

ILLINOIS POLLUTION CONTROL BOARD
September 21, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-16
)	(Enforcement - Water)
OGOCO, INC., an Illinois corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On August 4, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Ogoco, Inc. (Ogoco). The People allege that Ogoco caused or allowed the discharge of contaminants so as to cause water pollution in violation of the Environmental Protection Act (Act) and the Board's water regulations. 415 ILCS 5/12(a), 12(d) (2004); 35 Ill. Adm. Code 302.203, 304.105, 304.106. The complaint concerns two facilities operated by Ogoco in Effingham County.

Today the Board decides an uncontested motion for summary judgment filed by the People against Ogoco on July 25, 2006. For the reasons discussed below, the Board grants the People's motion for summary judgment and accordingly requires Ogoco to pay a \$28,000 civil penalty, perform soil and sediment sampling, and cease and desist from further violations.

This order first reviews the procedural history of this case. It then summarizes the People's complaint and sets forth the relevant statutory and regulatory provisions. The order next describes the standard of review applied by the Board in considering summary judgment motions, followed by a summary of the People's motion for summary judgment. Next, the order provides the Board's discussion of and ruling on that motion, including findings of violations and the imposition of remedies.

PROCEDURAL HISTORY

On August 4, 2005, the People filed a two-count complaint alleging that Ogoco had committed water pollution violations (Comp.). In an order dated August 10, 2005, the Board accepted the complaint for hearing. Ogoco filed no answer to the complaint and has raised no affirmative defenses. On May 26, 2006, the People filed notice with the Board that they had served Ogoco with a Request for Admission of Fact (Req.) on May 23, 2006. Ogoco has not filed with the Board any response to the People's request for admission. On July 25, 2006, the People filed a motion for summary judgment (Mot.). Ogoco filed no response to the motion.

THE PEOPLE'S COMPLAINT

The People allege that Ogoco is an Illinois corporation in good standing. Comp. at 1. The People further allege that Ogoco is “authorized to operate oil production wells in accordance with permits issued by the Illinois Department of Natural Resources (DNR).” *Id.*, citing 225 ILCS 725/6(2) (2004) (Illinois Oil and Gas Act).

Count I

In count I of the complaint, the People allege that, “[o]n October 10, 2003, an IDNR investigator discovered spills of crude oil and salt water from two facilities operated by Ogoco” in Effingham County. Comp. at 3. The People further allege that the first of these two facilities, the David Reed #1 well and Reed #1 salt water disposal tank battery, experienced “a leak in the well’s firewall and the overflowing of the tank battery’s firewall.” *Id.* The People further allege that this leak resulted in the release of approximately ten barrels of crude oil and ten barrels of salt water. *Id.* With regard to the second facility, the Wachtel-Reed #2 tank battery, the People allege that the firewall overflowed, resulting in the release of approximately ten barrels of crude oil and ten barrels of salt water. *Id.*

The People allege that “[t]he spills had apparently been ongoing for several days, flowing through a pasture and a wooded area, and into Little Moccasin Creek.” Comp. at 3. The People further allege that “[o]n October 10, 2003, a sheen was visible on Little Moccasin Creek[,] and a drainage ditch that drained into Little Moccasin Creek was heavily oiled.” *Id.* The People further allege that Ogoco’s oil production activities produce saltwater, which includes the contaminants chlorides and petroleum constituents. *Id.*, citing 415 ILCS 5/3.165 (2004) (defining “contaminant”). The People further allege that “[a] water sample taken from a roadside ditch downstream of the crude oil and saltwater release showed 9,510 mg/L [milligrams per liter] of total chlorides.” *Id.*

The People argue that, by depositing crude oil and salt water upon the land so that it eventually flowed approximately one-quarter mile before entering Little Moccasin Creek, Ogoco created a water pollution hazard in violation on the Act. Comp. at 4, citing 415 ILCS 5/12(d) (2002). The People further argue that, by discharging saltwater into Little Moccasin Creek and altering its properties in a manner likely to create a nuisance or render the creek harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or aquatic life, Ogoco caused water pollution in violation of the Act. Comp. at 4, citing 415 ILCS 5/12(a) (2004).

Count II

The People argue that, by discharging saltwater into a tributary of Big Creek, Ogoco caused offensive conditions in violation of the Act and the Board’s regulations in that the waters were discolored and turbid and contained bottom deposits and visible oil. Comp. at 5, citing 415 ILCS 5/12(a) (2004); 35 Ill. Adm. Code 302.203, 304.105, 304.106. The People further argue that by causing “the concentration of chlorides in the tributary to Big Creek to exceed the general use water quality standard of 500 mg/L,” Ogoco violated the Act and the Board’s regulations. *Id.*, citing 415 ILCS 5/ 12(a) (2004), 35 Ill. Adm. Code 302.203.

