

ILLINOIS POLLUTION CONTROL BOARD  
July 26, 2007

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 06-119
	)	(Enforcement - UST)
STRATA GEOLOGIC SERVICES, INC., an	)	
Illinois corporation,	)	
	)	
Respondent.	)	

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

On June 15, 2007, the Office of the Attorney General, on behalf of the complainant, the People of the State of Illinois (People), filed a motion for summary judgment. The respondent, Strata Geological Services, Inc. (Strata), has filed no response. Today the Board finds that there are no genuine issues of material fact as to the violations alleged in the People's amended complaint and grants the People's unopposed motion for summary judgment.

Below, the Board first provides the procedural history of this case, the applicable statutory and regulatory provisions, and a summary of the allegations in the People's amended complaint. The Board next summarizes the People's arguments in the motion for summary judgment. The Board then analyzes those arguments before granting the unopposed motion for summary judgment and issuing its order.

**PROCEDURAL HISTORY**

On December 29, 2005, the People filed a four-count complaint alleging that Strata violated Sections 56.7(a), 57.6(a), and 57.7(b)(1) of the Environmental Protection Act (Act) (415 ILCS 5/56.7(a), 57.6(a), and 57.7(b)(1) (2004)) and 35 Ill. Adm. Code 732.100(c); 732.202(a), (b), (c), and (e); 732.300(a); 732.307(a) and (b); and 732.309(a) by failing to submit various reports and to investigate and remediate an August 2000 release from Strata's underground storage tank (UST) system at 3801 14th Avenue, Rock Island, Rock Island County, and a June 2003 release from a UST system at 210 East 1st Street, Milan, Rock Island County. In an order dated January 5, 2006, the Board accepted the complaint for hearing. Strata did not file an answer. *See* 35 Ill. Adm. Code 103.204(d) (60-day deadline).

On April 4, 2007, the People filed with the Board notice that it had on April 2, 2007 served Strata with a request for admission of fact.

On April 27, 2007, the People filed a motion for leave to file an amended complaint, accompanied by a two-count amended complaint (Am. Comp.). Strata did not respond to the

People's motion. In an order dated May 17, 2007, the Board granted the People's motion and accepted the amended complaint. Strata has not filed an answer to the amended complaint.

On June 15, 2007, the People filed a motion for summary judgment (MSJ). Strata did not respond to the People's motion.

### **STATUTORY AND REGULATORY BACKGROUND**

Section 33(c) of the Act provides in pertinent part 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) (2006).

Section 42(h) of the Act provides that, in determining the appropriate civil penalty, the Board considers 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; and
- (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. 415 ILCS 5/42(h) (2006).

Section 57.6(a) of the Act provides that “[o]wners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.” 415 ILCS 5/57.6(a) (2006).

Section 732.100(c) of the Board’s UST regulations, pertaining to releases reported September 23, 1994 through June 23, 2002, provides in pertinent part that “[o]wners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part.” 35 Ill. Adm. Code 732.100(c).

Section 732.200 of the Board’s UST regulations, pertaining to releases reported September 23, 1994 through June 23, 2002, provides that

*Owners and operators of underground storage tanks shall, in response to all confirmed releases of petroleum, comply with all applicable statutory and regulatory reporting and response requirements. [415 ILCS 5/57.6] No work plan or corresponding budget plan shall be required for conducting early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product. 35 Ill. Adm. Code 732.200.*

Section 732.202(c) of the Board’s UST regulations, pertaining to releases reported September 23, 1994 through June 23, 2002, provides that

within 20 days after initial notification to I[llinois] E[mergency] M[anagement] A[gency] of a release plus 14 days, the owner or operator shall submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data. 35 Ill. Adm. Code 732.202(c).

Section 732.202(e) of the Board’s UST regulations, pertaining to releases reported September 23, 1994 through June 23, 2002, provides in pertinent part that

[w]ithin 45 days after initial notification to I[llinois] E[mergency] M[anagement] A[gency] of a release plus 14 days, the owner or operator shall submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy. 35 Ill. Adm. Code 732.202(e).

