

Yafai and Quick Gas. The Board then provides statutory and regulatory background before addressing the motions to deem facts admitted and the uncontested facts. The Board next considers the People's motions for summary judgment and proposed remedies. The Board then reaches its conclusions and issues its order.

PROCEDURAL HISTORY

On August 30, 2023, the People filed a complaint against Respondents (Comp.), which the Board accepted for hearing on September 7, 2023.

On September 25, 2023, the People filed affidavits of service of the complaint on Nasser Yafai on September 25, 2023; on CYPR Harvey on September 19, 2023; and Harvey Real Estate on September 19, 2023. On October 2, 2023, the People filed an affidavit of service on Quick Gas on September 29, 2023. As of the date of this opinion and order, neither CYPR Harvey nor Harvey Real Estate has filed an answer or pleading responding to the complaint or requested an extended deadline to do so.

On December 1, 2023, the People filed a motion for relief from the hearing requirements and stipulation and proposed settlement with respondents Nasser Yafai and Quick Gas. On December 7, 2023, the Board directed its Clerk to provide the required notice of the motion and stipulation and proposed settlement, which appeared in the *Daily Southtown* on December 12, 2023.

On December 6, 2023, the People filed separate motions to deem facts admitted and for summary judgment against CYPR Harvey (CYPR Harvey Mot.) and Harvey Real Estate (Harvey Real Estate Mot.). As of the date of this opinion and order, neither CYPR Harvey nor Harvey Real Estate has responded to the motion or requested an extended deadline to do so.

SUMMARY OF PEOPLE'S COMPLAINT

The complaint alleges that, from at least January 1, 2017, to September 26, 2018, or dates better known to him, Nasser Yafai owned or operated the Facility. Comp. at 2. It also alleges that, from at least January 1, 2017, to September 26, 2018, or dates better known to it, Quick Gas owned or operated the Facility. Comp. at 2.

The complaint alleges that, from September 27, 2018, through the filing of the People's complaint, CYPR Harvey operated and continues to operate the Facility. Comp. at 2. It also alleges that, from September 27, 2018, through the filing of the People's complaint, Harvey Real Estate owned the Facility. *Id.*

The complaint alleges that each of the four respondents is a "person" as the Act defines that term. Comp. at 4, citing 415 ILCS 5/3.315 (2022). It further alleges that each of the four respondents is an "owner" or "operator" as the Board's rules define those terms. Comp. at 5, citing 35 Ill. Adm. Code 218.586(a)(11).

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, 2017, to September 26, 2018, or dates better known to them, Nasser Yafai and Quick Gas owned or operated gasoline dispensing pumps at the Facility that emit volatile organic compounds (VOCs) into the environment. Comp. at 3, 6. The complaint further alleges that, from September 27, 2018, through the filing of the People’s complaint or dates better known to them, CYPR Harvey and Harvey Real Estate owned or operated gasoline dispensing pumps at the Facility that emit VOCs into the environment. *Id.* at 3, 7. VOCs are “contaminants” as defined in the Act. *Id.* at 4, citing 415 ILCS 5/3.165 (2022).

The complaint alleges that, by January 1, 2017, Nasser Yafai and Quick Gas were required to decommission the vapor collection and control system at the Facility and then to submit a decommissioning checklist, certification, and test results within 30 days after completing decommissioning activities. Comp. at 5, citing 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C). It further alleges on information and belief that, from January 1, 2017, to September 26, 2018, or dates better known to them, Naser Yafai and Quick Gas failed to timely decommission the Facility’s vapor collection and control system. Comp. at 6. The complaint further alleges that, as of the date of filing the People’s complaint, Nasser Yafai and Quick Gas have failed to submit a decommissioning checklist, certification, or tests results to the Illinois Environmental Protection Agency (IEPA or Agency). *Id.* at 5, 6.

The complaint alleges that, after September 27, 2018, CYPR Harvey and Harvey Real Estate were required to decommission the vapor collection and control system at the Facility and then to submit a decommissioning checklist, certification, and test results within 30 days after completing decommissioning activities. Comp. at 5-6, citing 35 Ill. Adm. Code 218.586(i)(1)(B), 218.586(i)(2)(C). It further alleges on information and belief that, from September 27, 2018, through the filing of the People’s complaint, CYPR Harvey and Harvey Real Estate failed to timely decommission the Facility’s vapor collection and control system. Comp. at 6. The complaint further alleges that, as of the date of filing the People’s complaint, CYPR Harvey and Harvey Real Estate have not submitted a decommissioning checklist, certification, and test results to the Agency. *Id.* at 6.

