP, INC.:

Count I: Failure to Timely Decommission Vapor Collection and Control System and Submit Reports: Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(1)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

11. Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If the record, including pleading, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

12. If the Board finds that LA FOX BP, INC. has admitted all material allegations in Complainant's First Amended Complaint, then the record shows that there is no issue of material fact remaining for review. Therefore, pursuant to Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), Complainant is entitled to summary judgment in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board issue an order in favor of Complainant and against Respondent LA FOX BP, INC. as follows:

A. Finding all material allegations in the First Amended Complaint admitted against LA FOX BP, INC.;

B. Finding that LA FOX BP, INC. violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C);

C. Granting summary judgment in favor of Complainant and against LA FOX BP, INC. on Count I of the First Amended Complaint;

D. Requiring LA FOX BP, INC. to provide notice of decommissioning to Illinois EPA, decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA within 60 days of the Board's order regarding this motion; and

E. Assessing a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00) against LA FOX BP, INC. for its violation of the Act and Board Air Pollution Regulations.

**COMPLAINANT'S ARGUMENT IN SUPPORT OF ITS PROPOSED REMEDY**

The December 15, 2022, Board Order in this cause provides, in pertinent part:

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...

Pursuant to the December 15, 2022, Board Order, Complainant is proposing a remedy for LA FOX BP, INC.'s violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

Complainant therefore requests that LA FOX BP, INC. be ordered to provide notice of decommissioning to Illinois EPA, decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA, pursuant to Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C). Additionally, the Board should assess a civil penalty against LA FOX BP, INC.

**Impact on the Public Resulting from LA FOX BP, INC.'s Alleged Non-Compliance**

In determining whether a civil penalty is warranted, the Board must consider the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c). *Toyal Am., Inc. v. Illinois Pollution Control Board*, 2012 IL App (3d) 100585, ¶ 28 (3d Dist. 2012). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation. *People v. John Prior d/b/a*



*Prior Oil Co. and James Mezo d/b/a Mezo Oil Co.*, (PCB 02-177), Slip Op. at 29 (May 6, 2004).

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), provides as follows:

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.

In response to these factors, Complainant states the following:

1. Human health and the environment were threatened by emissions of volatile organic compounds at the Facility caused by LA FOX BP, INC.'s violations. Additionally, the Illinois EPA's information gathering responsibilities were hindered by LA FOX BP, INC.'s violations.

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 submission of a decommissioning checklist, certification, and test results to the Illinois EPA, are both technically practicable and economically reasonable.

5. LA FOX BP, INC. has not subsequently complied with the Act and the Board Air Pollution Regulations.

In consideration of these factors, the Board should enter an order requiring LA FOX BP, INC. to provide notice of decommissioning to Illinois EPA, decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA within 60 days of the Board's order regarding this motion. Additionally, the Board should assess a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00) against LA FOX BP, INC., for their violation of the Act and Board Air Pollution Regulations.

**Explanation of Civil Penalty Requested**

Section 2(b) of the Act, 415 ILCS 5/2(b) (2022), provides:

It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, *and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.* (Emphasis added.)

The primary purpose of civil penalties is to aid in the enforcement of the Act. *See People v. McHenry Shores Water Co.*, 295 Ill. App. 3d 628, 638 (2d Dist. 1998). Civil penalties should reflect the severity of the violation(s) of the Act. *Southern Illinois Asphalt Company, Inc. v. Pollution Control Board*, 60 Ill. App. 2d 204, 208 (5th Dist. 1975). However, the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the award of a civil penalty “serves the legislative purpose of aiding enforcement of the Act, for through penalties upon those who blatantly disregard applicable rules and regulations, others, who might consider cutting corners at the expense of the environment, are deterred.” *Wasteland, Inc. v. Illinois Pollution Control Board*, 118 Ill. App. 3d 1041, 1055 (3d Dist. 1983) (subsequently cited by the

First District; *see e.g. Standard Scrap Metal Co. v. Pollution Control Board*, 142 Ill. App 3d 655, 665 (1st Dist.1986)).

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. In particular, Section 42(a) of the Act, 415 ILCS 5/42(a) (2022), provides in pertinent part, as follows:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues;

**Consideration of Section 42(h) Factors**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), provides as follows:

In determining the appropriate civil penalty to be imposed..., 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 response to these factors, Complainant states as follows:

1. LA FOX BP, INC. failed to timely decommission its vapor collection and control system and failed to submit a decommissioning checklist, certification, and test results to the Illinois EPA on or before January 30, 2017. The violation began on January 30, 2017, and had continued through the date of LA FOX BP, INC. selling the Facility on or about February 20, 2020. LA FOX BP, INC. has violated the Act and Board Air Pollution Regulations for over three years.