### **ALLEGATIONS IN AMENDED COMPLAINT**

#### **Count I: August 2000 Release**

The amended complaint alleges that Strata has, at all times relevant to the amended complaint, been an Illinois corporation in good standing. Am. Comp. at 1. The People further allege that, on August 28, 2000, Strata reported to the Illinois Emergency Management Agency (IEMA) a release of gasoline from a UST owned by Strata at 3801 14th Avenue, Rock Island, Rock Island County. Am. Comp. at 4. The People claim that, “[d]uring a tank removal, it was determined that there had been a release of gasoline from one or more of four underground tanks.” *Id.*

The People argue that the owner or operator of a UST must submit a 20-Day Certification to the Illinois Environmental Protection Agency (Agency) within 20 days of confirming a release. Am. Comp. at 4, citing 35 Ill. Adm. Code 732.202(c). The People further argue that, in this case, “[t]he 20-Day Certification was due no later than September 17, 2000.” Am. Comp. at 4. The People allege that the Agency did not receive a 20-Day Certification regarding the August 28, 2000 release from Strata until October 10, 2000. *Id.*

The People also claim that the owner or operator of a UST must submit a 45-Day Report to the Agency within 45 days of confirming a release. Am. Comp. at 4, citing 35 Ill. Adm. Code 732.202(e). The People further claim that “[t]he 45-Day Report was due no later than October 15, 2000.” Am. Comp. at 4. The People allege that the Agency did not receive a 45-Day Report regarding the August 28, 2000 release until November 30, 2000. *Id.*

The People state that the Agency approved a Site Classification Work Plan in a letter dated May 31, 2001. Am. Comp. at 4. The People further state that the letter notified Strata “that the Site Classification Completion Report was due no later than August 28, 2001, pursuant to 35 Ill. Adm. Code 732.301.” *Id.* The People claim that the Agency notified Strata in a letter dated February 26, 2002, that it had not received the Site Classification Completion Report. *Id.* The People further claim that that letter extended the deadline for filing that report to March 15, 2002. *Id.* at 4-5.

The People allege that, on April 18, 2002, the Agency sent to Strata a Violation Notice (VN) regarding the August 28, 2000 release. Am. Comp. at 5. The People further allege that, although the VN sought a response by June 2, 2002, “Strata never responded to the VN.” *Id.*

The amended complaint alleges that, on August 30, 2002, Strata filed with the Agency a Site Classification Completion Report regarding the August 28, 2000 release. Am. Comp. at 5. The amended complaint further alleges that the Agency rejected the report on September 27,

2002. *Id.* On October 24, 2002, alleges the amended complaint, Strata filed an Amended Site Classification Completion Report with the Agency. *Id.* The amended complaint further alleges that “[t]he amended report was approved on December 10, 2002.” *Id.*

The People allege that, by exceeding the deadline to file a 20-Day Certification, exceeding the deadline to file a 45-Day Report, and exceeding two deadlines to file a Site Classification Completion Report, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and 35 Ill. Adm. Code 732.200, 732.202(c), and 732.202(e) with regard to the August 28, 2000 release. Am. Comp. at 5. The People further allege that, “[b]y failing to proceed in a timely manner to complete remediation,” Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and 35 Ill. Adm. Code 732.100(c) with regard to the August 28., 2000 release. *Id.*

### **Count II: June 2003 Release**

The People allege that, on June 12, 2003, Strata reported to IEMA a release of gasoline from a UST owned by Strata at 210 East 1st Street, Milan, Rock Island County. Am. Comp. at 6. The People further allege that “[t]he extent of the release was unknown, but the tank system at the site included one 4000 gallon gasoline tank and one 6000 gallon gasoline tank, as well as a 4000 gallon diesel tank and an 8000 gallon kerosene tank.” *Id.*

The People argue that, although Strata was required to file a 20-Day Certification no later than July 3, 2003, Strata has never filed a 20-Day Certification regarding the June 12, 2003 release with the Agency. Am. Comp. at 6-7. The People further argue that, although Strata was required to file a 45-Day Report no later than July 27, 2003, Strata has never filed a 45-Day Report regarding the June 12, 2003 release with the Agency. *Id.* at 7.

