



On November 15, 2022, the People filed a motion for leave to file a first amended complaint, attached to which was the first amended complaint against La Fox BP and Fox River Petro (Comp.). On December 15, 2022, the Board granted the motion for leave and accepted the amended complaint for hearing. As of the date of this opinion and order, neither respondent has filed an answer or pleading responding to the complaint.

On October 30, 2023, the People filed separate motions to deem facts admitted and for summary judgment against La Fox BP (La Fox BP Mot.) and Fox River Petro (Fox River Petro Mot.). As of the date of this opinion and order, neither respondent has responded to the motions.

### **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) (2022).

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 (2022). 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 (2022).

Section 218.586(a)(7) of the Board’s 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’s 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’s air pollution regulations states that:

[t]he 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(c) of the Board’s air pollution regulations states that:

[n]o 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(d)(1) of the Board's air pollution regulations states that:

[g]asoline 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's air pollution regulations states that,

[n]o 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's air pollution regulations states that:

[t]he 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).

### **SUMMARY OF FIRST AMENDED COMPLAINT**

The complaint alleges that, from January 1, 2015, to February 20, 2020, or dates better known to it, La Fox BP operated the facility. It further alleges that, from February 20, 2020, or dates better known to it, Fox River Petro owned and operated the facility. Comp. at 2. The facility is a "gasoline dispensing operation" as defined in the Board' regulations. *Id.* at 4, citing 35 Ill. Adm. Code 218.586(a)(7).

The complaint alleges that, from January 1, 2015, to February 20, 2020, or dates better known to it, La Fox BP operated gasoline dispensing pumps at the facility that emitted volatile organic compounds (VOCs) into the environment. Comp. at 2, 4. The complaint further alleges that, from February 20, 2020, or dates better known to it, Fox River Petro owned and operated gasoline dispensing pumps at the facility that emitted VOCs into the environment. *Id.* VOCs are

“contaminants” as defined in the Environmental Protection Act (Act). *Id.* at 3, citing 415 ILCS 5.3.165 (2022).

The complaint alleges that, by December 31, 2016, La Fox BP was required to decommission its vapor collection and control system and then to submit a decommissioning checklist, certification, and test results within 30 days after competing decommissioning activities. *Comp.* at 4-5, citing 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C). The complaint further alleges that, on February 20, 2020, Fox River Petro was required to decommission its vapor collection and control system and then to submit a decommissioning checklist, certification, and test results within 30 days after competing decommissioning activities. *Comp.* at 5, citing 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C).

The complaint alleges that neither respondent timely decommissioned its vapor collection and control system. *Comp.* at 6. It further alleges that neither La Fox BP nor Fox River Petro timely submitted a decommissioning checklist, certification, and test results. *Id.* at 5.

In its single count, the complaint alleges that respondents 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), 218.586(i)(2)(C)). *Comp.* at 4-5. By violating these regulations, the complaint alleges that respondents violated Section 9(a) of the Act (415 ILCS 5/9(a) (2022)). *Comp.* at 6.

### **MOTIONS TO DEEM FACTS ADMITTED**

The Board’s procedural rules provide that, except under circumstances not presented in this case, “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. . . .” 35 Ill. Adm. Code 103.204(d).

#### **La Fox BP**

The People argue that, by failing to answer the complaint within 60 days or filing a motion that would extend that deadline, La Fox BP “has admitted the material allegation asserted in the First Amended Complaint.” La Fox BP Mot. at 3, citing 35 Ill. Adm. Code 103.204. The People request that the Board find that La Fox BP has admitted the allegations. *Id.* at 4.

La Fox BP failed to answer the complaint within 60 days. It also did not file a motion that would have extended the 60-day deadline. *See* 35 Ill. Adm. Code 103.204(d), 101.506. La Fox BP also failed to respond to the People’s motion to deem facts admitted and waives objection to the Board granting it. *See* 35 Ill. Adm. Code 101.500(d). The Board grants the People’s motion and deems that La Fox BP has admitted the material allegations in the People’s first amended complaint. *See* Ill. Adm. Code 103.204(d).