2. The question of good faith, or lack thereof, is pertinent to a determination of sanctions. *Wasteland, Inc. v. Pollution Control Board*, 118 Ill.App.3d 1041 (3rd Dist., 1983). Here, LA FOX BP, INC. failed to act diligently in this matter, as evidenced by its failure to timely decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA. As a result, LA FOX BP, INC. caused, threatened or allowed the discharge or emissions of VOCs, a contaminant, into the environment.

3. The Ten Thousand Dollars (\$10,000.00) civil penalty requested by Complainant includes any economic benefit that LA FOX BP, INC. may have accrued as a result of its noncompliance.

4. In the absence of a civil penalty sufficient to deter other persons similarly situated under the Act, no regulated entity “would ever be inclined to comply with Illinois’ environmental requirements” *See Standard Scrap Metal Co.*, 142 Ill. App 3d at 664. Accordingly, a significant civil penalty is warranted. As such, a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00) will serve to deter further violations by LA FOX BP, INC. and to otherwise aid in enhancing voluntary compliance with the Act and Board Air Pollution Regulations by LA FOX BP, INC. and other persons similarly subject to the Act and Board Air Pollution Regulations.

5. To Complainant’s knowledge, LA FOX BP, INC. has had no previously adjudicated violations.

6. Self-disclosure is not at issue in this matter.

7. LA FOX BP, INC. did not offer to perform a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

In furtherance of the purposes of the Act “to assure that adverse effects upon the environment are fully considered and borne by those who cause them, 415 ILCS 5/2(b) (2022), and based on the duration of the violations and LA FOX BP, INC.’s lack of diligence to comply with Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C), the Board should assess against LA FOX BP, INC. a civil penalty of no less than Ten Thousand Dollars (\$10,000.00).

Based on the facts of this case and consideration of Section 42(h) of the Act, 415 ILCS 5/42(h), the Board should assess LA FOX BP, INC. a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board grant its Motion to Deem Facts Admitted and for Summary Judgment against Respondent, LA FOX BP, INC. and award the relief requested herein, and take such other action as the Board deems to be appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
by KWAME RAOUL, Attorney General  
of the State of Illinois

BY: /s/ Jason Clark  
JASON CLARK  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(773) 590-6964  
Jason.Clark@ilag.gov

# EXHIBIT 1

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by KWAME ROAUL, Attorney	)	
General of the State of Illinois,	)	
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v.	)	PCB No. 2023-009
	)	(Enforcement – Air)
La Fox BP, Inc.,	)	
a dissolved Illinois corporation,	)	
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Respondent.	)	

**NOTICE OF FILING**

To: Persons on Attached Service List

PLEASE TAKE NOTICE that I have today caused to be filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Proof of Service of Complainant's Complaint, a true and correct copy of which is attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
KWAME RAOUL, Attorney General of the State of  
Illinois

By: /s/ Arlene R. Haas  
Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(773) 590-7836  
[Arlene.Haas@ilag.gov](mailto:Arlene.Haas@ilag.gov)

Date: July 27, 2022



Service List

Waqar Quereshi  
Agent and President La Fox BP, Inc.  
La Fox BP, Inc.  
380 N. La Fox Street  
South Elgin, Illinois 60177

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren, Suite 630  
Chicago, IL 60605  
Brad.Halloran@illinois.gov  
(Via Email)

**CERTIFICATE OF SERVICE**

I, Arlene R. Haas, an Assistant Attorney General, certify that on the 27th day of July 2022, I caused to be served the foregoing Notice of Filing and Proof of Service on the parties named on the attached Service List, by first class mail by depositing envelope at United States Post Office, 100 W. Randolph Street, Chicago, IL 60601.