FACTUAL BACKGROUND

On October 10, 2003, a DNR investigator discovered spills of crude oil and salt water from two facilities operated by Ogoco. The first of these two facilities, the David Reed #1 well and Reed #1 saltwater disposal tank battery, experienced a leak in the well's firewall and the overflowing of the tank battery's firewall. These leaks resulted in the release of approximately ten barrels of crude oil and ten barrels of salt water. At the second facility, the Wachtel-Reed #2 tank battery, the firewall overflowed, resulting in the release of approximately ten barrels of crude oil and ten barrels of salt water.

The spills flowed through a pasture and a wooded area and into Little Moccasin Creek. On October 10, 2003, a sheen was visible on Little Moccasin Creek, and a drainage ditch that drained into Little Moccasin Creek was heavily oiled. Ogoco's oil production activities produce saltwater, which includes the contaminants chlorides and petroleum constituents. A water sample taken from a roadside ditch downstream of the crude oil and saltwater release showed 9,510 milligrams per liter of total chlorides.

STATUTORY AND REGULATORY PROVISIONS

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 (2004).

Section 3.395 of the Act defines "release" as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment" 415 ILCS 5/3.395 (2004).

Section 3.545 of the Act defines "water pollution" as:

such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.545 (2004).

Section 3.550 of the Act defines "waters" as "all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State." 415 ILCS 5.550 (2004).

Section 12 of the Act provides:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard. 415 ILCS 5/12(a), 12(d) (2004).

Section 33(c) of the Act provides:

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:

- (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) (2004).

Section 42(h) of the Act provides:

In determining the appropriate penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (i) the duration and gravity of the violation;
- (ii) 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;
- (iii) 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;

- (iv) 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;
- (v) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent;
- (vi) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and
- (vii) 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. 415 ILCS 5/42(h) (2004).

Section 302.203 of the Board’s water regulations provides under the heading “Offensive Conditions” that “[w]aters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.” 35 Ill. Adm. Code 302.203.

Section 304.105 of the Board’s water regulations provides that, “[i]n addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard” 35 Ill. Adm. Code 304.105.

Section 304.106 of the Board’s water regulations provides that “[i]n addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.” 35 Ill. Adm. Code 304.106.

STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings, deposition, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. V. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.*

Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to relief “is clear and free from doubt.” Dowd & Dowd, Ltd. V. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998), citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E. 2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably

entitle [it] to judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

PEOPLE’S MOTION FOR SUMMARY JUDGMENT

In support of their motion for summary judgment, the People state that they rely upon the uncontroverted facts contained in the exhibits attached to their motion and in the request for admission of facts. Mot. at 1.

The People first state that Ogoco is an Illinois corporation. Mot. at 1; *see* Comp. at 1. The People claim that, “[a]t some time before October 10, 2003 on dates better known to the Respondent, crude oil and salt water were released from two facilities operated by Ogoco located on Moccasin Road, near Little Moccasin Creek, in Effingham County, Illinois.” Mot. at 1, citing Mot., Exh. A (affidavit of Agency inspector), Mot., Exhs. B1, B2, and B3 (photographs), Mot., Exh. C (¶ 1).

The People next state that the first of these two facilities, the David Reed #1 well and Reed #1 salt water disposal tank battery, experienced “a leak in the firewall and the overflowing of the tank battery’s firewall.” Mot. at 2. The People further state that this leak resulted in the release of approximately ten barrels of crude oil and ten barrels of salt water. *Id.*, citing Mot., Exh. A (¶ 7), Mot., Exh. B, Mot., Exh. C (¶ 2). With regard to the second facility, the Wachtel-Reed #2 tank battery, the People state that the firewall overflowed, resulting in the release of approximately ten barrels of crude oil and ten barrels of salt water. *Id.* at 2, citing Mot., Exh. A (¶ 8), Mot. Exh. B, Mot., Exh. C (¶ 3). According to the People, the “salt water is a produced fluid generated by Ogoco’s oil production activities and contains a large concentration of chlorides and varying amounts of petroleum constituents.” *Id.* at 2, citing Mot., Exh. A, Mot., Exh. C (¶ 4).

The People next state that crude oil and salt water flowed from Ogoco facilities “for several days prior to October 10, 2003.” Mot. at 2, citing Mot., Exh. A (¶ 9), Mot., Exh. C (¶ 5). The People further state that “[t]he salt water and crude oil flowed through a pasture and a wooded area approximately one-quarter of a mile and into Little Moccasin Creek.” *Id.* at 2, citing Mot., Exh. A (¶ 10), Mot., Exh. B, Mot., Exh. C (¶ 6).

The People state that, on October 10, 2003, Little Moccasin Creek exhibited “a sheen” and a drainage ditch draining into the creek “was heavily oiled.” Mot. at 2, citing Mot., Exh. A (¶ 11), Mot., Exh. B, Mot., Exh. C (¶ 7). The People further state that “[t]he discharge of salt water from Ogoco’s wells into Little Moccasin Creek altered its physical and chemical properties.” *Id.* at 3, citing Mot., Exh. A (¶ 13), Mot., Exh. C (¶ 8). The People further state that “[t]he discharge of salt water from Ogoco’s wells caused offensive conditions in the tributary because the water contained bottom deposits and visible oil, and were discolored and turbid.” *Id.*, citing Mot., Exh. A (¶ 12), Mot. Exh. C (¶ 9).

The People conclude by arguing that, because Ogoco failed to file a response to the request for admission of facts, all facts stated within that request are admitted. Mot. at 4. Consequently, the People claim that “[t]here are no genuine issues as to any material facts.” *Id.*

at 3. The People argue that Ogoco created a water pollution hazard by releasing crude oil and salt water in a manner and place that allowed it to flow into Little Moccasin Creek. *Id.*; see 415 ILCS 5/12(d) (2004). The People further argue that Ogoco “caused or allowed water pollution by releasing crude oil and salt water into Little Moccasin Creek.” *Id.*; see 415 ILCS 5/12(a) (2004). The People further argue that Ogoco’s release caused offensive conditions in Little Moccasin Creek. *Id.* at 4; see 35 Ill. Adm. Code 302.203, 35 Ill. Adm. Code 304.106. Finally, the People argue that Ogoco’s “release caused a violation of the applicable water quality standards.” *Id.*; see 35 Ill. Adm. Code 302.208(g) (chloride standard of 500 mg/L), 304.105.

DISCUSSION

Under Section 103.204(d) of the Board’s procedural rules, Ogoco had 60 days after receipt of the People’s complaint to file an answer. 35 Ill. Adm. Code 103.204(d). “All material allegations of the complaint will be taken as admitted if no answer is filed.” *Id.* In addition, the Board notes that the People on May 26, 2006, filed notice that they had served Ogoco with a Request for Admission of Fact on May 23, 2006. Under the Board’s procedural rules regarding discovery, Ogoco had 28 days to respond to the People’s request for admission of fact:

Each of the matters of fact . . . of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. 35 Ill. Adm. Code 101.618(f); see Mot., Exh. C.

Furthermore, Ogoco had 14 days to respond to the People’s motion for summary judgment: “[i]f no response is filed, the party will be deemed to have waived objection to the granting of the motion.” 35 Ill. Adm. Code 101.500(d).

Under these provisions, Ogoco’s failure to answer the complaint has caused the material allegations of the complaint to be taken as admitted and Ogoco’s failure to respond to the request for admission has resulted in the admission of each of those matters. Further, Ogoco’s failure to respond to the motion for summary judgment has resulted in Ogoco waiving any objection to the Board granting the motion. Below, the Board will review the motion and the evidence and arguments offered in its support before the Board makes its rulings.

Count I

The record, including the pleadings, admissions, and an affidavit, demonstrates that Ogoco deposited crude oil and salt water on the land in a place and manner that caused a water pollution hazard. Specifically, that crude oil and salt water flowed approximately one-quarter mile across the ground before entering Little Moccasin Creek. Comp. at 4, Mot. at 2 (¶ 7). Mot., Exh. A (¶ 10). Mot., Exh. B., Mot., Exh. C (¶ 6).

The record also demonstrates that the discharge of crude oil and salt water from Ogoco's facilities altered the physical and chemical properties of Little Moccasin Creek and one of its tributaries. On October 10, 2003, Little Moccasin Creek exhibited a sheen, and a tributary was heavily oiled. Comp. at 3, Mot. at 2 (¶ 8), Mot., Exh. A (¶ 11), Mot., Exh. B, Mot. Exh. C (¶ 7).