#### **Fox River Petro**

The People argue that, by failing to answer the complaint within 60 days or filing a motion that would extend that deadline, Fox River Petro “has admitted the material allegation

asserted in the First Amended Complaint.” Fox River Petro Mot. at 3, citing 35 Ill. Adm. Code 103.204. The People request that the Board find that Fox River Petro has admitted the allegations. *Id.*

Fox River Petro failed to answer the complaint within 60 days. It also did not file a motion that would have extended the 60-day deadline. *See* 35 Ill. Adm. Code 103.204(d), 101.506. Fox River Petro also failed to respond to the People’s motion to deem facts admitted and waives objection to the Board granting it. *See* 35 Ill. Adm. Code 101.500(d). The Board grants the People’s motion and deems that Fox River Petro has admitted the material allegations in the People’s first amended complaint. *See* Ill. Adm. Code 103.204(d).

### **FACTS DEEMED ADMITTED**

From January 1, 2015, to February 20, 2020, or dates better known to it, La Fox BP operated a gasoline dispensing operation located at 380 North La Fox Street in South Elgin, Kane County. Comp. at 2, 4. At that facility, La Fox BP operated gasoline dispensing pumps that emitted volatile organic compounds (VOCs) into the environment. *Id.* at 2.

By December 31, 2016, La Fox BP was required to decommission its vapor collection and control system and then to submit a decommissioning checklist, certification, and test results within 30 days after competing decommissioning activities. Comp. at 4-5. On February 20, 2020, Fox River Petro was required to decommission its vapor collection and control system and then to submit a decommissioning checklist, certification, and test results within 30 days after competing decommissioning activities. Comp. at 5.

Neither respondent timely decommissioned its vapor collection and control system. Comp. at 6. Neither respondent timely submitted a decommissioning checklist, certification, and test results. *Id.* at 5.

By violating these regulatory requirements, La Fox BP caused or threatened or allowed the emission of VOCs into the environment so as to violate Board regulations. Comp. at 6, citing 415 ILCS 5/9(a) (2022).

### **MOTIONS FOR SUMMARY JUDGMENT**

A party has 14 days from receiving a 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). Neither La Fox BP nor Fox River Petro responded to the People’s motion or requested that the Board extend the response deadline. Both La Fox BP and Fox River Petro have waived any objection to the Board granting the People’s motions for summary judgment.

The Board next reviews the standards for considering motions for summary judgment and then decides the motions.

### **Standard 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 Motions for Summary Judgment**

#### **La Fox BP**

The People argue that the facts alleged in the complaint and deemed admitted by La Fox BP are sufficient to establish that La Fox BP 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), 218.586(i)(2)(C)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)). La Fox BP Mot. at 3. The People assert that there are no genuine issues of fact and that the People are entitled to judgment as a matter of law. *Id.* at 4.

La Fox BP operated a gasoline dispensing operation that emitted VOCs, a contaminant as defined in the Act. 415 ILCS 5/3.165 (2022). The Board’s air pollution regulations required 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. 35 Ill. Adm. Code 218.586(b), (c), (i). The People alleged that the facility operated by La Fox BP is a “gasoline dispensing operation” but did not allege that La Fox BP dispensed an average monthly volume of more than 10,000 gallons of motor vehicle fuel. *See* La Fox BP Comp. at 3-4; 35 Ill. Adm. Code 218.586(a)(7).

However, the facts deemed admitted include that La Fox BP had a vapor collection and control system that it was required to decommission. La Fox BP Comp. at 4-5. A reasonable person would infer from this undisputed fact that La Fox BP dispensed an average monthly volume of more than 10,000 gallons of motor vehicle fuel and therefore was required to install the vapor collection and control system. *See* Makowski, 249 Ill. App 3d at 119. The facts deemed admitted establish that La Fox BP 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 Illinois Environmental Protection Agency (IEPA) 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 La Fox BP as the non-moving party. Doing so, the Board finds that this case presents no genuine issue of material fact. The facts deemed admitted establish that La Fox BP violated Section 218.586(i)(1)(B) by failing to timely decommission its vapor collection and control system and violated Section 218.586(i)(2)(C) by failing to timely submit a decommissioning checklist, certification, and test results to IEPA. By doing so, La Fox BP caused, threatened, or allowed the discharge or emission of VOCs into the environment so as to violate Board regulations, violating Section 9(a) of the Act. The Board finds that the People are entitled to judgment against La Fox BP as a matter of law.

The Board grants the People's motion for summary judgment, finding that La Fox BP violated Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations and Section 9(a) of the Act as alleged in the People's first amended complaint.

### **Fox River Petro**

The People argue that the facts alleged in the complaint and deemed admitted by Fox River Petro are sufficient to establish that Fox River Petro 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), 218.586(i)(2)(C)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)). Fox River Petro Mot. at 3-4. The People assert that there are no genuine issues of fact and that the People are entitled to judgment as a matter of law. *Id.* at 4.

