

ILLINOIS POLLUTION CONTROL BOARD  
December 7, 2023

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 23-118
	)	(Enforcement - Air)
SJK1 INC., an Illinois corporation,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

On May 26, 2023, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint (Comp.) against SJK1 Inc. (SJK1). The complaint alleges violations of the Environmental Protection Act (Act) and the Board’s Air Pollution Regulations. The complaint concerns SJK1’s gasoline dispensing facility located at 29849 East Lorenzo Road in Wilmington, Will County.

On October 11, 2023, the People filed a motion to deem facts admitted and for summary judgment (Mot.). SJK1 has not responded to the motion. The People argue that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. Mot. at 3. For the reasons discussed below, the Board grants the People’s motion to deem facts admitted and for summary judgment, finding that SJK1 violated Section 9(a) of the Act (415 ILCS 5/9(a) (2022)), and 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)).

In this opinion and order, the Board first reviews the procedural history and summarizes the People’s complaint. The Board then addresses the People’s motion to deem facts admitted and the uncontested facts. The Board next considers the People’s motion for summary judgment and proposed remedy. The Board then reaches its conclusion and issues its order.

**PROCEDURAL HISTORY**

On May 26, 2023, the People filed their complaint, and the Board accepted it for hearing on June 1, 2023. On June 6, 2023, the People filed a certified mail return receipt showing service of the complaint on SJK1 on May 30, 2023. Mot., Exh. 1. As of the date of this opinion and order, SJK1 has not filed an answer or any pleading responding to the complaint

On October 11, 2023, the People filed a motion to deem facts admitted and for summary judgment. As of the date of this opinion and order, SJK1 has not responded to the motion.

**COMPLAINT**

In its single count, the complaint alleges that SJK1 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)).

The People allege that SJK1 committed these violations by failing to timely decommission its vapor collection and control system; failing to timely submit a decommissioning checklist, certification, and test results to the Illinois Environmental Protection Agency (IEPA); and causing, threatening, or allowing emission of volatile organic compounds (VOCs) into the environment so as to violate Board regulations. Comp. at 4.

### **MOTION 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).

The People argue that, by failing to answer the complaint within 60 days or filing a motion that would extend that deadline, SJK1 "has admitted the material allegations asserted in the Complaint." Mot. at 2, citing 35 Ill. Adm. Code 103.204. The People request that the Board enter an order finding that SJK1 has admitted the allegations. *Id.* at 3.

SJK1 failed to answer the complaint within 60 days after service, *i.e.*, by Monday, July 31, 2023. SJK1 did not file a motion that would have extended the 60-day deadline. *See* 35 Ill. Adm. Code 103.204(d), 101.506. SJK1 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 to deem facts admitted and deems admitted the material allegations in the People's complaint. *See* Ill. Adm. Code 103.204(d).

### **FACTS**

SJK1 is the owner and operator of a gasoline dispensing facility located at 29849 East Lorenzo Road in Wilmington, Will County. Comp. at 2. At that facility, SJK1 owns and operates gasoline dispensing pumps that emit volatile organic compounds (VOCs) into the environment. *Id.*

SJK1 has a vapor collection and control system. Comp. at 3. By December 31, 2016, SJK1 was required to decommission the system. *Id.* at 4, citing 35 Ill. Adm. Code 218.586(i)(1)(B). SJK1 was also required to submit a decommissioning checklist, certification, and test results. Comp. at 3-4, citing 35 Ill. Adm. Code 218.586(i)(2)(C).

SJK1 did not decommission its vapor collection and control system by the date of the People's complaint and had not timely submitted a decommissioning checklist, certification, and test results to the Agency. Comp. at 4. By violating these requirements, SJK1 caused or threatened or allowed the emission of VOCs into the environment so as to violate Board regulations. *Id.*

## **MOTION FOR SUMMARY JUDGMENT**

The People argue that the facts alleged in the complaint and deemed admitted by SJK1 are sufficient to establish that SJK1 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)). 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.*

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't'l Health and Safety Svcs., Inc.*, PCB 05-51, slip op. at 13 (July 23, 2009). SJK1 did not respond to the People's motion or request that the Board extend the response deadline. SJK1 has waived any objection to the Board granting the motion for summary judgment.

The Board next provides relevant statutory and regulatory provisions and standards for considering motions for summary judgment, and then decides the motion.

### **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(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(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(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).