The Board finds that the allegations deemed admitted pursuant to Sections 103.204(d) and 101.618(d) of the Board's procedural rules (35 Ill. Adm. Code 103.204(d), 101.618(d)) are sufficient to prove that there are no genuine issues of material fact and that the People are entitled to judgment as a matter of law on count I. 35 Ill. Adm. Code 101.516(b). Consequently, the Board grants the People's motion for summary judgment as to count I and finds that Ogoco violated Sections 12(a) and 12(d) of the Act. 415 ILCS 5/12(a), 12(d) (2004).

Count II

The record also shows that Ogoco's discharge of crude oil and salt water caused offensive conditions in the tributary to Little Moccasin Creek. Specifically, the tributary contained bottom deposits and visible oil and were discolored and turbid. Comp. at 5; Mot. at 3 (¶ 10), Mot., Exh. A (¶ 12), Mot., Exh. C (¶ 9). The record also shows that Ogoco's discharge of salt water caused the concentration of chlorides in the tributary to exceed the general use water quality standard of 500mg/L. Comp. at 4 (¶ 15); *see* 35 Ill. Adm. Code 302.208(g).

The Board finds that the allegations deemed admitted pursuant to Sections 103.204(d) and 101.618(d) of the Board's procedural rules (35 Ill. Adm. Code 103.204(d), 101.618(d)) are sufficient to prove that there are no genuine issues of material fact and that the People are entitled to judgment as a matter of law on count II. 35 Ill. Adm. Code 101.516(b). Consequently, the Board grants the People's motion for summary judgment as to count II and finds that Ogoco has violated section 12(a) of the Act and Sections 302.203, 304.105, and 304.106 of the Board's water regulations. 415 ILCS 5/12(a) (2004); 35 Ill. Adm. Code 302.203, 304.105, 304.106.

Remedies

In their motion for summary judgment, the People request that the Board enter an order assessing a penalty of \$28,000. Mot. at 7. The People also request that the Board order Ogoco to collect 6 soil samples from the drainage paths north of Moccasin Road and 2 sediment samples in the drainage way south of Moccasin Road and have them analyzed for the presence of chlorides and sulfates. *Id.* Finally, the People ask the Board to order Ogoco to cease and desist from any further violations of the Act and regulations. *Id.*

Having found that Ogoco committed the violations alleged in the complaint, the Board will now devise an appropriate remedy by considering all facts and circumstances pertaining to the violations, including the factors set forth in Section 33(c) of the Act. *See* 415 ILCS 5/33(c) (2004). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violations, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violations.

Section 33(c) Factors

The People first state that Ogoco's release of crude oil and salt water threatened human health and the environment. Mot. at 4. The People further state that Ogoco's operation is suitable for the area in which it operates and that its oil business provides a social and economic benefit. *Id.* at 4-5. The People further claim it is both technically practicable and economically reasonable to prevent a release of crude oil and salt water. *Id.* at 5. Finally the People state that "[r]espondent has not subsequently complied with the Act and the Board Regulations." *Id.* Although acknowledging that Ogoco took soil and sediment samples with regard to the crude oil spilled, the People state that Ogoco "did not take samples for analysis of sulfates and chlorides for the salt water spill." *Id.*

The Board finds on the basis of the record in this case that the Section 33(c) factors weigh in favor of granting the relief requested by the People, including assessing a civil penalty. First, photographs taken by Agency specialist Thomas Powell depict the overflow of crude oil from a tank battery toward Little Moccasin Creek. Mot., Exh. B. Ultimately, Ogoco's discharge of crude oil and salt water resulted both in offensive conditions and violation of the water quality standard for chlorides. Mot., Exh. A (§§12-13), Mot., Exh. C (§9). The character and degree of injury to the soil and water in the vicinity of Ogoco's site were not slight, although the record does not quantify specific environmental consequences or health effects.

The People concede that Ogoco's oil business has social and economic value and that its operation is suitable for the area in which it operates. The People's unopposed assertion is that it is both technically practicable and economically reasonable to prevent releases of crude oil and salt water from facilities such as Ogoco's. Further, it is undisputed that Ogoco has failed to subsequently comply.

The Board finds that the Section 33(c) factors justify requiring Ogoco to perform the requested sampling, cease and desist from further violations, and pay a civil penalty. To determine the proper penalty amount, the Board below considers factors listed in Section 42(h) of the Act. *See* 415 ILCS 4/42(h) (2004).

Section 42(h) Factors

Section 42(h) of the Act (415 ILCS 5/42(h) (2004)) sets forth factors that may mitigate or aggravate the amount of a civil penalty. Those factors include the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and other entities that are similarly situated.