Fox River Petro operated a gasoline dispensing operation that emitted VOCs, a contaminant as defined in the Act. 415 ILCS 5/3.165 (2022). The Board's air pollution regulations required 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. 35 Ill. Adm. Code 218.586(b), (c), (i). The People alleged that the facility owned and operated by Fox River Petro is a "gasoline dispensing operation" but did not allege that Fox River Petro dispensed an average monthly volume of more than 10,000 gallons of motor vehicle fuel. *See* Comp. at 3-4; 35 Ill. Adm. Code 218.586(a)(7).

However, the facts deemed admitted include that Fox River Petro had a vapor collection and control system that it was required to decommission. Comp. at 4-5. A reasonable person would infer from this undisputed fact that Fox River Petro dispensed an average monthly volume of more than 10,000 gallons of motor vehicle fuel and therefore was required to install the vapor collection and control system. *See Makowski*, 249 Ill. App 3d at 119. The facts deemed admitted establish that Fox River Petro 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 IEPA 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 Fox River Petro as the non-moving party. Doing so, the Board finds that this case presents no genuine issue of material fact. The facts deemed admitted establish that Fox River Petro violated Section 218.586(i)(1)(B) by failing to timely decommission its vapor collection and control system and violated Section 218.586(i)(2)(C) by failing to timely submit a decommissioning checklist, certification, and test results to IEPA. By doing so, Fox River Petro caused, threatened, or allowed the discharge or emission of VOCs into the environment so as to violate Board regulations, violating Section 9(a) of the Act. The Board finds that the People are entitled to judgment against Fox River Petro as a matter of law.

The Board grants the People's motion for summary judgment, finding that Fox River Petro violated Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations and Section 9(a) of the Act as alleged in the People's first amended complaint.

### **REMEDY**

Having found that respondents violated Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of Board's air pollution regulations and Section 9(a) of the Act, the Board next determines an appropriate remedy including any penalties. To evaluate the record to determine a remedy, the Board first considers the factors of Section 33(c) of the Act (415 ILCS 5/33(c) (2022)). If, after considering those factors, the Board decides to impose a civil penalty, then the Board considers the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2022)) to determine the appropriate amount of civil penalty.

Section 33(c) of the Act states that,

[i]n 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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2022).

Section 42(h) of the Act states that,

[i]n 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) (2022).

### **La Fox BP**

The People request that the Board order La Fox BP to provide notice of intent to decommission to the Agency; decommission its vapor collection and control system; and submit a decommissioning checklist, certification, and test results to the Agency. La Fox BP Mot. at 5. The People also argue that the Board should assess a civil penalty of \$10,000 against La Fox BP. *Id.* at 5, 7.

The People's motion addressed the Section 33(c) factors: 1) VOC emissions from La Fox BP's facility threatened human health and the environment, and its violations hindered IEPA's information-gathering responsibilities; 2) "[t]here is social and economic benefit to the Facility"; 3) "[o]peration of the facility was and is suitable for the area in which it is located;" 4) both timely decommissioning of its vapor collection and control system and timely submitting a decommissioning checklist, a certification, and test results to IEPA were technically practicable and economically reasonable; and 5) La Fox BP has not subsequently complied with the Act and Board regulations. La Fox BP Mot. at 6-7. Based on these factors, the People ask the Board to assess a civil penalty of at least \$10,000. *Id.* at 4, 7.

The Board agrees with the People that La Fox BP's violations threatened human health and the environment and impaired IEPA's ability to gather information. This first Section 33(c) factor weighs against La Fox BP.

The Board also agrees with the People that La Fox BP's gasoline dispensing facility is suitable for the area in which it is located and that the facility has social and economic value. The second and third factors weigh in La Fox BP's favor.

The Board finds that timely decommissioning the vapor collection and control system and submitting a decommissioning checklist, a certification, and test results are both technically practicable and economically reasonable. The fourth factor weighs against La Fox BP.

The People report that La Fox BP has not subsequently complied with the Act or Board regulations, and the fifth factor weighs against La Fox BP.

La Fox BP's violations threatened human health and the environment and hindered IEPA's ability to gather information. Decommissioning the vapor collection and control system and submitting decommissioning reports under the Act and Board regulations were both practicable and economically feasible, yet La Fox BP has not complied. Having weighed the Section 33(c) factors, the Board finds that they favor requiring La Fox BP to pay a civil penalty. The Board next applies the factors of Section 42(h) to consider the \$10,000 civil penalty requested by the People.

The People's motion addressed the Section 42(h) factors: 1) La Fox BP's violations began on January 30, 2017, and continued through its sale of the facility on or about February

20, 2020, for more than three years; 2) La Fox BP failed to act diligently, “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;” 3) the \$10,000 requested penalty includes any economic benefit that La Fox BP may have accrued as a result of its noncompliance; 4) the requested penalty will deter further violations and encourage future compliance by La Fox BP and others similarly situated; 5) La Fox BP has no previously adjudicated violations; 6) self-disclosure was not at issue; 7) La Fox BP did not offer to perform a supplemental environmental project; and 8) a Compliance Commitment Agreement was not at issue. La Fox BP Mot. at 9-10.

La Fox BP’s violations of the Act and Board regulations continued for three years. The duration of the violations is extensive. La Fox BP showed a lack of diligence in complying with the Act and Board regulations, and its violations threatened human health and the environment and hindered the Agency’s ability to gather information. *Id.* The first two Section 42(h) factors weigh against La Fox BP.

The Board agrees with the People that the requested civil penalty of \$10,000 includes any economic benefit that La Fox BP may have accrued as a result of its noncompliance. The Board also finds that the suggested \$10,000 penalty will deter further violations by La Fox BP and encourage voluntary compliance with the Act and the Board’s air pollution regulations. The third and fourth weigh against La Fox BP and support the People’s requested penalty.

La Fox BP has no previously adjudicated violations. This factor weighs in its favor. Neither self-disclosure nor a Compliance Commitment Agreement were at issue in this matter. La Fox BP did not offer to 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, the lack of diligence in complying with the Act and regulations, and the resulting threat to human health and the environment. The requested penalty amount will serve to encourage future compliance by La Fox BP and others similarly situated and recoup any economic benefit La Fox BP may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$10,000 against La Fox BP.

### **Fox River Petro**

The People request that the Board order Fox River Petro to provide notice of intent to decommission to the Agency; decommission its vapor collection and control system; and submit a decommissioning checklist, certification, and test results to the Agency. Fox River Petro Mot. at 5. The People also argue that the Board should assess a civil penalty of \$10,000 against Fox River Petro. *Id.* at 5, 7.

The People’s motion addressed the Section 33(c) factors: 1) VOC emissions from Fox River Petro’s facility threatened human health and the environment, and its violations hindered the Agency’s information-gathering responsibilities; 2) “[t]here is social and economic benefit to

the Facility”; 3) “[o]peration of the Facility was and is suitable for the area in which it is located;” 4) both timely decommissioning of its vapor collection and control system and timely submitting a decommissioning checklist, a certification, and test results to IEPA were technically practicable and economically reasonable; and 5) Fox River Petro has not subsequently complied with the Act and Board regulations. Fox River Petro Mot. at 6-7. Based on these factors, the People ask the Board to assess a civil penalty of at least \$10,000. *Id.* at 7.

The Board agrees with the People that Fox River Petro’s violations threatened human health and the environment and impaired the Agency’s ability to gather information. This first Section 33(c) factor weighs against Fox River Petro.

The Board also agrees with the People that Fox River Petro’s gasoline dispensing facility is suitable for the area in which it is located and that the facility has social and economic value. The second and third factors weigh in Fox River Petro’s favor.

The Board finds that timely decommissioning the vapor collection and control system and submitting a decommissioning checklist, a certification, and test results are both technically practicable and economically reasonable. The fourth factor weighs against Fox River Petro.

The People report that Fox River Petro has not subsequently complied with the Act or Board regulations, and the fifth factor weighs against Fox River Petro.

Fox River Petro’s violations threatened human health and the environment and hindered IEPA’s ability to gather information. Decommissioning the vapor collection and control system and submitting decommissioning reports under the Act and Board regulations were both practicable and economically feasible, yet the record shows that Fox River Petro has not complied. Having weighed the Section 33(c) factors, the Board finds that they favor requiring Fox River Petro to pay a civil penalty. The Board next applies the factors of Section 42(h) to consider the \$10,000 civil penalty requested by the People.

