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CERTIFICATE OF SERVICE

I, Arlene R. Haas, an Assistant Attorney General, certify that on the 17th day of January 2023, I caused to be served the foregoing Notice of Filing and Complainant's Motion Voluntarily Dismiss with Prejudice on the parties named on the attached Service List by email.

/s/ Arlene R. Haas
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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. 2023-008
)	(Enforcement – Air)
Downtown Oil Company, LLC)	
a dissolved Illinois limited liability company,)	
)	
Respondent.)	

**COMPLAINANT’S MOTION TO VOLUNTARILY DISMISS
WITHOUT PREJUDICE**

Complainant, PEOPLE OF THE STATE OF ILLINOIS by KWAME RAOUL, Attorney General of the State of Illinois (“Complainant”), moves the Pollution Control Board (“Board”) to dismiss this action against Respondent, Downtown Oil Company, LLC (“Respondent”), without prejudice and without costs pursuant to Section 101.500(a) of the Board’s General Rules (“General Rules”), 35 Ill. Adm. Code 101.500(a) and Sections 2-1009 and 5-117 of the Illinois Code of Civil Procedure (“Code”), 735 ILCS 5/2-1009 and 5/5-117 (2020).¹ In support thereof, Complainant states as follows:

1. On July 8, 2022, Complainant filed its Complaint for Failure to Timely Decommission Vapor Collection and Control System and Submit Reports (“Complaint”) in case no. PCB 2023-008 at the request of the Illinois Environmental Protection Agency (“Illinois EPA”). The Complaint was filed after the Respondent failed to respond to the Violation Notice

¹ The General Rules do not specifically provide for a motion for voluntary dismissal; however, Section 101.100(b) of the General Rules, 35 Ill. Adm. Code 101.100(b) (2020) states: “the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board’s procedural rules are silent.”

and the Notice of Intent to Pursue Legal Action Illinois EPA issued on May 26, 2021 and September 15, 2021, respectively.

2. The Complaint alleges that Respondent, as the owner and operator of gasoline dispensing pumps that emit volatile organic compounds at 7600 S. Chicago Ave, Chicago, Cook County, IL (“Facility”), failed to timely decommission its vapor collection and control system and submit a decommissioning checklist, certification, and test results for decommissioning Respondent’s vapor collection and control system to the Illinois EPA in violation of Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a) (2020), and Sections 218.586(i)(1)(B), (2)(A) and (C) of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B), (2)(A) and (C).

3. Documentation obtained from the Office of State Fire Marshall and HPG Holding, Inc., a more recent owner of the Facility, shows that the Respondent replaced the Facility’s gasoline dispensing pumps in May of 2013; and therefore, did not own any vapor collection and control systems at the Facility that required decommissioning prior to the deadline of December 31, 2016, set forth in Section 218.586(i)(1)(B) of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 218.586(i)(1)(B).

4. Section 2-1009(a) of the Code, 735 ILCS 5/2-1009(a), provides as follows:

The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each party’s attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.

5. As of the date of filing this Motion, Illinois EPA has determined that Respondent is in compliance with the Act.

6. There are no pending motions for summary judgment regarding the Complaint, and the Board has not set a hearing date.

7. Accordingly, as this matter has not yet gone to hearing, pursuant to Section 2-1009(a) of the Code, 735 ILCS 5/2-1009(a), the Board may grant Complainant's Motion to Voluntarily Dismiss this action without prejudice.

8. Section 5-117 of the Code, 735 ILCS 5/5-117, provides, in relevant part, as follows:

In all actions commenced for and on behalf of the people of this state... if the action is dismissed voluntarily by the plaintiff... the defendant shall not recover any costs whatsoever.

9. As provided by the plain language of Sections 2-1009(a) and 5-117 of the Code, 735 ILCS 5/2-1009(a) and 5/5-117, the Complainant requests that the Board grant its Motion to Voluntarily Dismiss the Complaint without prejudice with the parties to each bear their own costs.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board enter an order granting Complainant's Motion to Voluntarily Dismiss this action against Downtown Oil Company, LLC, without prejudice and without costs.

Respectfully Submitted,

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

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