The People first state that, at some time before October 10, 2003, "[t]he Respondent cause[d] or allowed the release of crude oil and salt water from its facility." Mot. at 6. The People further state that, nearly two years later, Ogoco took soil samples for benzene, toluene, ethylbenzene, and xylene (BTEX) and polynuclear aromatic hydrocarbons (PNAs) and obtained results meeting cleanup objectives under the Tiered Approach to Corrective Action Objectives

(TACO) (35 Ill. Adm. Code 742). *Id.* The People note, however, that Ogoco has not yet “sampled the soil for chlorides and sulfates in response to the salt water release.” *Id.*

The People also state that Ogoco “was not diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.” Mot. at 6. The People further states that Ogoco obtained a “nominal economic benefit for the release of crude oil and salt water.” *Id.* The People state that Ogoco did not self-report its violations and did not file a timely notification of the release from its site. *Id.* Also, this matter does not include a supplemental environmental project, according to the People. *Id.* In addition, the People report that they know of no previously adjudicated violations by Ogoco. *Id.* Ultimately, the People state a \$28,000 penalty “will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.” *Id.* at 7.

The Board found above that Ogoco has violated two different sections of the Act and three different provisions of the Board’s water regulations. Section 42(a) of the Act provides that the Board may impose a civil penalty of up to \$50,000 for the violation of any provision of the Act or Board regulations, and \$10,000 for each day the violation continues. 415 ILCS 5/42(a) (2004).

The record shows that Ogoco has not yet taken samples for analysis of sulfates and chlorides that may be present as a result of its releases, so one or more violations may be ongoing after nearly three years. The Board weighs both the duration of the violation and the absence of due diligence as factors aggravating the amount of a civil penalty. Because Ogoco obtained at least a nominal economic benefit from its delayed compliance and because Ogoco failed to self-report its violations, the Board will also weigh those factors as aggravating the amount of a penalty. Because the record shows no previously adjudicated violations by Ogoco, the Board weighs that factor as mitigating the penalty. Finally, the People make the uncontested assertion that a civil penalty of \$28,000 will serve to deter further violations of this kind and help obtain future compliance with the Act.

By its complete lack of participation in this proceeding, Ogoco has offered no evidence to contradict the facts and legal arguments presented by the People, and accordingly waives any objection to the Board granting the People’s request for civil penalties in their motion for summary judgment. See 35 Ill. Adm. Code 101.500(d). The Board finds that the Section 42(h) factors justify imposition of the \$28,000 civil penalty on Ogoco as proposed by the People. See People v. J&F Hauling, Inc., PCB 02-21 (Feb. 6, 2003) (imposing the People’s requested civil penalty where respondent failed to participate).

CONCLUSION

The Board grants the People’s unopposed motion for summary judgment. The Board therefore finds that Ogoco violated the Act and Board regulation as alleged in both counts of the complaint and imposes the People’s requested \$28,000 civil penalty on Ogoco. In addition, the Board requires Ogoco to cease and desist from further violating the Act and Board regulations and to perform soil and sediment sampling as specified below.

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

ORDER

1. The Board grants the Office of the Attorney General, on behalf of the People of the State of Illinois (People), summary judgment on both counts of the complaint as alleged against Ogoco. The Board thus finds that Ogoco has violated Sections 12(a) and 12(d) of the Act (415 ILCS 5/12(a), 12(d) (2004)) and Sections 302.203, 304.105, and 304.106 of the Board's water regulations (35 Ill. Adm. Code 302.203, 304.105, 304.106).
2. Ogoco must pay a civil penalty of \$28,000 no later than Monday, October 23, 2006, which is the first business day after 30 days from the date of this order. Such payment must be made by certified check, money order, or the electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and Ogoco's social security number or federal employer identification number must be included on the certified check or money order.
3. Ogoco must send the certified check, money order, or confirmation of electronic funds transfer by first class mail to:

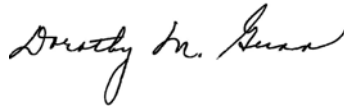
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Ogoco must promptly collect six soil samples from the drainage paths north of Moccasin Road and two sediment samples in the drainage way south of Moccasin Road and have the eight samples analyzed for both chlorides and sulfates. Ogoco must promptly submit a copy of the analytical results to the Illinois Environmental Protection Agency.
6. Ogoco must cease and desist from further violations of the Act and Board regulations.

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) (2004); *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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 21, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board