The People’s motion addressed the Section 42(h) factors: 1) Fox River Petro’s violations began on February 20, 2020, and continued to the date of the People’s motion for more than three and one-half years; 2) Fox River Petro failed to act diligently, “as evidenced by its failure to timely decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results;” 3) the requested \$10,000 penalty includes any economic benefit that Fox River Petro may have accrued as a result of noncompliance; 4) the requested penalty will deter further violations and encourage future compliance by Fox River Petro and others similarly situated; 5) Fox River Petro has no previously adjudicated violations; 6) self-disclosure was not at issue; 7) Fox River Petro did not offer to perform a supplemental environmental project; and 8) a Compliance Commitment Agreement was not at issue. Fox River Petro Mot. at 9-10.

Fox River Petro’s violations of the Act and Board regulations continued for more than three years. The duration of the violations is extensive. Fox River Petro showed a lack of diligence in complying with the Act and Board regulations, and its violations threatened human

health and the environment and hindered the Agency's ability to gather information. *Id.* The first two Section 42(h) factors weigh against Fox River Petro.

The Board agrees with the People that the requested civil penalty of \$10,000 includes any economic benefit that Fox River Petro may have accrued as a result of its noncompliance. The Board also finds that the suggested \$10,000 penalty will deter further violations by Fox River Petro and encourage voluntary compliance with the Act and the Board's air pollution regulations. The third and fourth weigh against Fox River Petro and support the People's requested penalty.

Fox River Petro has no previously adjudicated violations. This factor weighs in its favor. Neither self-disclosure nor a Compliance Commitment Agreement were at issue in this matter, and Fox River Petro did not offer to 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, the lack of diligence in complying with the Act and regulations, and the resulting threat to human health and the environment. The requested penalty amount will serve to encourage future compliance by Fox River Petro and others similarly situated and recoup any economic benefit Fox River Petro may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$10,000 against Fox River Petro.

### **CONCLUSION**

The Board grants the People's unopposed motions to deem facts admitted by the respondents. Based on 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 motions for summary judgment against the respondents.

The Board finds that La Fox BP 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), 218.586(i)(2)(C)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022) as alleged in the People's first amended complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2022)), the Board enters an order requiring La Fox BP to pay a civil penalty of \$10,000, as requested by the People.

The Board finds that Fox River Petro 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), 218.586(i)(2)(C)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022) as alleged in the People's first amended complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2022)), the Board enters an order requiring Fox River Petro to pay a civil penalty of \$10,000, as requested by the People.

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

### **ORDER**

1. The Board grants the People's unopposed motions against La Fox BP to deem facts admitted and for summary judgment and finds that La Fox BP violated Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board's air pollution regulations (35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)).
2. The Board grants the People's unopposed motions against Fox River Petro to deem facts admitted and for summary judgment and finds that Fox River Petro violated Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board's air pollution regulations (35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)).
3. The Board directs La Fox BP and Fox River Petro to provide notice of intent to decommission the vapor collection and control system to the Illinois Environmental Protection Agency; decommission the vapor collection and control system; and submit a decommissioning checklist, certification, and test results to the IEPA.
4. La Fox BP must pay a civil penalty of \$10,000 no later than Monday, January 8, 2024, 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 La Fox BP's federal employer identification number must be included on the certified check or money order.
5. Fox River Petro must pay a civil penalty of \$10,000 no later than Monday, January 8, 2024, 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 Fox River Petro's federal employer identification number must be included on the certified check or money order.
6. Both La Fox BP and Fox River Petro 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.
7. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2022)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2022)).

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) (2022); *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.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Illinois Attorney General's Office Attn.: Jason Clark, Asst. Attorney General Environmental Bureau 69 West Washington Street, Suite 1800 Chicago, Illinois 60602 <a href="mailto:Jason.Clark@ilag.gov">Jason.Clark@ilag.gov</a>	Illinois Pollution Control Board Attn.: Don A. Brown, Clerk 60 E. Van Buren Street, Suite 630 Chicago, Illinois, 60605 <a href="mailto:don.brown@illinois.gov">don.brown@illinois.gov</a>
La Fox BP, Inc. Attn.: Waqar Quereshi, President and Agent 994 Reading Street Bartlett, Illinois 60103 <a href="mailto:WQloans@gmail.com">WQloans@gmail.com</a>	
Fox River Petro, LLC Mohammed Hussain, Registered Agent 117 South Cook, Suite 195 Barrington, Illinois 60010	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 7, 2023, by a vote of 4-0.



Don A. Brown, Clerk  
 Illinois Pollution Control Board