/s/ Arlene R. Haas  
Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(773) 590-7836  
[Arlene.Haas@ilag.gov](mailto:Arlene.Haas@ilag.gov)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature</p> <p>X <u>COULD 19</u> <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Address</p>	
<p>1. Article Addressed to:</p> <p style="text-align: center;">Waqar Quereshi                      Agent and President La Fox BP, Inc.                      La Fox BP, Inc.                      380 N. La Fox Street                      South Elgin, Illinois 60177</p>	<p>B. Received by (Printed Name)</p> <p style="text-align: center;"><u>COULD</u></p>	<p>C. Date of Delivery</p> <p style="text-align: center;"><u>7/14</u></p>
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Signature Confirmation  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                      If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>	
<p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7021 2720 0002 0106 1070</p>	<p>PS Form 3811 July 2020 PSN 7500-02-000-0000</p>	

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	)	(Enforcement - Air)
LA FOX BP, INC.,	)	
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**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT**  
**AGAINST RESPONDENT FOX RIVER PETRO, LLC**

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Sections 103.204 and 101.516 of the Illinois Pollution Control Board’s Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and hereby moves for the entry of an order deeming all material facts in Complainant’s First Amended Complaint as admitted against Respondent FOX RIVER PETRO, LLC, as to Count I of the First Amended Complaint. Further, Complainant moves this Illinois Pollution Control Board (“Board”) for Summary Judgment as to Count I of the First Amended Complaint against Respondent FOX RIVER PETRO, LLC. In support thereof, Complainant states as follows:

1. On July 21, 2022, the Board accepted Complainant’s Complaint against Respondent LA FOX BP, INC., for alleged violations that occurred at its gasoline dispensing facility located at 380 N. La Fox Street, South Elgin, Kane County, Illinois (“Facility”). Complainant alleged that LA FOX BP, INC. failed to timely decommission its vapor collection and control system and submit reports in violation of Section 9(a) of the Illinois Environmental

Protection Act (“Act”), 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), and 218.586(i)(2)(C).

2. On November 15, 2022, Complainant filed a Motion for Leave to file a First Amended Complaint to name FOX RIVER PETRO, LLC, the current owner and operator of the Facility, as a Respondent in this matter. The First Amended Complaint was attached as an exhibit to Complainant’s Motion for Leave.

3. On December 15, 2022, the Board accepted Complainant’s First Amended Complaint against FOX RIVER PETRO, LLC for alleged violations that occurred at its Facility. Complainant alleged that FOX RIVER PETRO, LLC failed to timely decommission its vapor collection and control system and submit reports in violation of Section 9(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

4. On January 31, 2023, Complainant filed its Proof of Service of the December 15, 2022, First Amended Complaint with the Board.

5. The Proof of Service indicated that Respondent, had been served with the First Amended Complaint on January 31, 2023. A true and correct copy of the Proof of Service is attached hereto as Exhibit 1.

6. As of the date of the filing of this Motion, FOX RIVER PETRO, LLC has not filed an Answer, nor otherwise pled, to the First Amended Complaint.

7. Section 103.204(d) and (e) of the Board’s Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), provide as follows:

- (d) Except as provided in subsection (e), 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, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

- (e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

8. By failing to answer the First Amended Complaint on or before April 1, 2023, and by failing to file a motion staying the 60-day period in which to file an Answer as required by Sections 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), FOX RIVER PETRO, LLC has admitted the material allegations asserted in the First Amended Complaint.

9. Complainant therefore requests that the Board enter an order finding that pursuant to Sections 103.204(d) and (e), 35 Ill. Adm. Code 103.204(d) and (e), FOX RIVER PETRO, LLC has admitted all material allegations asserted in the First Amended Complaint.

10. Complainant's First Amended Complaint sufficiently states facts establishing the following violations of the Act and Board Air Pollution Regulations against FOX RIVER PETRO, LLC:

Count I: Failure to Timely Decommission Vapor Collection and Control System and Submit Reports: Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

11. Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If the record, including pleadings, depositions and admissions on file,

together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

12. If the Board finds that FOX RIVER PETRO, LLC has admitted all material allegations in Complainant's First Amended Complaint, then the record shows that there is no issue of material fact remaining for review. Therefore, pursuant to Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), Complainant is entitled to summary judgment in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board issue an order in favor of Complainant and against Respondent FOX RIVER PETRO, LLC, as follows:

A. Finding all material allegations in the First Amended Complaint admitted against FOX RIVER PETRO, LLC;

B. Finding that FOX RIVER PETRO, LLC violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C);

C. Granting summary judgment in favor of Complainant and against FOX RIVER PETRO, LLC on Count I of the First Amended Complaint;

D. Requiring FOX RIVER PETRO, LLC, to provide notice of decommissioning to Illinois EPA, decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA within 60 days of the Board's order regarding this motion; and

E. Assessing a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00) against FOX RIVER PETRO, LLC for its violation of the Act and Board Air Pollution Regulations.