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 6-7. By violating these regulations, the complaint further alleges that Respondents violated Section 9(a) of the Act (415 ILCS 5/9(a) (2022)). *Id.*

The complaint requests that the Board find that respondents committed the alleged violations and order that respondents CYPR Harvey and Harvey Real Estate decommission the vapor collection and control system and submit a decommissioning checklist, certification, and test results to the Agency. Comp. at 7-8. The People also requested that the Board assess against the Respondents a civil penalty of \$50,000 for each violation of the Act and regulations and an additional penalty of \$10,000 for each day of violation. *Id.* at 8. Finally, the People requested that the Board order the Respondents to cease and desist from the violations that were the subject of the complaint. *Id.* at 7.

PROPOSED SETTLEMENT WITH RESPONDENTS
NASSER YAFAI AND QUICK GAS

As noted above, on December 1, 2023, the People filed a stipulation and proposed settlement with respondents Nasser Yafai and Quick Gas, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2022)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2022)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Daily Southtown* on December 12, 2023. The Board did not receive any requests for hearing. The Board grants the request for relief from the hearing requirement for respondents Nasser Yafai and Quick Gas. *See* 415 ILCS 5/31(c)(2) (2022); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Nasser Yafai's and Quick Gas' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2022)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Nasser Yafai and Quick Gas admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2022)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, Yasser Nafai and Quick Gas agree to jointly and severally pay a civil penalty of \$5,000 within 30 days after the date of this order. The People and Nasser Yafai and Quick Gas have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement, which it addresses below in its conclusion and order.

STATUTORY AND REGULATORY PROVISIONS

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

[c]ause 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 [Illinois Environmental Protection] 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).

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).

CYPR Harvey

The People argue that, by failing to answer the complaint within 60 days or filing a motion that would extend that deadline, CYPR Harvey "has admitted the material allegation asserted in the Complaint." CYPR Harvey Mot. at 2-3, citing 35 Ill. Adm. Code 103.204. The People request that the Board find that CYPR Harvey has admitted all material allegations. *Id.* at 3.

CYPR Harvey 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. CYPR Harvey 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 CYPR Harvey has admitted the material allegations in the People's complaint. *See* Ill. Adm. Code 103.204(d).

Harvey Real Estate

The People argue that, by failing to answer the complaint within 60 days or filing a motion that would extend that deadline, Harvey Real Estate "has admitted the material allegation asserted in the Complaint." Harvey Real Estate Mot. at 2-3, citing 35 Ill. Adm. Code 103.204. The People request that the Board find that Harvey Real Estate has admitted all material allegations. *Id.* at 3.

Harvey Real Estate 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. Harvey Real Estate 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 Harvey Real Estate has admitted the material allegations in the People's complaint. *See* Ill. Adm. Code 103.204(d).

FACTS DEEMED ADMITTED

From September 27, 2018, through the filing of the People’s complaint on August 30, 2023, or dates better known to them, CYPR Harvey and Harvey Real Estate owned or operated the Facility. Comp. at 2; *see* Comp. at 5, citing 35 Ill. Adm. Code 218.586(a)(11).

Both CYPR Harvey and Harvey Real Estate are a “person” as the Act defines that term. Comp. at 4, citing 415 ILCS 5/3.315 (2022). The Facility is a “gasoline dispensing operation” as defined in Board regulations. Comp. at 4, citing 35 Ill. Adm. Code 218.586(a)(7).

From September 27, 2018, through the filing of the People’s complaint on August 30, 2023, or dates better known to them, CYPR Harvey and Harvey Real Estate owned or operated gasoline dispensing pumps at the Facility that emit VOCs into the environment. Comp. at 3, 7. VOCs are “contaminants” as defined in the Act. *Id.* at 4, citing 415 ILCS 5.3.165 (2022).

After September 27, 2018, CYPR Harvey and Harvey Real Estate were required to decommission the Facility’s 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 5-6, citing 35 Ill. Adm. Code 218.586(i)(1)(B). 218.586(i)(2)(C).