The People allege that, on October 8, 2003, the Agency sent to Strata a VN regarding the June 12, 2003 release. Am. Comp. at 7. The People further allege that “Strata never responded to the VN.” *Id.*

The People state that the Agency on October 5, 2006 received from Strata a Corrective Action Completion Report (CACR) concerning the June 12, 2003 release. Am. Comp. at 7. The People further state that the Agency on October 23, 2006 issued to Strata a No Further Remediation (NFR) letter concerning the June 12, 2003 release. *Id.*

The People allege that, by failing to submit the required reports, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and 35 Ill. Adm. Code 732.100(c), 732.202(c), and 732.202(e) with regard to the June 12, 2003 release. Am. Comp. at 7. The People further allege that, by failing to proceed in a timely manner to complete remediation, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and 35 Ill. Adm. Code 732.100(c). *Id.*

### **MOTION FOR SUMMARY JUDGMENT**

### **People's Request for Admission of Facts**

Although the People acknowledge that Charles E. Miller, Strata's president, provided unsworn responses dated April 19, 2007 to the People's request for admission of facts (MSJ at 7), the People challenge those responses on various grounds. First, the People argue that the Board's procedural rules reflect the requirements of the Attorney Act and the Corporation Practice of Law Prohibition Act that anyone other than an individual "must appear through an attorney-at-law licensed and registered to practice law." MSJ at 7, citing 35 Ill. Adm. Code 101.400(a)(2); *see* 705 ILCS 205/1 (2006), 705 ILCS 220/1 (2006). The People argue that, because Mr. Miller cannot represent Strata before the Board, his "purported responses to the Request for Admission of Fact directed toward Strata are invalid and cannot be considered as a denial of any requested admission." MSJ at 7.

Second, the People argue that the Board's procedural rules also require that any denial of a request for admission must be sworn. MSJ at 7, citing 35 Ill. Adm. Code 101.618(f). Mr. Miller's response dated April 19, 2007 is not sworn. *See* MSJ, Exh. B. Third, the People argue that the Board's procedural rules also requires that denying a request for admission must be done with specificity. MSJ at 7, citing 35 Ill. Adm. Code 101.618(f). The People claim that a number of Mr. Miller's handwritten responses either do not effectively deny the request, are ambiguous, lie outside the scope of his personal knowledge, or are "simply false." *See* MSJ at 8.

The People argue that the Board's procedural rules provide that each matter of fact of which admission is requested is admitted unless the party to which the request is directed files a sworn response within 28 days. MSJ at 7, citing 35 Ill. Adm. Code 101.618(f). The People further argue that "[a]mbiguous and unsworn response to the requests for admission do not serve as a denial of any requested admission." MSJ at 7, citing Robbins v. Allstate Ins. Co., 362 Ill. App. 3d 540, 543-44, 841 N.E.2d 22, 25-26 (2nd Dist. 2005). Claiming that Mr. Miller's purported responses to the request for admission were ambiguous, unsworn, and not submitted by authorized counsel, the People argue that "all facts within the request must be considered admitted." MSJ at 8.

The People argue that "[n]o Answer or responsive pleadings to the Complaint or Amended Complaint have been filed and, therefore, no affirmative defenses have been pleaded." MSJ at 1. The People state that their motion relies upon uncontroverted facts contained in exhibits attached to the motion for summary judgment and in the Request for Admission of Facts mailed to Strata on April 2, 2007. *Id.*

### **People's Statement of Uncontested Facts**

#### **August 2000 Release**

Specifically, the People argue that Strata has admitted that it is "an Illinois corporation in good standing," for which Charles E. Miller III acts as president and Roseanne M. Miller acts as registered agent. MSJ at 1; *see* MSJ, Exh. B at 1 (¶¶ 1,2).