**COMPLAINANT'S ARGUMENT IN SUPPORT OF ITS PROPOSED REMEDY**

The December 15, 2022, Board Order in this cause provides, in pertinent part:

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...

Pursuant to the December 15, 2022, Board Order, Complainant is proposing a remedy for FOX RIVER PETRO, LLC's violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C).

Complainant therefore requests that FOX RIVER PETRO, LLC be ordered to provide notice of decommissioning to Illinois EPA, decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA, pursuant to Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C). Additionally, the Board should assess a civil penalty against FOX RIVER PETRO, LLC.

**Impact on the Public Resulting from FOX RIVER PETRO, LLC's Alleged Non-Compliance**

In determining whether a civil penalty is warranted, the Board must consider the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c). *Toyal Am., Inc. v. Illinois Pollution Control*



*Board*, 2012 IL App (3d) 100585, ¶ 28 (3d Dist. 2012). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation. *People v. John Prior d/b/a Prior Oil Co. and James Mezo d/b/a Mezo Oil Co.*, (PCB 02-177), Slip Op. at 29 (May 6, 2004).

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), provides as follows:

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.

In response to these factors, Complainant states the following:

1. Human health and the environment were threatened by emissions of volatile organic compounds at the Facility caused by FOX RIVER PETRO, LLC's violations. Additionally, the Illinois EPA's information gathering responsibilities were hindered by FOX RIVER PETRO, LLC's violations.

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 submission of a decommissioning checklist, certification, and test results to the Illinois EPA, are

both technically practicable and economically reasonable.

5. FOX RIVER PETRO, LLC has not subsequently complied with the Act and the Board Air Pollution Regulations.

In consideration of these factors, the Board should enter an order requiring FOX RIVER PETRO, LLC to provide notice of decommissioning to Illinois EPA, decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA within 60 days of the Board's order regarding this motion. Additionally, the Board should assess a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00) against FOX RIVER PETRO, LLC, for their violation of the Act and Board Air Pollution Regulations.

#### **Explanation of Civil Penalty Requested**

Section 2(b) of the Act, 415 ILCS 5/2(b) (2022), provides:

It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, *and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.* (Emphasis added.)

The primary purpose of civil penalties is to aid in the enforcement of the Act. *See People v. McHenry Shores Water Co.*, 295 Ill. App. 3d 628, 638 (2d Dist. 1998). Civil penalties should reflect the severity of the violation(s) of the Act. *Southern Illinois Asphalt Company, Inc. v. Pollution Control Board*, 60 Ill. App. 2d 204, 208 (5th Dist. 1975). However, the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the award of a civil penalty “serves the legislative purpose of aiding enforcement of the Act, for through penalties upon those who blatantly disregard applicable rules and regulations, others, who might

consider cutting corners at the expense of the environment, are deterred.” *Wasteland, Inc. v. Illinois Pollution Control Board*, 118 Ill. App. 3d 1041, 1055 (3d Dist. 1983) (subsequently cited by the First District; see, e.g., *Standard Scrap Metal Co. v. Pollution Control Board*, 142 Ill. App 3d 655, 665 (1st Dist.1986)).

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. In particular, Section 42(a) of the Act, 415 ILCS 5/42(a) (2022), provides in pertinent part, as follows:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues;

**Consideration of Section 42(h) Factors**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), provides as follows:

In determining the appropriate civil penalty to be imposed..., 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 response to these factors, Complainant states as follows:

1. FOX RIVER PETRO, LLC failed to timely decommission its vapor collection and control system and failed to submit a decommissioning checklist, certification, and test results to the Illinois EPA on or before February 20, 2020. The violations began on February 20, 2020, when FOX RIVER PETRO, LLC took possession of the Site, and have continued through the date of filing of this motion. FOX RIVER PETRO, LLC has violated the Act and Board Air Pollution Regulations for over three years.

2. The question of good faith, or the lack thereof, is pertinent to a determination of sanctions. *Wasteland, Inc. v. Pollution Control Board*, 118 Ill. App. 3d 1041 (3d Dist. 1983). Here, FOX RIVER PETRO, LLC failed to act diligently in this matter, as evidenced by its failure to timely decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Illinois EPA. As a result, FOX RIVER PETRO, LLC caused, threatened or allowed the discharge or emission of VOCs, a contaminant, into the environment.