Neither CYPR Harvey nor Harvey Real Estate timely decommissioned its vapor collection and control system. Comp. at 6-7. As of the filing of the People’s complaint on August 30, 2023, neither CYPR Harvey nor Harvey Real Estate had timely submitted a decommissioning checklist, certification, and test results to the Agency. *Id.* at 6.

By violating these regulatory requirements, CYPR Harvey and Harvey Real Estate caused or threatened or allowed the emission of VOCs into the environment so as to violate Board regulations. Comp. at 7, citing 415 ILCS 5/9(a) (2022).

MOTIONS FOR SUMMARY JUDGMENT

A party has 14 days to respond after receiving a motion for summary judgment. *See* 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 CYPR Harvey nor Harvey Real Estate responded to the People’s motion or requested that the Board extend the response deadline. Both CYPR Harvey and Harvey Real Estate 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); *see 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

CYPR Harvey

The People argue that the facts alleged in the complaint and deemed admitted by CYPR Harvey are sufficient to establish that CYPR Harvey 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)). CYPR Harvey Mot. at 3. The People assert that there are no genuine issues of fact and that the People are entitled to summary judgment as a matter of law. *Id.* at 4.

CYPR Harvey owned or 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 or operated by CYPR Harvey is a “gasoline dispensing operation” but did not allege that CYPR Harvey 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 CYPR Harvey had a vapor collection and control system that it was required to decommission. *Comp.* at 5-6. A reasonable person would infer from this undisputed fact that CYPR Harvey 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 CYPR Harvey was required by Section 218.586(i)(1)(B) to decommission its vapor collection and control system after September 27, 2018, 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

CYPR Harvey 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 CYPR Harvey violated Section 218.586(i)(1)(B) by failing to timely decommission its vapor collection and control system and Section 218.586(i)(2)(C) by failing to timely submit a decommissioning checklist, certification, and test results to the Agency. By doing so, CYPR Harvey 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 CYPR Harvey as a matter of law.

The Board grants the People's motion for summary judgment, finding that CYPR Harvey 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 complaint.

Harvey Real Estate

The People argue that the facts alleged in the complaint and deemed admitted by Harvey Real Estate are sufficient to establish that Harvey Real Estate 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)). Harvey Real Estate 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.*

Harvey Real Estate owned or 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 or operated by Harvey Real Estate is a "gasoline dispensing operation" but did not allege that Harvey Real Estate 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 Harvey Real Estate 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 Harvey Real Estate 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 Harvey Real Estate was required by Section 218.586(i)(1)(B) to decommission its vapor collection and control system after September 27, 2018, and required by Section 218.586(i)(2)(C) to submit a decommissioning checklist, a certification, and test results to the Agency within 30 days after completing decommissioning procedures.

On summary judgment, to determine whether a genuine issue of material fact exists, the Board must construe the record strictly against the People as movant and liberally in favor of Harvey Real Estate 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 Harvey Real Estate 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, Harvey Real Estate 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 Harvey Real Estate as a matter of law.

The Board grants the People's motion for summary judgment, finding that Harvey Real Estate 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 complaint.

REMEDY

Having found that CYPR Harvey and Harvey Real Estate 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).

CYPR Harvey

The People's motion addresses the Section 33(c) factors: 1) VOC emissions from CYPR Harvey'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) CYPR Harvey has not subsequently complied with the Act and Board regulations. CYPR Harvey Mot. at 5.

The People request that the Board issue an order requiring CYPR Harvey to provide notice of decommissioning to the Agency; decommission its vapor collection and control system; and submit a decommissioning checklist, certification, and test results to the Agency. CYPR Harvey Mot. at 5; *see* Comp. at 7. The People also argue that the Board should assess a civil penalty of \$10,000 against CYPR Harvey. CYPR Harvey Mot. at 4, 9.

The Board agrees with the People that CYPR Harvey's violations threatened human health and the environment and impaired the Agency's ability to gather information. The Board weighs the first Section 33(c) factor against CYPR Harvey.

The Board also agrees with the People that CYPR Harvey'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 CYPR Harvey's favor.

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

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

CYPR Harvey's violations threatened human health and the environment and hindered the Agency'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 CYPR Harvey has not complied. Having weighed the Section 33(c) factors, the Board finds that they favor requiring CYPR Harvey to provide notice of decommissioning to the Agency; decommission its vapor collection and control system; and submit a decommissioning checklist, certification, and test results to the Agency and also to pay a civil penalty. Next, the Board 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) CYPR Harvey's violations began on September 27, 2018, and continued through the date of filing the People's motion on December 6, 2023, for more than five years; 2) CYPR Harvey 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

requested \$10,000 penalty includes any economic benefit that CYPR Harvey “may have accrued as a result of its noncompliance;” 4) the requested penalty will deter further violations and encourage future compliance by CYPR Harvey and others similarly situated; 5) the People do not know of previously adjudicated violations by CYPR Harvey; 6) self-disclosure was not at issue; 7) CYPR Harvey did not offer to perform a supplemental environmental project; and 8) a Compliance Commitment Agreement was not at issue. CYPR Harvey Mot. at 8-10.

CYPR Harvey’s violations of the Act and Board regulations continued for more than five years. The duration of the violations is extensive. CYPR Harvey 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 Board weighs the first two Section 42(h) factors against CYPR Harvey.

The Board agrees with the People that the requested civil penalty of \$10,000 includes any economic benefit that CYPR Harvey may have accrued as a result of its noncompliance. The Board also finds that the suggested \$10,000 penalty will deter further violations by CYPR Harvey and encourage voluntary compliance with the Act and the Board’s air pollution regulations. The third and fourth weigh against CYPR Harvey and support the People’s requested penalty. The People do not know of previously adjudicated violations by CYPR Harvey, and the Board weighs this factor in its favor.

Neither self-disclosure nor a Compliance Commitment Agreement were at issue in this matter, and CYPR Harvey 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 five-year duration 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 CYPR Harvey and others similarly situated and recoup any economic benefit CYPR Harvey may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$10,000 against CYPR Harvey.

Harvey Real Estate

The People’s motion addresses the Section 33(c) factors: 1) VOC emissions from Harvey Real Estate’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 the Agency were technically practicable and economically reasonable; and 5) Harvey Real Estate has not subsequently complied with the Act and Board regulations. Harvey Real Estate Mot. at 6.

Based on these factors, the People request that the Board order Harvey Real Estate 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. Harvey Real Estate Mot. at 6. The People also argue that the Board should assess a civil penalty of \$10,000 against Harvey Real Estate. *Id.*

The Board agrees with the People that Harvey Real Estate's violations threatened human health and the environment and impaired the Agency's ability to gather information. The Board weighs this first Section 33(c) factor against Harvey Real Estate.

The Board also agrees with the People that Harvey Real Estate's gasoline dispensing facility is suitable for the area in which it is located and that the Facility has social and economic value. The Board weighs the second and third factors in Harvey Real Estate's favor.

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

The People report that Harvey Real Estate has not subsequently complied with the Act or Board regulations, and the Board weighs this fifth factor against Harvey Real Estate.

Harvey Real Estate's violations threatened human health and the environment and hindered the Agency'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 Harvey Real Estate has not complied. Having weighed the Section 33(c) factors, the Board finds that they favor requiring Harvey Real Estate to provide notice of decommissioning to the Agency; decommission its vapor collection and control system; and submit a decommissioning checklist, certification, and test results to the Agency and also to pay a civil penalty. Next, the Board applies the factors of Section 42(h) to consider the \$10,000 civil penalty requested by the People.

The People's motion addresses the Section 42(h) factors: 1) Harvey Real Estate's violations began on approximately September 27, 2018, and continued to the date of filing the People's motion on December 6, 2023 for more than five years; 2) Harvey Real Estate 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 Harvey Real Estate "may have accrued as a result of noncompliance;" 4) the requested penalty will deter further violations and encourage future compliance by Harvey Real Estate and others similarly situated; 5) the People do not know of previously adjudicated violations by Harvey Real Estate; 6) self-disclosure was not at issue; 7) Harvey Real Estate did not offer to perform a supplemental environmental project; and 8) a Compliance Commitment Agreement was not at issue. Harvey Real Estate Mot. at 9-10.

Harvey Real Estate's violations of the Act and Board regulations continued for more than five years. The duration of the violations is extensive. Harvey Real Estate 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 Board weighs the first two Section 42(h) factors against Harvey Real Estate.

The Board agrees with the People that the requested civil penalty of \$10,000 includes any economic benefit that Harvey Real Estate may have accrued as a result of its noncompliance. The Board also finds that the suggested \$10,000 penalty will deter further violations by Harvey Real Estate and encourage voluntary compliance with the Act and the Board's air pollution regulations. The third and fourth weigh against Harvey Real Estate and support the People's requested penalty. The People do not know of previously adjudicated violations by Harvey Real Estate, and the Board weighs this factor in its favor.

