



Finally, on August 17, 2010, the People simultaneously filed motions to deem facts admitted against AET (AET Mot.) and EOR (EOR Mot.). The hearing officer gave respondents until September 3, 2010 to file a response. *See* Hearing Officer Order 8/31/10. Neither AET nor EOR have retained attorneys nor timely responded to the People's motions.

### **COMPLAINT**

On March 23, 2007, the People filed a five-count complaint (Comp.) against AET and EOR. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. The complaint concerns AET's and EOR's transport, storage, treatment, and disposal of hazardous acid to and at EOR's two oil fields. The first oil field ("Rink-Truax Lease") is located north of 2050 N. Road and 400 E. Road in South Fork Township, Christian County. The second oil field ("Galloway Lease") is located along Township Road 4.25E South East of the junction with Township Road 13S in Pawnee, Cotton Hill Township, Sangamon County.

The People allege that respondents violated Section 21(e) of the Environmental Protection Act (Act) (415 ILCS 21(e) (2008)) by transporting hazardous wastes into Illinois for storage and disposal at a site that does not meet the Act's requirements (count I). In addition, the People allege that EOR violated Sections 21(e) and (f)(1) of the Act (415 ILCS 21(e), (f)(1) (2008)) by storing, disposing, and/or abandoning hazardous wastes at a site that does not meet the Act's requirements, thereby conducting a hazardous-waste storage operation without a Resource Conservation and Recovery Act (RCRA) permit (count II). In count III the People allege that EOR violated 35 Ill. Adm. Code 703.121(a) and (b), 35 Ill. Adm. Code 703.150(a)(2), and Section 21(f)(2) of the Act (415 ILCS 21(f)(2) (2008)) by failing to apply for or acquire a RCRA permit before storing hazardous waste at their site.

Count IV alleges that EOR violated 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278, thereby violating Section 21(f)(2) of the Act. 415 ILCS 5/21(f)(2) (2008). According to the complaint, EOR violated these provisions under count IV by failing to follow proper procedures, take all necessary precautions, and keep and maintain all appropriate records regarding the management of the hazardous waste acid. Lastly, the People allege in Count V that EOR violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2008)), by injecting hazardous waste acid into wells without having an Underground Injection Control (UIC) permit and failing to comply with the listed requirements of Section 704.203.

### **PEOPLE'S MOTION TO DEEM FACTS ADMITTED**

The People filed their complaint against AET and EOR on March 23, 2007 and service was made on EOR's registered agent on March 23, 2007, and AET's registered agent on March 28, 2007. On March 24, 2008, the People served a Request to Admit Facts on AET. Section 101.618(f) of the Board's Procedural Rules provides that if a party does not respond to a request of admission within 28 days after service of the request, "each of the matters of fact and the genuineness of each document of which admission is requested" is deemed admitted. 35 Ill. Adm. Code 101.618(f). In addition, Section 101.400 of the Board's Procedural Rules requires

that any person not an individual must appear through “an attorney-at-law licensed and registered to practice law.” 35 Ill. Adm. Code 101.400. On April 22, 2008, Lori M. DeVito, filed an answer to complainant’s complaint on behalf of AET (AET’s Answer). The People argue that as a non-attorney, Lori DeVito is prohibited from representing AET, a corporation. AET Mot. at 3-4. Therefore, the People claim that as of April 22, 2008, 28 days after service of the People’s request, no licensed and registered attorney-at-law had filed a response on behalf of AET. AET Mot. at 4.

On May 25, 2008, four days after mailing, the People served a Request to Admit Facts on EOR. See 35 Ill. Adm. Code 101.300(c). On January 22, 2009, per a hearing officer order, the People again served their Request to Admit Facts on EOR. See Hearing Officer Order 1/20/09. Section 101.618(f) of the Board’s Procedural Rules requires that any response to a request of admission must contain a “sworn statement denying specifically the matters of which admission is requested.” 35 Ill. Adm. Code 101.618(f). Section 1-109 of the Illinois Code of Civil Procedure provides that any document required to be sworn is “hereby defined to include a certification of such pleading.” 735 ILCS 5/1-109 (2008). On February 20, 2009, Diane F. O’Neill, a licensed attorney-at-law, filed an answer to complainant’s request on behalf of EOR. The People claim that because EOR’s Answer was not signed by a registered agent or by Diane O’Neill and did not include a certification statement, the response does not constitute a valid denial of the People’s Request to Admit Facts. EOR Mot. at 4-5, citing People v. Strata Geological Services, Inc., PCB 06-119, slip op. at 10 (July 26, 2007). Therefore, the People maintain that as of February 20, 2009, 28 days after the second service of the People’s request, EOR had not filed a sworn and signed response.

### **DISCUSSION**

The Board’s rules require respondents to respond to a request to admit within 28 days after receipt of the People’s request. 35 Ill. Adm. Code 101.618(f). Respondents are to file a response denying or explaining the matters of which admission was requested. *Id.* In the absence of any denial or explanation, these matters are deemed to be admitted. *Id.* On August 17, 2010, the People filed simultaneous motions to deem facts admitted by respondents. Respondents were given until September 3, 2010, to respond to the People’s motions. See Hearing Officer Order 8/31/10. Respondents did not timely respond to the People’s motions. Respondents had 14 days to respond to the People’s Motion: “If no response is filed, the party will be deemed to have waived objection to the granting of the motion.” 35 Ill. Adm. Code 101.500(d). Thus any objection to granting the motion is waived.

As of the date of this order, respondents still have not responded to either the motion or the request to admit. Therefore, the Board finds that respondents’ failure to timely respond by an attorney-at-law has caused the matters of fact included in the People’s Request to Admit Facts to be taken as admitted. See 35 Ill. Adm. Code 101.618.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board