



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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CLERK'S OFFICE

JUL 25 2006

STATE OF ILLINOIS
Pollution Control Board

July 24, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. OGOCO, Inc., an Illinois corporation***
PCB No. 06-16

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and MOTION FOR SUMMARY JUDGMENT, in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the documents to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristen Laughridge Gale", is written over the typed name.

Kristen Laughridge Gale
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KL/pp
Enclosures

RECEIVED
CLERK'S OFFICE

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y.

PCB NO. 06-16
(Enforcement-Water)

Respondent.

JUL 25 2006
STATE OF ILLINOIS
Pollution Control Board

To: William W. Austin, R.A.
307 N. Third Street
Effingham, IL 62401-3467

William Niemeyer
Ogoco, Inc.
16080 N. 1st Street
Beecher City, IL 61414

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR SUMMARY JUDGMENT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:

BY: Kristen Laughridge GALE
KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on July 24, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and MOTION FOR SUMMARY JUDGMENT

To: William W. Austin, R.A. 307 N. Third Street Effingham, IL 62401-3467	William Niemeyer Ogoco, Inc. 16080 N. 1 st Street Beecher City, IL 61414
--	--

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
OGOCO, INC., an Illinois corporation,)
)
Respondent.)

No. PCB 06-16
(Enforcement-Water)

RECEIVED
CLERK'S OFFICE

JUL 25 2006

STATE OF ILLINOIS
Pollution Control Board

MOTION FOR SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Supreme Court Rules 191 and 192, Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2004), and Section 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516, hereby moves for Summary Judgment against the Respondent, OGOCO, INC. No Answer or responsive pleadings to the Complaint have been filed and, therefore, no affirmative defenses have been pleaded. Complainant relies upon uncontroverted facts in the attached exhibits and in the Request for Admission of Facts Directed toward Ogoco, Inc. mailed to Respondent on May 23, 2006 and filed with the Illinois Pollution Control Board ("Board") on May 26, 2006. In support of this Motion, Complainant states as follows:

STATEMENT OF FACTS

1. Ogoco, Inc., ("Ogoco") is an Illinois corporation.
2. At some time before October 10, 2003 on dates better known to the Respondent, crude oil and salt water were released from two facilities operated by Ogoco located on Moccasin Road, near Little Moccasin Creek, in Effingham County, Illinois. See Exhibits A

(Affidavit of Thomas Powell), Exhibit B (October 10, 2003 photos) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

3. Approximately 10 barrels of crude oil and 10 barrels of salt water were released from the first facility, the David Reed #1 well and Reed #1 salt water disposal tank battery, due to a leak in the firewall and the overflowing of the tank battery's firewall. See Exhibits A (Affidavit of Thomas Powell), Exhibit B (October 10, 2003 photos) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

4. Approximately 10 barrels of crude oil and 10 barrels of salt water were released from the second facility, the Wachtel- Reed #2 tank battery, due to the overflowing of the tank battery's firewall. See Exhibits A (Affidavit of Thomas Powell), Exhibit B (October 10, 2003 photos) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

5. The salt water is a produced fluid generated by Ogoco's oil production activities and contains a large concentration of chlorides and varying amounts of petroleum constituents. See Exhibits A (Affidavit of Thomas Powell) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

6. The salt water and crude oil had been flowing out of the Ogoco facilities for several days prior to October 10, 2003. See Exhibits A (Affidavit of Thomas Powell) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

7. The salt water and crude oil flowed through a pasture and a wooded area approximately one-quarter of a mile and into Little Moccasin Creek. See Exhibits A (Affidavit of Thomas Powell), Exhibit B (October 10, 2003 photos) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

8. On October 10, 2003, a sheen was on Little Moccasin Creek and a drainage ditch that drained into the Little Moccasin Creek was heavily oiled. See Exhibits A (Affidavit of

Thomas Powell), Exhibit B (October 10, 2003 photos) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

9. The discharge of salt water from Ogoco's wells into Little Moccasin Creek altered its physical and chemical properties. See Exhibits A (Affidavit of Thomas Powell) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

10. The discharge of salt water from Ogoco's wells caused offensive conditions in the tributary because the waters contained bottom deposits and visible oil, and were discolored and turbid. See Exhibits A (Affidavit of Thomas Powell) and Exhibit C (Request for Admission of Fact Directed toward Ogoco, Inc.).