3. The Ten Thousand Dollars (\$10,000.00) civil penalty requested by Complainant includes any economic benefit that FOX RIVER PETRO, LLC may have accrued as a result of its noncompliance.

4. In the absence of a civil penalty sufficient to deter other persons similarly situated under the Act, no regulated entity “would ever be inclined to comply with Illinois’ environmental requirements.” *See Standard Scrap Metal Co.*, 142 Ill. App. 3d at 664. Accordingly, a significant civil penalty is warranted. As such, a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00) will serve to deter further violations by FOX RIVER PETRO, LLC and to otherwise aid in enhancing voluntary compliance with the Act and Board Air Pollution Regulations by FOX RIVER PETRO, LLC and other persons similarly subject to the Act and Board Air Pollution Regulations.

5. To Complainant's knowledge, FOX RIVER PETRO, LLC has had no previously adjudicated violations.

6. Self-disclosure is not at issue in this matter.

7. FOX RIVER PETRO, LLC did not offer to perform a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

In furtherance of the purposes of the Act “to assure that adverse effects upon the environment are fully considered and borne by those who cause them, 415 ILCS 5/2(b) (2022), and based on the duration of the violations and FOX RIVER PETRO, LLC’s lack of diligence to comply with Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and

218.586(i)(2)(C), the Board should assess against FOX RIVER PETRO, LLC a civil penalty of no less than Ten Thousand Dollars (\$10,000.00).

Based on the facts of this case and consideration of Section 42(h) of the Act, 415 ILCS 5/42(h), the Board should assess FOX RIVER PETRO, LLC a civil penalty in the amount of at least Ten Thousand Dollars (\$10,000.00).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board grant its Motion to Deem Facts Admitted and for Summary Judgment against Respondent, FOX RIVER PETRO, LLC, and award the relief requested herein, and take such other action as the Board deems to be appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
by KWAME RAOUL, Attorney General  
of the State of Illinois

BY: /s/ Jason Clark  
JASON CLARK  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(773) 590-6964  
Jason.Clark@ilag.gov

# EXHIBIT 1

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 by KWAME ROAUL, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 La Fox BP, Inc., )  
 a dissolved Illinois corporation, and )  
 FOX RIVER PETRO, LLC, )  
 an Illinois Limited Liability company )  
 )  
 Respondent. )

PCB No. 2023-009  
(Enforcement – Air)

**NOTICE OF FILING**

To: Persons on Attached Service List

PLEASE TAKE NOTICE that I have today caused to be filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Proof of Service of Complaint upon Respondent' Fox River Petro, LLC's registered agent, a true and correct copy of which is attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
KWAME RAOUL, Attorney General of the State of  
Illinois

By: /s/ Arlene R. Haas  
Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(773) 590-7836  
[Arlene.Haas@ilag.gov](mailto:Arlene.Haas@ilag.gov)

Date: January 31, 2023



Service List

Waqar Quereshi  
Agent and President La Fox BP, Inc.  
La Fox BP, Inc.  
994 Reading Street  
Bartlett, IL 60103  
WQloans@gmail.com  
(Via Email)

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren, Suite 630  
Chicago, IL 60605  
Brad.Halloran@illinois.gov  
(Via Email)

Mohammed Hussain, Registered Agent  
FOX RIVER PETRO, LLC  
117 S. Cook, Suite 195  
Barrington, IL 60010  
(Via U.S. Mail)

**CERTIFICATE OF SERVICE**

I, Arlene R. Haas, an Assistant Attorney General, certify that on the 31st day of January, 2023, I caused to be served the foregoing Notice of Filing and Proof of Service of Complaint upon Registered Agent of Fox River Petro LLC, on the parties named on the attached Service List by methods described.

/s/ Arlene R. Haas  
Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(773) 590-7836  
[Arlene.Haas@ilag.gov](mailto:Arlene.Haas@ilag.gov)

Electronic Filing Received Client's Office 00/30/2025

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Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, 18th Floor  
Chicago, IL 60602



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Mohammed M. Hussain, Registered Agent  
Fox River Petro, LLC  
117 S Cook St., Suite 195  
Barrington, IL 60010



9590 9402 7806 2152 7443 85

Article Number. (Transfer from service label)

7010 0290 0001 9495 5954

COMPLETE THIS SECTION ON DELIVERY

A. Signature  
*Tom Schaefer*  Agent  Addressee

B. Received by (Printed Name) *Tom Schaefer* C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

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- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery