

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: Persons on Attached Service List

PLEASE TAKE NOTICE that I have today caused to be filed with the Clerk of the Illinois Pollution Control Board by electronic filing the following Motion for Leave to File First Amended Complaint, a true and correct copy of which is attached hereto and hereby served upon you.

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

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

Date: November 15, 2022

Service List

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

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

CERTIFICATE OF SERVICE

I, Arlene R. Haas, an Assistant Attorney General, certify that on the 15th day of November 2022, I caused to be served the foregoing Notice of Filing and Motion for Leave to File First Amended Complaint on the parties named on the attached Service List by electronic mail.

/s/ Arlene R. Haas
Arlene R. Haas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 23-9
)	(Enforcement - Air)
La Fox BP, Inc.,)	
a dissolved Illinois corporation,)	
)	
Respondent.)	

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and hereby moves, pursuant to Sections 101.403, 101.500, and 103.206 of the Illinois Pollution Control Board (“Board”) regulations, 35 Ill. Adm. Code 101.403, 101.500, and 103.206, and Section 2-616 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616 (2020), for an order granting it leave to file a first amended complaint. In support of its motion, Complainant states as follows:

1. On July 8, 2022, Complainant filed a complaint against La Fox BP, Inc., a dissolved Illinois corporation, alleging violations of the Illinois Environmental Protection Act (“Act”) and corresponding Board regulations relating to the gasoline dispensing facility located at 380 N. La Fox Street, South Elgin, Kane County, Illinois (the “Facility”).

2. On September 13, 2022, Complainant learned from Respondent that the Facility was sold to Fox River Petro, LLC (“Fox River Petro”), an Illinois limited liability company, on or about February 20, 2020.

3. Complainant believes that Fox River Petro, as the current owner and operator of the Facility, is in violation of the Act and corresponding Board regulations relating to the Facility.

4. As a result, Complainant seeks to amend the original complaint to add Fox River Petro as an additional Respondent.

5. A proposed First Amended Complaint is attached hereto as Exhibit A and incorporated herein by reference.

6. The Respondent, LaFox BP, Inc., will not be prejudiced in any way by allowing this amendment.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the entry of an order granting it leave to file its First Amended Complaint and such other relief as the Board deems appropriate.

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

By: s/ Arlene R. Haas
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

EXHIBIT A

FIRST AMENDED COMPLAINT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 23-9
)	(Enforcement - Air)
LA FOX BP, INC.,)	
a dissolved Illinois corporation, and)	
FOX RIVER PETRO, LLC,)	
an Illinois limited liability company,)	
)	
Respondents.)	

FIRST AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois (“Complainant”), complains of Respondents, LA FOX BP, INC., a dissolved Illinois corporation, and FOX RIVER PETRO, LLC, an Illinois limited liability company, as follows:

COUNT I

FAILURE TO TIMELY DECOMMISSION VAPOR COLLECTION AND CONTROL SYSTEM AND SUBMIT REPORTS

1. This Complaint is brought on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), against La Fox BP, Inc. (“La Fox BP”), a dissolved Illinois corporation and on behalf of the People of the State of Illinois by the Attorney General on his own motion against Fox River Petro, LLC (“Fox River Petro”), an Illinois limited liability company, (collectively “Respondents”) pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2020).

2. The Illinois EPA is an administrative agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2020), and is charged, inter alia, with the duty of enforcing the Act.

3. La Fox BP is an Illinois corporation that was involuntarily dissolved on May 14, 2021.

4. From January 1, 2015 until February 20, 2020, or on a date or dates better known to La Fox BP, La Fox BP operated a gasoline dispensing facility located at 380 N. La Fox Street, South Elgin, Kane County, IL 60177 (the "Facility").

5. Fox River Petro is an Illinois limited liability company in good standing with the Illinois Secretary of State.

6. From February 20, 2020, or on a date or dates better known to Fox River Petro, until the filing of this Complaint, Fox River Petro owned and operated the Facility.

7. As of the date of filing of this Complaint, the Facility is located in an area of Environmental Justice ("EJ") concern as identified using Illinois EPA EJ Start.