11. On August 4, 2005, Complainant filed its complaint.

12. On May 23, 2006, Complainant mailed to Respondent a Request for Admission of Fact. The Request for Admission of Fact was filed with the Board on May 26, 2006.

13. Respondent has failed to respond to the Request for Admission of Fact.

ARGUMENT

The Respondent violated Sections 12(a) and 12(d) of the Act, 415 ILCS 5/12(a), (d) (2004) and Sections 302.203, 304.105, and 304.106 of the Board's Water Pollution Regulations 35 Ill. Adm. Code 302.203, 304.105, 304.106 for releasing crude oil and salt water into waters of the State. There are no genuine issues as to any material facts.

- 1) The Respondent released crude oil and salt water in such a manner and place as to create a water pollution hazard because it flowed approximately one-quarter of a mile into Little Moccasin Creek
- 2) The Respondent caused or allowed water pollution by releasing crude oil and salt water into Little Moccasin Creek

- 3) The Respondent's release caused offensive conditions in Little Moccasin Creek in that there were visible oil and bottom deposits.
- 4) The Respondent's release caused a violation of the applicable water quality standards.

Furthermore, Supreme Court Rule 216 and Section 101.618 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618, states that each of the matters of fact of which admission is requested is admitted unless the party directed the admission files a verified response within 28 days. In this case, the Respondent has failed to file a response to the Request for Admission of Fact. Therefore, all facts stated within the Request for Admission of Fact are admitted.

VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

After the Board finds a violation, the Board considers the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), to create an appropriate remedy. Those factors are:

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, the Complainant states the following:

1. Human health and the environment were threatened by the Respondent's release of crude oil and salt water.
2. There is a social and economic benefit to the Respondent's crude oil business.

3. Pumping for oil and injecting saltwater into the oil wells is suitable for the area in which they are operating.

4. Not allowing a release of crude oil and salt water is both technically practicable and economically reasonable.

5. Respondent has not subsequently complied with the Act and the Board Regulations. Respondent took samples from the soil and sediment and had it analyzed for BTEX and PNAs for the crude oil spill. However, the Respondent did not take samples for analysis of sulfates and chlorides for the salt water spill.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

To impose a civil penalty, the Board must consider the factors contained within Section 42(h) of the Act, 415 ILCS 5/42(h)(2004). Those factors are:

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; and
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.

In response to these factors, the Complainant states as follows:

1. The Respondent cause or allowed the release of crude oil and salt water from its facility. The releases were at some time before October 10, 2003. On September 8, 2005, Respondent took soil samples to analyze for BTEX and PNAs. All of the results met the TACO cleanup objectives. However, to date, Respondent has not sampled the soil for chlorides and sulfates in response to the salt water release.
2. Respondent was not diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.
3. There was a nominal economic benefit for release of the crude oil and salt water.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-Eight Thousand Dollars (\$28,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.
6. Respondent did not self report the violations nor timely file a notification of the release.
7. The adjudication of this matter does not include a supplemental environmental project.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter a final order:

- A) Granting Complainant's motion for summary judgment;

B) Finding that the Respondent, OGOCO, INC., violated Sections 12(a), and 12(d), of the Act, 415 ILCS 5/21(a), (d), (2004) and Sections 302.203, 304.105, and 304.106 of the Board's Water Pollution Regulations 35 Ill. Adm. Code 302.203, 304.105, 304.106;

C) Order the Respondent, OGOCO, INC., to collect six (6) soil samples from the drainage paths North of Moccasin Road and two (2) sediment samples in the drainage way South of Moccasin Road, for a total of eight (8) samples and have the samples analyzed for chlorides and sulfates

D) Order the Respondent, OGOCO, INC., to cease and desist from any further violations of the Act and associated regulations;

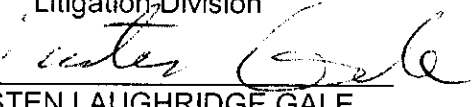
E) Award the Complainant a penalty of \$28,000 for the violations of the Act;