The People argue that Strata has admitted that, on August 28, 2000, it reported to IEMA a release from a UST owned by Strata at 3801 14th Avenue, Rock Island, Rock Island County. MSJ at 2, citing MSJ, Exh. A at 2 (Zuehlke affidavit), MSJ, Exh. B at 1-2 (¶ 3 misnumbered as 2). The People further argue that Strata has admitted that, in the course of removing tanks from the site, “it was determined that there had been a release of gasoline from one or more of four underground tanks.” MSJ at 2, citing MSJ, Exh. A at 2.

The People claim that Strata has admitted that it did not submit a timely 20-Day Certification to the Agency within 20 days of confirming the August 2000 release. MSJ at 2, citing MSJ, Exh. A at 2, MSJ, Exh. B (¶ 4 misnumbered as 3). The People further claim that the Agency did not receive the 20-Day Certification, which had been due no later than September 17, 2000, until October 10, 2000. MSJ at 2, citing MSJ, Exh. A at 2, MSJ, Exh. B (¶ 4 misnumbered as 3).

The People argue that Strata has admitted that it did not submit a timely 45-Day Report to the Agency within 45 days of confirming the August 2000 release. MSJ at 2, citing MSJ, Exh. A at 2-3, MSJ, Exh. B (¶ 5 misnumbered as 4). The People further argues that the Agency did not receive the 45-day Report, which had been due no later than October 15, 2000, until November 30, 2000. MSJ at 2, citing MSJ, Exh. A at 2-3, MSJ, Exh. B (¶ 5 misnumbered as 4).

The People claim that Strata has admitted that, in a letter dated May 30, 2001, the Agency “approved the Site Classification Work Plan and notified Strata that the Site Classification Completion Report was due by no later than August 28, 2001.” MSJ at 2, citing MSJ, Exh. A at 3, MSJ, Exh. B at 2 MSJ, Exh. B (¶ 6 misnumbered as 5). The People further claim that, in a letter dated February 26, 2002, the Agency “notified Strata that the Site Classification Completion Report had not been received and that this report was now due by no later than March 15, 2002.” MSJ at 2, citing MSJ, Exh. A at 3, MSJ, Exh. B at 2 MSJ, Exh. B (¶ 7 misnumbered as 6).

The People argue that Strata has admitted that, on April 18, 2002, the Agency sent a VN regarding the August 2000 release to Strata. MSJ at 3, citing MSJ, Exh. A at 3, MSJ, Exh. B at 2 MSJ, Exh. B (¶ 9 misnumbered as 8). The People further argue that, although the VN requested a response no later than June 2, 2002, “Strata never responded to the VN.” MSJ at 3, citing MSJ, Exh. A at 3, MSJ, Exh. B. at 2 MSJ, Exh. B (¶ 9 misnumbered as 8).

The People claim that Strata has admitted that it did not file the required Site Classification Completion Report by either the August 28, 2001 or the March 15, 2002 deadlines and that it only filed the report on August 30, 2002. MSJ at 3, citing MSJ, Exh. A at 3, MSJ, Exh. B at 2 MSJ, Exh. B (¶ 8 misnumbered as 7). The People further claim Strata has admitted that the Agency rejected this filing on September 27, 2002. MSJ at 3, citing MSJ, Exh. A at 3. The People further claim that Strata has admitted that, on October 24, 2002, Strata file with the Agency an Amended Site Classification Completion Report, which the Agency approved on December 10, 2002. MSJ at 3, citing MSJ, Exh. A at 3.