### **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 Motion for Summary Judgment**

SJK1 owns and operates a gasoline dispensing facility that emits VOCs, which is a contaminant as defined in the Act. 415 ILCS 5/3.165 (2022). The Board’s Air Pollution Regulations require 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 per month. 35 Ill. Adm Code 218.586(b), (c), (i). The People alleged that SJK1’s gasoline dispensing facility is a “gasoline dispensing operation” but did not allege that SJK1 dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month. *See* Comp. at 3; 35 Ill. Adm. Code 218.586(a)(7).

However, the facts deemed admitted include that SJK1 has a vapor collection and control system. Comp. at 3-4. A reasonable person would infer from this undisputed fact that SJK1 dispenses an average monthly volume of more than 10,000 gallons of motor vehicle fuel per month and therefore was required to install the vapor collection and control system. Makowski, 249 Ill. App. 3d at 119. The facts deemed admitted establish that SJK1 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 SJK1 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 SJK1 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 IEPA. By violating these Board regulations, SJK1 caused, threatened, or allowed the discharge or emission of VOCs into the environment so as to violate regulations

adopted by the Board, thereby violating Section 9(a) of the Act. Accordingly, the Board finds that the People are entitled to judgment as a matter of law.

The Board grants the People's motion for summary judgment, finding that SJK1 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.

### **REMEDY**

Having found that SJK1 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 must now determine an appropriate remedy, including any penalties.

In evaluating the record to determine a remedy, the Board 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:

In 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:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance. 415 ILCS 5/33(c) (2022).

The People's motion briefly addressed these factors: 1) VOC emissions from SJK1'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) SJK1 subsequently complied with the Act and Board

regulations. Mot. at 5-6. Based on these factors, the People ask the Board to assess a civil penalty of at least \$10,000. *Id.* at 4, 6.

The Board agrees with the People that SJK1's violations threatened human health and the environment and impaired IEPA's ability to gather information. This first Section 33(c) factor weighs against SJK1.

The Board also agrees with the People that SJK1's gasoline dispensing facility is suitable for the area in which it is located, and the facility has social and economic value. The second and third factors weigh in SJK1'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 SJK1.

SJK1 subsequently complied with the Act or Board regulations, and the fifth factor weighs in favor of SJK1.

SJK1'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. The Board finds that the Section 33(c) factors favor requiring SJK1 to pay a civil penalty.

Having concluded that the Section 33(c) factors support assessing a civil, the Board next applies the factors of Section 42(h) to consider the \$10,000 civil penalty requested by the People. 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).

The People’s motion briefly addressed these factors: 1) SJK1’s violations began in January 2017 and were only resolved on July 10, 2023, when SJK1 submitted documents to IEPA; 2) SJK1 failed to act diligently; 3) the \$10,000 requested penalty includes any economic benefit that SJK1 may have accrued as a result of noncompliance; 4) the requested penalty will deter further violations and encourage future compliance by SJK1 and others similarly situated; 5) SJK1 has no previously adjudicated violations; 6) self-disclosure was not at issue in this matter; 7) SJK1 did not offer to perform a supplemental environmental project; and 8) a Compliance Commitment Agreement was not at issue in this matter. Mot. at 8-9.

SJK1’s violations of the Act and Board regulations began more than six years ago and were resolved only after the People filed their complaint. The duration of the violations is extensive. SJK1 showed a lack of diligence in complying with the requirements of 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 SJK1.



The Board agrees with the People that the requested civil penalty of \$10,000 includes any economic benefit that SJK1 may have accrued as a result of its noncompliance. The Board also finds that the suggested \$10,000 penalty will deter further violations by SJK1 and ensure voluntary compliance with the Act and the Board's Air Pollution Regulations. The third and fourth factors weigh against SJK1 and support the People's requested penalty.

SJK1 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. SJK1 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 SJK1 and others similarly situated and recoup any economic benefit SJK1 may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$10,000.

### **CONCLUSION**

The Board grants the People's unopposed motion to deem facts admitted. 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 motion for summary judgment against SJK1. The Board finds that SJK1 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) and 42(h) (2022)), the Board enters an order requiring SJK1 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 motion to deem facts admitted and for summary judgment and finds that SJK1 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. SJK1 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 SJK1's federal employer identification number must be included on the respective certified check or money order.

3. SJK1 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

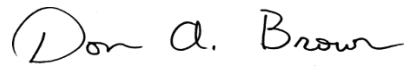
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2022)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2022)).

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>
SJK1 Inc. Attn.: Khalid Siddiqui, President and Registered Agent 1535 Grand Avenue Chicago, Illinois 60642	

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.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board