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JUN 9 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.) No. PCB 95-180
) (Enforcement)
ARCHER DANIELS MIDLAND COMPANY,)
a Delaware corporation,)
)
Respondent.)

NOTICE OF FILING

TO: Lee R. Cunningham Carol Sudman
Archer Daniels Midland Company Hearing Officer
4666 Faries Parkway Illinois Pollution
P.O.Box 1470 Control Board
Decatur, Illinois 62526 600 S. Second Street
Springfiel, Il. 62704

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:

Thomas Davis by ZB

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

DATE: June 9, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

v.)

ARCHER DANIELS MIDLAND COMPANY,)
a Delaware corporation,)

Respondent.)

PCB NO. 95-180
(Enforcement)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002). In support of this motion, Complainant states as follows:

1. Complainant and Respondent had previously filed in June 1995 a Stipulation and Proposal for Settlement, but subsequently requested that the Board defer consideration of that settlement pleading.
2. The parties have recently reached an agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion, which supercedes the June 1995 settlement pleading.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section

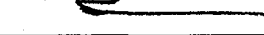
31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby request that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-7968

Dated: 5/05/03

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 ARCHER DANIELS MIDLAND)
 COMPANY,)
 a Delaware corporation,)
)
 Respondent.)

PCB NO. 95-180
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, and Respondent, ARCHER DANIELS MIDLAND COMPANY, a Delaware corporation, and hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties agree that this Settlement is a compromise of a disputed claim. The parties further stipulate that this statement of facts is made and agreed upon for the purposes of settlement only and that neither the fact that a party has entered into the Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future enforcement action as evidence of a past adjudication of violation, as provided in Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2002). The agreement

shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the Settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent and any officer, director, agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Settlement the failure of its officers, directors, agents, servants, or employees to take such action as shall be required to comply with the provisions of this Settlement.

IV.

STATEMENT OF FACTS

1. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent, Archer Daniels Midland Company ("ADM"), is a Delaware corporation qualified to do business in Illinois.

3. ADM owns and operates a complex of buildings and physical plants in Decatur, Illinois. ADM's Decatur complex consists of the East campus, which contains a Specialty Soybean Processing Plant and related plants, Wet Corn Processing Plant; a Bio-products Plant; Co-generation (power) Plant; Vitamin C Plant; Xanthan Gum Plant; Lactic Acid Plant; Ethanol Plant or Denatured Alcohol Plant; and the West campus, which consists of plants involved in the production of oil from soybeans by solvent extraction; the production of oil from corn germ using a press and solvent extraction process; the secondary refining of vegetable oils from the crude state with hydrogenation and deodorization processes; the conversion of vegetable distillates into vitamin E products; a De-oiled Lecithin Plant; and a Wastewater Treatment Plant. The Decatur plant also houses ADM's national corporate offices.

4. The Complaint in this matter was filed on June 22, 1995.

5. Counts I and II are the subject of a Motion to Dismiss. Respondent has implemented measures to ensure future compliance with applicable federal and State laws and regulations that are the subject of violations specifically alleged within Counts III through VIII contained within the State's complaint.

6. The Alcohol Plant violations alleged in Counts III and IV arose from a process change which was not properly reflected in the relevant permits, but which may have resulted in lower overall emissions. ADM also operated the carbon dioxide liquefaction plant from about June 1989 until March 16, 1990, without an operating permit.

7. Count V involves ADM's operation of a pressure relief device at the Alcohol Plant without complying with the New Source Performance Standards ("NSPS").

8. The violations alleged in Counts VI and VII arose from problems in the start-up of fluidized bed combustion boilers in the Co-generation Plant. Excess emissions resulted from

baghouse failures and bypass damper sealing problems, which were largely remedied by early 1990.

9. Count VIII pertains to a release of ammonia from a pressure relief valve at ADM's Food Oil Packaging Plant. The release was caused by an electrical malfunction coupled with the proper functioning of the valve, and a warning system functioned properly at the time of the incident.

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall diligently comply with the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides;

- c. 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.