The People argue that Strata has admitted that, on October 30, 2002, the Agency sent to Strata a Notice of Intent to Pursue Legal Action (NIPLA) concerning the August 2000 release

but that Strata never responded to the NIPLA. MSJ at 3, citing MSJ, Exh. B at 2 (¶ 10 misnumbered as 9). The People further argue that Strata has admitted that, to date, Strata has not submitted to the Agency a CACR regarding the August 2000 release. MSJ at 3, citing MSJ, Exh. A at 4, MSJ, Exh. B at 2 MSJ, Exh. B (¶ 11 misnumbered as 10).

The People argue that the uncontroverted facts in the record of this proceeding demonstrate that Strata failed to comply with applicable statutory and regulatory reporting and response requirements with regard to the reported August 2000 release from its UST. MSJ at 5. The People further argue that there is no genuine issue of material fact with regard to Strata's alleged violations of Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Sections 732.100(c), 732.200, 732.202(c), and 732.202(e) of the Board's UST regulations (35 Ill. Adm. Code 732.100(c), 732.200, 732.202(c), and 732.202(e)). MSJ at 5. Accordingly, the People seek a Board order granting their motion for summary judgment on the first count of the amended complaint. MSJ at 11.

### **June 2003 Release**

The People argue that Strata has admitted that, on June 12, 2003, it reported to IEMA a release of gasoline from a UST owned by Strata at 210 East 1st Street, Milan, Rock Island County. MSJ at 4, citing MSJ, Exh. B at 2 (¶ 12 misnumbered as 9), MSJ, Exh. C at 2 (Malcom affidavit). The People further argue that Strata has admitted that, although the extent of the release was unknown, "the tank system at the site included one 4000 gallon gasoline tank and one 6000 gallon gasoline tank, as well as a 4000 gallon diesel tank and an 8000 gallon kerosene tank." MSJ at 4, MSJ, Exh. C at 2.

The People claim that Strata has admitted that it never filed with the Agency the required 20-Day Certification regarding the June 2003 release. MSJ at 4, citing MSJ, Exh. B at 3 (¶ 13 misnumbered as 10), MSJ, Exh. C at 2. The People further claim that Strata has admitted that it never filed with the Agency the required 45-Day Certification regarding the June 2003 release. MSJ at 4, citing MSJ, Exh. B. at 3 (¶ 14 misnumbered as 11), MSJ, Exh. C at 2.

The People argue that Strata has admitted that, on October 8, 2003, the Agency sent to Strata a VN regarding the June 2003 release. MSJ at 4, citing MSJ, Exh. B at 3 (¶ 15 misnumbered as 12), MSJ, Exh. C at 2. The People further argue that Strata has admitted that it never responded to the VN. MSJ at 4, citing MSJ, Exh. B at 3 (¶ 15 misnumbered as 12), MSJ, Exh. C at 2. The People argue that Strata has admitted that the Agency sent to Strata a NIPLA concerning the August 2000 release but that Strata never responded to the NIPLA. MSJ at 4, citing MSJ, Exh. B at 3 (¶ 16 misnumbered as 13), MSJ, Exh. C at 2.

The People argue that the uncontroverted facts in the record of this proceeding demonstrate that Strata failed to comply with applicable statutory and regulatory reporting and response requirements with regard to the reported June 2003 release from its UST. MSJ at 5. The People further argue that there is no genuine issue of material fact with regard to Strata's alleged violations of Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Sections 732.100(c), 732.200, 732.202(c), and 732.202(e) of the Board's UST regulations (35 Ill. Adm. Code 732.100(c), 732.200, 732.202(c), and 732.202(e)). MSJ at 6. Accordingly, the People seek



a Board order granting their motion for summary judgment on the first count of the amended complaint. MSJ at 11.

### **SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate when the pleadings, depositions, 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 the relief “is clear and free from doubt.” *Id.*, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). “Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis which would arguably entitle [it] to a judgment.” Sutter Sanitation, Inc. et al. v. IEPA, PCB 04-187 slip op. at 9 (Sept. 16, 2004); citing Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

### **BOARD ANALYSIS**

The Board’s procedural rules provide that

the respondent may 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 or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. 35 Ill. Adm. Code 103.204(d).

Strata has not filed an answer either to the original complaint filed December 29, 2005, or to the amended complaint filed April 27, 2007. Consequently, the Board will take as admitted all of the material allegations in the People’s amended complaint.

The Board’s procedural rules further provide that

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion. 35 Ill. Adm. Code 101.500(d).

Strata has not filed a response to the People’s motion for summary judgment. Accordingly, the Board will consider Strata to have waived objection to granting the People’s motion for summary judgment.

The Board’s procedural rules further provide that

[e]ach 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).

Strata has, in response to the People's Request for Admission of Fact, submitted only an unsworn document signed by Charles E. Miller. The record in this proceeding does not show that Mr. Miller is an attorney, and no attorney has filed an appearance on behalf of Strata. The Board's procedural rules provide that, "[w]hen appearing before the Board, any person other an individuals must appear through an attorney-at-law licensed and registered to practice law." 35 Ill. Adm. Code 101.400(a)(2). Consequently, the Board finds that Mr. Miller's unsworn response does not constitute a valid denial of the request for admission of fact. In the absence of a valid denial, the Board deems the facts that were the subject of the request to have been admitted.

### **August 2000 Release**

With regard to the August 2000 release, the admitted allegations and facts demonstrate that Strata exceeded the deadline for filing a 20-Day Certification. Am Comp. at 4 (¶ 11); MSJ, Exh. A at 2; MSJ, Exh. B at 2 (¶ 4 misnumbered as 3). The admitted allegations and facts also demonstrate that Strata exceeded the deadline for filing a 45-Day Report. Am. Comp. at 4 (¶ 12); MSJ, Exh. A at 2-3; MSJ, Exh. B at 2 (¶ 5 misnumbered as 4). The admitted allegations and facts further demonstrate that Strata twice exceeded deadlines for filing a Site Classification Completion Report. Am. Comp. at 4-5 (¶¶ 13-17); MSJ, Exh. At at 3; MSJ, Exh. B at 2 (¶ 8 misnumbered as 7). The admitted allegations and facts further demonstrate that Strata has not yet submitted to the Agency a CACR concerning this release. Am. Comp. at 5 (¶ 20); MSJ, Exh. A at 4; MSJ, Exh. B at 2 (¶ 11 misnumbered as 10).

The Board finds that there is no genuine issue of material fact that, by failing to submit the required reports regarding the August 2000 release to the Agency on a timely basis, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Sections 732.200, 732.202(c), and 732.202(e) of the Board's UST regulations (35 Ill. Adm. Code 732.200, 732.202(c), and 732.202(e)). In addition, the Board finds that there is no genuine issue of material fact that, by failing to proceed in a timely and expeditious manner to complete remediation of the August 2000 release, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Section 732.100(c) of the Board's UST regulations (35 Ill. Adm. Code 732.100(c)). Accordingly, the Board grants the People's uncontested motion for summary judgment on Count I of the Amended Complaint addressing the August 2000 release.

### **June 2003 Release**

With regard to the June 2003 release, the admitted allegations and facts demonstrate that Strata has never submitted to the Agency a 20-Day Certification. Am. Comp. at 6 (¶ 11); MSJ, Exh. B at 3 (¶ 13 misnumbered as 10); MSJ, Exh. C at 2. The admitted allegations and facts also demonstrate that Strata has never submitted to the Agency a 45-Day Report. Am. Comp. at 7 (¶ 12); MSJ, Exh. B at 3 (¶ 14 misnumbered as 11); MSJ, Exh. C. at 2.