8. From January 1, 2015 until February 20, 2020, or on a date or dates better known to La Fox BP, La Fox BP operated gasoline dispensing pumps at the Facility that emitted volatile organic compounds ("VOCs") into the environment.

9. From February 20, 2020, or on a date or dates better known to Fox River Petro, until the filing of this Complaint, Fox River Petro owned and operated gasoline dispensing pumps at the Facility that emit VOCs into the environment.

10. Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), provides as follows:

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.

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), provides the following definition:

“Person” is 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.

12. La Fox BP, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

13. Fox River Petro, a limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

14. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

15. VOCs are “contaminants” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

16. Section 218.586(i)(1)(B) of the Illinois Pollution Control Board (“Board”) Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), provides as follows:

No 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).

17. Section 218.586(a)(7) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(7), provides the following definition:

“Gasoline dispensing operation” means 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.

18. The Facility is a “gasoline dispensing operation,” as that term is defined in Section 218.586(a)(7) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(7).

19. Section 218.586(a)(11) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(11), provides the following definition:

“Owner” or “operator” means any person who owns, leases, operates, manages, supervises or controls (directly or indirectly) a gasoline dispensing operation.

20. From January 1, 2015 until February 20, 2020, or on a date or dates better known to La Fox BP, La Fox BP was an “owner” or “operator”, as that term is defined in Section 218.586(a)(11) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(11).

21. From February 20, 2020, or on a date or dates better known to Fox River Petro, through the date of filing this Complaint, Fox River Petro was and is an “owner” or “operator”, as that term is defined in Section 218.586(a)(11) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(a)(11).

22. Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C), provides as follows:

The 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.

23. By December 31, 2016, La Fox BP was required to decommission its vapor collection and control system in accordance with Section 218.586(i)(1)(B) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), and therefore was required to submit

a decommissioning checklist, certification, and test results within 30 days after completion of decommissioning procedures, pursuant to Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C).

24. La Fox BP did not timely submit a decommissioning checklist, certification, or test results to Illinois EPA.

25. Upon February 20, 2020, Fox River Petro was required to decommission its vapor collection and control system in accordance with Section 218.586(i)(1)(B) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), and therefore was required to submit a decommissioning checklist, certification, and test results within 30 days after completion of decommissioning procedures, pursuant to Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C).

26. Fox River Petro did not timely submit a decommissioning checklist, certification, or test results to Illinois EPA.

27. From January 1, 2015 until February 20, 2020, or on a date or dates better known to La Fox BP, by failing to timely submit a decommissioning checklist, certification, and test results to Illinois EPA, La Fox BP violated Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C).

28. From February 20, 2020, or on a date or dates better known to Fox River Petro, through the date of filing this Complaint, by failing to timely submit a decommissioning checklist, certification, and test results to Illinois EPA, Fox River Petro violated Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C).

29. On information and belief, Respondents failed to timely decommission its vapor collection and control system and thereby violated Section 218.586(i)(1)(B) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B).

30. From January 1, 2015 until February 20, 2020, or on a date or dates better known to La Fox BP, by violating Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C), La Fox BP caused or threatened or allowed the discharge or emission of VOCs into the environment so as to violate regulations adopted by the Board, and has thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

31. From February 20, 2020, or on a date or dates better known to Fox River Petro, through the date of filing this Complaint, by violating Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C), Fox River Petro caused or threatened or allowed the discharge or emission of VOCs into the environment so as to violate regulations adopted by the Board, and has thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondents, LA FOX BP, INC. and FOX RIVER PETRO, LLC, with respect to Count I:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Finding that Respondents have each violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C);

3. Ordering Respondents to cease and desist from any future violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B) and 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B) and 218.586(i)(2)(C);

4. Requiring Fox River Petro to decommission its vapor collection and control system pursuant to Section 218.586(i)(1)(B) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), submit a notice of intent to Illinois EPA to decommission its vapor collection and control system pursuant to Section 218.586(i)(2)(A) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(A), and submit a decommissioning checklist, certification, and test results to Illinois EPA pursuant to Section 218.586(i)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(2)(C);

5. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

6. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees against Respondents; and

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7. Granting such other relief as the Board deems appropriate and just.

Respectfully submitted,

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

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

BY: */s/ Stephen J. Sylvester*
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