ILLINOIS POLLUTION CONTROL BOARD July 6, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 02-186
)	(Enforcement - Air)
PERFETTI VAN MELLE USA INC. f/k/a)	
VAN MELLE USA INC., a Kentucky)	
corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On April 23, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Perfetti Van Melle USA Inc. (Perfetti Van Melle). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns Perfetti Van Melle's candy manufacturing facility at 151 North Hastings Lane, Buffalo Grove, Lake County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (2004)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. See 415 ILCS 5/31 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that Perfetti Van Melle violated Sections 9(a) and (b), 9.8(b), and 39.5(6)(b) of the Act (415 ILCS 5/9(a) and (b), 9.8(b), and 39.5(6)(b) (2004)) and 35 Ill. Adm. Code 201.141; 201.143; 203.201; 205.150(c), (d), and (e); 205.300(a); 205.310(a); 218.986; and 270.301(b). The People further allege that Perfetti Van Melle violated these provisions by (1) operating an emissions source without a permit; (2) failing to timely submit a Clean Air Act Permit Program (CAAPP) application; (3) failing to timely submit an Emission Reduction Market System (ERMS) application; (4) releasing volatile organic material (VOM) into the atmosphere without demonstrating compliance with New Source Review (NSR) requirements; and (5) failing to reduce uncontrolled VOM emissions.

On May 18, 2006, the People and Perfetti Van Melle filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. See 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the Buffalo Grove Countryside on May 25, 2006. The Board did not receive any requests for

hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2004); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Perfetti Van Melle's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

Perfetti Van Melle neither admits nor denies the alleged violations. Perfetti Van Melle has terminated all operations at the Buffalo Grove facility and agrees to obtain all necessary permits and approvals before recommencing. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount. Perfetti Van Melle agrees to pay a civil penalty of \$120,000. Perfetti Van Melle further agrees to pay \$60,909.39 for purchase of allotment trading units (ATUs) from the Agency's Alternative Compliance Market Account (ACMA) for the 2000 and 2001 emissions seasons, and \$1,800 for the 2004 annual air pollution site fee. The parties stipulate that payment of this penalty and these fees negates any economic benefit derived from delayed compliance. The People further assert that this civil penalty will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

The People and Perfetti Van Melle have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. This docket is now closed.

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

ORDER

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Perfetti Van Melle, through its attorney of record, must pay each of the following no later than August 7, 2006, which is the first business day after the 30th day after the date of this order:
 - a. A civil penalty of \$120,000;
 - b. The amount of \$60,909.39 for past-due ATUs, as provided in the ACMA bill that the Agency issued to Perfetti Van Melle on or about June 25, 2004; and
 - c. The amount of \$1,800 for the 2004 air pollution site fees, as provided in the that the Agency invoice issued to Perfetti Van Melle on or about December 8, 2004.

Perfetti Van Melle must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and Perfetti Van Melle's social security number or federal employer identification number must be included on the certified check or money order.

3. Perfetti Van Melle, through its attorney of record, must send the certified check, money order, or electronic funds transfer to the following person at the indicated address:

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

4. Perfetti Van Melle, through its attorney of record, must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to the following person at the indicated address:

George D. Theophilos, Assistant Attorney General Environmental Bureau 188 West Randolph Street, 20th Floor Chicago, Illinois 60601

Maureen E. Wozniak, Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

- 5. 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)).
- 6. Perfetti Van Melle must cease and desist from the alleged violations.

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 July 6, 2006, by a vote of 4-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board