The Board finds that there is no genuine issue of material fact that, by failing to submit the required reports regarding the June 2003 release to the Agency on a timely basis, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Sections 732.200, 732.202(c), and 732.202(e) of the Board's UST regulations (35 Ill. Adm. Code 732.200, 732.202(c), and 732.202(e)). In addition, the Board finds that there is no genuine issue of material fact that, by failing to proceed in a timely and expeditious manner to complete remediation of the June 2003 release, Strata has violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Section 732.100(c) of the Board's UST regulations (35 Ill. Adm. Code 732.100(c)). Accordingly, the Board grants the People's uncontested motion for summary judgment on Count II of the Amended Complaint addressing the June 2003 release.

### **REMEDY**

In granting summary judgment to the People, the Board has found that Strata has committed the violations alleged in the amended complaint. When a complainant proves an alleged violation, the Board must consider the factors in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2006). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation. In their motion for summary judgment, the People address each of these factors. MSJ at 8-9. The People seek to have the Board order Strata to complete remediation concerning the August 2000 release and submit a Corrective Action Completion Report to the Agency, to cease and desist from any further violations of the Act and Board regulations, and pay a civil penalty of \$6,500. MSJ at 11-12.

### **Section 33(c) Factors**

The People first address "the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people." 415 ILCS 5/33(c)(i) (2006). The People claim that Strata's failure to comply with reporting requirements and its failure to proceed to remediate the two releases in a timely fashion threatened human health and the environment. MSJ at 9. The Board weighs this factor in favor of assessing a civil penalty in this case.

Second, the People address "the social and economic value of the pollution source" (415 ILCS 5/33(c)(ii) (2006)) by stating that Strata's business had a social and economic benefit. MSJ at 9. The Board weighs this factor against assessing a civil penalty in this case.

Third, turning to "the suitability or unsuitability of the pollution source to the area in which it is located (415 ILCS 5.33(c)(iii) (2006)), the People state that Strata's USTs "were

suitable for the area in which they were operating.” MSJ at 9. The Board weighs this factor against assessing a civil penalty in this case.

Fourth, the People address the technical practicability and economic reasonableness of reducing or eliminating the violation. 415 ILCS 5/33(c)(iv) (2006). The People state that “[c]omplying with the applicable statutory and regulatory reporting requirements and proceeding in a timely manner to complete remediation were technically practicable and economically reasonable.” MSJ at 9. The Board weighs this factor in favor of assessing a civil penalty in this case.

Fifth, on the issue of any subsequent compliance (415 ILCS 5/33(c)(v) (2006)), the People claim that Strata has not complied with the Act and Board regulations and has not yet fully remediated the August 2000 release. MSJ at 9. The Board weighs this factor in favor of assessing a civil penalty in this case.

After weighing the Section 33(c) factors, particularly the practicability and reasonableness of complying with the various UST requirements to which Strata was subject and Strata’s failure to complete remediation of the August 2000 release, the Board finds that Strata’s violations were unreasonable. Consequently, the Board orders Strata to complete remediation expeditiously with regard to the August 2000 release and submit a Corrective Action Completion Report to the Agency and to cease and desist from any further violations of the Act and Board regulations. The Board also finds that a civil penalty is warranted in this case. To determine the proper penalty, the Board considers factors listed in Section 42(h) of the Act. 415 ILCS 4/42(h) (2006).

#### **Section 42(h) Factors**

Section 42(h) of the Act (415 ILCS 5/42(h) (2006)) sets forth seven factors that may mitigate or aggravate the amount of a civil penalty, including the need to deter further violations by the respondent and others similarly situated. In their motion for summary judgment, the People address each of these seven factors. MSJ at 10-11.

The People first address “the duration and gravity of the violation.” 415 ILCS 5/42(h)(1) (2006). The People claim that Strata did not comply with reporting requirements to which it was subject and failed to undertake timely remediation of the August 2000 and June 2003 releases from its sites. MSJ at 11. Although the People acknowledge that the Agency has issued an NFR letter with regard to the June 2003 release, the People state that “remediation has not been completed concerning the August 2000 release.” *Id.* The Board weighs this as an aggravating factor in determining a penalty amount.