F) Grant such other relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
KRISTEN LAUGHRIDGE GALE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-7968
Dated: July 24, 2006



Wilmington Co. - 09000
Guide and Southern Power
Bank Building
Stewart





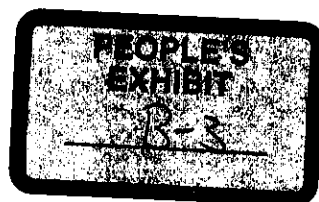
Ogoco
Crude oil overflow
from tank battery
Pearl





Ogoco

Crude oil in
"blue line" before
entering Little
Moccasin Creek
Howell





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CLERK'S OFFICE

MAY 26 2006

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 23, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. OGOCO, Inc., an Illinois corporation***
PCB No. 06-16

Dear Clerk Gunn:

Enclosed for filing please find the original and five copies of a NOTICE OF SERVICE OF DISCOVERY DOCUMENTS, in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the documents to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Kristen Laughridge Gale
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KL/pp
Enclosures



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

v.

OGOCO, INC., an Illinois corporation,

Respondent.

RECEIVED
CLERK'S OFFICE

MAY 26 2006

PCB NO. 06-16
(Enforcement-Water)

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

To: Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


PLEASE TAKE NOTICE that I have today served on the Respondent, c/o William W. Austin, R.A., 307 N. Third Street, Effingham, IL 62401-3467, and c/o William Niemeyer, Ogoco, Inc., 16080 N. 1st Street, Beecher City, IL 61414, the following discovery document in the above-referenced matter.

1. REQUEST FOR ADMISSION OF FACT.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 23, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on May 23, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF SERVICE OF DISCOVERY DOCUMENTS and REQUEST FOR ADMISSION OF FACT

To: William W. Austin, R.A.
307 N. Third Street
Effingham, IL 62401-3467

William Niemeyer
Ogoco, Inc.
16080 N. 1st Street
Beecher City, IL 62414

and the original and five copies of the NOTICE OF SERVICE OF DISCOVERY DOCUMENTS was sent by First Class Mail with postage thereon fully prepaid

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Illinois Pollution Control Board
State of Illinois Center
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Chicago, IL 60601

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To: Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



Kristen Laughridge Gale
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB 06-16
)	(Enforcement-Water)
)	
OGOCO, INC., an Illinois corporation,)	
)	
Respondent.)	

REQUEST FOR ADMISSION OF FACT

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Supreme Court Rule 216 and Section 101.618 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618 submits this request for the admission of the truth of the following specified relevant facts within 28 days after service hereof. Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney:

1. At some time before October 10, 2003 on dates better known to the Defendant, crude oil and salt water were released from two facilities operated by Ogoco, Inc. located on Mocassin Road, near Little Mocassin Creek, in Effingham County, Illinois.
2. Approximately 10 barrels of crude oil and 10 barrels of salt water were released from the first facility, the David Reed #1 well and Reed #1 salt water disposal tank battery, due to a leak in the well's firewall and the overflowing of the tank battery's firewall.
3. Approximately 10 barrels of crude oil and 10 barrels of salt water were released from the second facility, the Wachtel- Reed #2 tank battery, due to the overflowing of the tank

battery's firewall.

4. The salt water is a produced fluid generated by Ogoco, Inc.'s oil production activities and contains a large concentration of chlorides and varying amounts of petroleum constituents.

5. The salt water and crude oil had been flowing out of the wells for several days prior to October 10, 2003.

6. The salt water and crude oil flowed through a pasture and a wooded area approximately one-quarter of a mile and into Little Moccasin Creek.

7. On October 10, 2003, a sheen was on Little Moccasin Creek and a drainage ditch that drained into the Little Moccasin Creek was heavily oiled.

8. The discharge of salt water from Ogoco, Inc's wells into Little Moccasin Creek altered its physical and chemical properties.

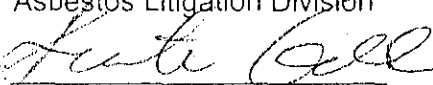
9. The discharge of salt water from Ogoco, Inc's wells caused offensive conditions in the tributary because the waters contained bottom deposits and visible oil, and were discolored and turbid.

Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62076
217/782-9031

Dated: 5/23/06