Neither self-disclosure nor a Compliance Commitment Agreement were at issue in this matter, and Harvey Real Estate 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 five-year duration 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 Harvey Real Estate and others similarly situated and recoup any economic benefit Harvey Real Estate may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$10,000 against Harvey Real Estate.

CONCLUSION

The Board grants the request for relief from the hearing requirement and accepts the proposed settlement between the People and respondents Nasser Yafai and Quick Gas.

The Board grants the People's unopposed motions to deem facts admitted by CYPR Harvey and Harvey Real Estate. 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 CYPR Harvey and Harvey Real Estate.

The Board finds that CYPR Harvey and Harvey Real Estate 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 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 CYPR Harvey and Harvey Real Estate to provide notice of intent to decommission to the Agency; decommission their vapor collection and control system; and submit a decommissioning checklist, certification,

and test results to the Agency. The Board also assesses a civil penalty of \$10,000 against both CYPR Harvey and Harvey Real Estate.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement with respondents Yasser Nafai and Quick Gas.
2. Nasser Yafai and Quick Gas must jointly and severally pay a civil penalty of \$5,000 by Tuesday, February 20, 2024, which is the first business day following the 30th day after the date of this order. Yasser Nafai and Quick Gas must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case number and case name must appear on the certified check or money order.

3. Yasser Nafai and Quick Gas must submit payment of the civil penalty to:

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

Yasser Nafai and Quick Gas must send a copy of the certified check or money order and any transmittal letter to:

Cara V. Sawyer, Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

4. The Board grants the People's unopposed motion against CYPR Harvey to deem facts admitted and for summary judgment and finds that CYPR Harvey 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)).
5. The Board grants the People's unopposed motion against Harvey Real Estate to deem facts admitted and for summary judgment and finds that Harvey Real Estate 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)).

6. The Board directs CYPR Harvey and Harvey Real Estate 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 Agency.
7. CYPR Harvey must pay a civil penalty of \$10,000 no later than Tuesday, February 20, 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 and case name must be included on the certified check or money order.
8. Harvey Real Estate must pay a civil penalty of \$10,000 no later than Tuesday, February 20, 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 and case name must be included on the certified check or money order.
9. Both CYPR Harvey and Harvey Real Estate 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.
10. 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 in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2022)).
11. Each of the four Respondents shall cease and desist from future violations of the Act and regulations that were the subject of the People's complaint.

IT IS SO ORDERED.

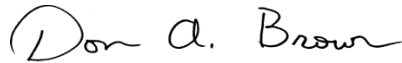
Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 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.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
<p>Illinois Attorney General's Office Attn.: Cara V. Sawyer, Asst. Attorney General Environmental Bureau 69 West Washington Street, Suite 1800 Chicago, Illinois 60602 cara.sawyer@ilag.gov</p>	<p>Illinois Pollution Control Board Attn.: Don A. Brown, Clerk 60 E. Van Buren Street, Suite 630 Chicago, Illinois, 60605 don.brown@illinois.gov</p>
<p>Nasser Yafai Attn.: John Mraibie Mraibie & Associates 14612 John Humphrey Drive Orland Park, Illinois 60462 Info@mraibelaw.com</p> <p>Nasser Yafai 6129 North Karlov Avenue Chicago, Illinois 60646</p> <p>Quick Gas & Mini Mart, Inc. Attn.: John Mraibie Mraibie & Associates 14612 John Humphrey Drive Orland Park, Illinois 60462 Info@mraibelaw.com</p> <p>Quick Gas & Mini Mart, Inc. Khaled M. Saeed, President 10059 Merrimac Avenue Oak Lawn, Illinois 60453</p> <p>CYPR Harvey, Inc. Cyriac K. Chandy, Registered Agent 960 Rand Road, Suite 208 Des Plaines, Illinois 60016</p> <p>CYPR Harvey, Inc.</p>	

15355 South Dixie Highway Harvey, Illinois 60426 Harvey Real Estate Inc. Cyriac K. Chandy, Registered Agent 960 Rand Road, Suite 208 Des Plaines, Illinois 60016 Harvey Real Estate Inc. 15355 South Dixie Highway Harvey, Illinois 60426	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 18, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board