Second, the People address “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.” 415 ILCS 5/42(h)(2) (2006). The People claim that Strata “was not diligent” in attempting to attain compliance with applicable legal authorities. MSJ at 11. The Board weighs this as an aggravating factor in determining a penalty amount.

Third, the People address “any economic benefits accrued by the respondent because of delay in compliance with requirements.” 415 ILCS 5/42(h)(3) (2006). The People characterize Strata’s economic benefit from delaying compliance and remediation of the two releases as “nominal.” MSJ at 11. The Board weighs this as an aggravating factor in determining a penalty amount.

Fourth, the People turn to “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.” 415 ILCS 5/42(h)(4) (2006). The People state that the specific facts of this matter have led to a determination that a penalty of \$6,500 will deter future violations and help generate voluntary compliance. MSJ at 11.

Fifth, addressing “the number, proximity in time, and gravity of previously adjudicated violations of the Act by this respondent” (415 ILCS 42(h)(5) (2006)), the People state that, to their knowledge, “Respondent has no previously adjudicated violations of the Act.” MSJ at 11. The Board weighs this as a mitigating factor in determining a penalty amount.

Sixth, Section 42(h) allows the Board to consider whether Strata “voluntarily self-disclosed . . . the non-compliance to the Agency.” 415 ILCS 5/42(h)(6) (2006). The People claim that Strata “did self report the initial releases.” MSJ at 11. The Board weighs this as a mitigating factor in determining a penalty amount.

Seventh, although Section 42(h) also allows the Board to consider “whether the respondent has agreed to undertake a ‘supplemental environmental project’” (415 ILCS 5/42(h)(7) (2006)), the People state that adjudication of this matter does not include one. MSJ at 11. The Board weighs this neither as an aggravating nor as a mitigating factor in determining a penalty amount.

Strata has committed two violations of one provision of the Act and two violations each of four provisions of the Board’s UST regulations. Section 42(a) 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) (2006).

By failing to file a response to the People’s motion for summary judgment, Strata did not offer any evidence to contradict the facts and legal arguments presented by the People on the issue of a penalty. Under these circumstances, and after carefully considering the factors at Section 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2006)), the Board finds that the People’s requested penalty of \$6,500 is appropriate. The Board grants the People’s request and imposes the proposed \$6,500 civil penalty. *See People v. J&S Companies and First Choice Construction, Inc.*, PCB 06-33, slip op. at 7 (Aug. 17, 2006); *People v. J&F Hauling, Inc.*, PCB 02-21, slip op. at 6 (Feb. 6, 2003).

## **CONCLUSION**

The Board grants the People's unopposed motion for summary judgment on the two counts of the amended complaint. The Board imposes a \$6,500 civil penalty on Strata. In addition, the Board orders Strata to complete remediation expeditiously with regard to the August 2000 release and submit a Corrective Action Completion Report to the Agency. The Board also orders Strata to cease and desist from any further violations of the Act and Board regulations.

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

### **ORDER**


1. The Board grants the People's unopposed motion for summary judgment on both counts of the amended complaint as alleged against Strata. The Board finds that Strata violated Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2006)) and Sections 732.100(c), 732.200, 732.202(c), and 732.202(e) of the Board's regulations (35 Ill. Adm. Code 732.100(c), 732.200, 732.202(c), and 732.202(e)).
2. Strata must pay a civil penalty of \$6,500 no later than Monday, August 27, 2007, 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 Strata's federal employer identification number must be included on the certified check or money order.
3. Strata 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.  
  
Strata must send a copy of the certified check or money order and any transmittal letter to:  
  
Raymond J. Callery  
Assistant Attorney General  
Environmental Bureau  
500 South 2nd Street  
Springfield, Illinois 62706
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 1003(a) (2006)).

5. Strata must expeditiously complete remediation concerning the August 2000 release and submit a Corrective Action Completion Report to the Agency.
6. Strata 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) (2006); 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 26, 2007, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board