In response to these factors, the parties state as follows:

1. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as a potential for air pollution and the degree of potential injury would be dependent upon the extent of the pollution and the degree of exposure to that pollution.

2. The parties agree that Respondent's facility is of social and economic benefit;

3. Respondent's facility is located at a site which has been used for the operation of a manufacturing facility for nearly sixty years. Respondent's facility has been found suitable for such use at that location;

4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and

5. Respondent has implemented measures to ensure future compliance with applicable federal and State laws and regulations that are the subject of violations specifically alleged within Counts III through VIII contained within the State's complaint.

VII.

CONSIDERATION OF SECTION 42(H) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides:

- h. in determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) 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 violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
 - (3) any economic benefits accrued by the violator because of delay in compliance with requirements;

- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The gravity and duration of the alleged violations were significant enough to warrant enforcement;
2. In response to notices of noncompliance issued by the Illinois EPA, the Respondent worked with the Illinois EPA to resolve compliance issues specifically alleged within the State's complaint;
3. The economic benefit derived by Respondent resulting from its failure to operate in compliance with the Act and regulations promulgated thereunder is undetermined;
4. Complainant has determined, without the agreement of Respondent, in this instance, that a penalty of one hundred and sixty thousand dollars (\$160,000.00) would serve to deter further violations and aid in future voluntary enforcement of the Act and applicable regulations.
5. The previously adjudicated violations of the Act by Respondent include PCB 94-123 (\$6,500 penalty), PCB 83-150 (\$10,000 penalty), and PCB 80-151 (\$15,000 penalty).

VIII.

TERMS OF SETTLEMENT

- A. Respondent does not admit the violations alleged in the Complaint;
- B. The Respondent shall pay a penalty of one hundred and sixty thousand dollars (\$160,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date on which the Board adopts a final order approving this Stipulation and Proposal for

Settlement. Payment shall be made by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Respondent's Federal Employer Identification Number ("FEIN") shall be written upon the certified check or money order. Respondent's FEIN is: _____

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

C. In the event the penalty is not paid in a timely fashion, interest shall accrue and be paid by Respondent at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002), pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002). Interest on unpaid payments shall begin to accrue from the date penalty is due and continue to accrue until the date payment is received. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid payments owing. All interest on payments owed the Complainant shall be paid in the manner specified above.

D. Respondent shall at all times meet its obligations under the Act; the Board's Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B; and Respondent's Operating Permits.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent to comply with any federal, state, or local regulations, including but not limited to

the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's Rules and Regulations, 35 Ill. Adm. Code, Subtitles A through H.

X.

RELEASE FROM LIABILITY

In consideration of the actions ADM has taken and which ADM has agreed to undertake through this Settlement to make the agreed payment and to comply with the Act and applicable rules adopted thereunder, the State of Illinois releases, waives and discharges ADM, as well as the successors and assignees of each and every officer, director, agent, employee or servant of ADM, from any further liability or penalties for any violations of the Act and State regulations which were specifically alleged in the Amended Complaint herein or for which protections are provided pursuant to the Terms of Settlement. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by complainant of the right to redress other violations or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written and grant the Motion to Dismiss Counts I and II.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General, State of Illinois,

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

Dated: 5/05/03

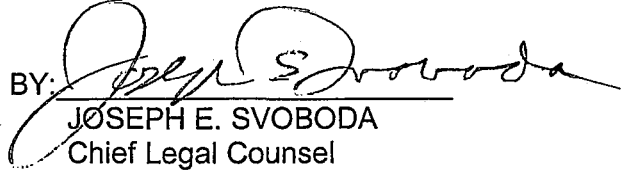
BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

People of the State of Illinois
v. Archer Daniels Midland Company
PCB 95-180

Dated: 4/15/03

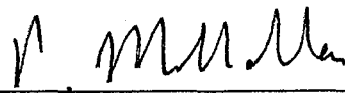
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

*People of the State of Illinois
v. Archer Daniels Midland Company
PCB 95-180*


ARCHER DANIELS MIDLAND COMPANY

Dated: 4-28-03

BY:  JPC.
Paul Mulhollem, President and Chief
Operating Officer

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 9th day of March 2003, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB