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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**STATE OF ILLINOIS**  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS by	)	
LISA MADIGAN, Attorney General of the	)	
State of Illinois,	)	
	)	PCB No. 07-124
Complainant,	)	(Enforcement - Water)
	)	
v.	)	
	)	
KRAFT FOODS GLOBAL, INC., a Delaware	)	
corporation,	)	
	)	
Respondent.	)	

**ANSWER TO COMPLAINT**

NOW COMES Respondent, KRAFT FOODS GLOBAL, INC., by and through its attorneys, SEYFARTH SHAW LLP, and states as follows for its Answer to Complaint:

**COUNT I**  
**WATER POLLUTION**

1. This Count is brought on behalf of the 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 ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

**RESPONSE:**

Respondent admits the allegations contained in paragraph 1 of the Complaint.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, inter alia, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7) (2007).

**RESPONSE:**

Respondent admits the allegations contained in paragraph 2 of the Complaint.

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3. At all times relevant to this Complaint, Respondent, Kraft Foods Global, Inc. ("Kraft") was and is a Delaware corporation authorized to transact business in Illinois.

**RESPONSE:**

Respondent admits the allegations contained in paragraph 3 of the Complaint.

4. At all times relevant to this Complaint, Kraft owned and operated a food processing and production facility ("Facility"), located at 1555 West Ogden Avenue, Naperville, DuPage County, Illinois ("Site").

**RESPONSE:**

Respondent admits the allegations contained in paragraph 4 of the Complaint.

5. As part of its food processing and production at the Site, Kraft discharges process wastewater across the Site to a pretreatment lagoon, located on the southwest corner of the Site. At all times relevant to this complaint, Kraft's process wastewater lines ran over and/or through the storm sewers at the Site, which discharge to the West Branch of the DuPage River.

**RESPONSE:**

Respondent admits the allegations contained in paragraph 5 of the Complaint.

6. On June 6, 2005 and continuing through June 7, 2005, one of Kraft's process wastewater lines ruptured at the Site. Kraft discharged approximately two hundred fifty (250) gallons of its process wastewater, containing cooked wheat water and sugar water, onto the ground at the Site. Kraft's process wastewater migrated to a ditch tributary to a storm sewer that runs along Jefferson Avenue ("Jefferson storm sewer") and flowed through the Jefferson storm sewer and into the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 6 of the Complaint.

7. On at least June 23, 2005, or a date better known to Kraft, Kraft's process wastewater pipe, which ran across and through the storm sewer near the employee parking lot ("western storm sewer") at the Site, had a large horizontal corroded hole on the bottom of it.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 7 of the Complaint.

8. From at least June 23, 2005 through June 24, 2005, on dates better known to Kraft, Kraft discharged its process wastewater containing a thick brown substance via its process wastewater pipe, which entered the western storm sewer at the Site through the large

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horizontal corroded hole on the bottom of the process wastewater pipe, and thereupon into the Jefferson storm sewer and into the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 8 of the Complaint.

9. On June 24, 2005, the Illinois EPA inspected the Site. At that time, process wastewater, which had been discharged from Kraft's Facility, containing a hot thick brown substance was present in the West Branch of the DuPage River. The western storm sewer at the Site had an observable flow of Kraft's process wastewater containing a thick brown substance with a temperature of one hundred and fourteen (114) degrees Fahrenheit.

**RESPONSE:**

Respondent admits that personnel from the Illinois EPA were present at the Site on or about June 24, 2005. Respondent denies the remaining allegations contained in paragraph 9 of the Complaint.

10. On June 28, 2005, the Illinois EPA again inspected the Site. At that time, Kraft informed the Illinois EPA inspector that the process wastewater containing a hot thick brown substance that it had discharged originated from its flavor kitchen clean-up, and contained caramel, corn syrup, liquid sugar, and salt water. Kraft also informed the Illinois EPA inspector that the discharge contained wheat water, wheat, and sugar water from two floor drains.

**RESPONSE:**

Respondent admits that personnel from the Illinois EPA were present at the Site on or about June 28, 2005. Respondent denies the remaining allegations contained in paragraph 10 of the Complaint.

11. On October 13, 2005, Kraft's south lift station at the Site was leaking process wastewater containing cooked wheat water from a hole in a ductile iron reducer pipe, located approximately two feet south of the lift station, and discharging the process wastewater to another storm sewer line at the eastern portion of the Site ("Jaguar storm sewer"). The Jaguar storm sewer line discharges into the Jefferson sewer line and thereupon to the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 11 of the Complaint.

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12. On October 14, 2005, the Illinois EPA inspected the Site. At the time, there was another leak that was caused by a failed gasket on the process wastewater pipe, located just north of the south lift station. A valve pit near the south lift station contained a brownish liquid, which appeared to be rising. Additionally, in the Jaguar storm sewer at the Site, there was a brown liquid that had a sewage type odor, which was being discharged to the Jefferson storm sewer and to the West Branch of the DuPage River.

**RESPONSE:**

Respondent admits that personnel from the Illinois EPA were present at the Site on or about October 14, 2005. Respondent denies the remaining allegations contained in paragraph 10 of the Complaint.

13. Samples of the liquid in the valve pit near the south lift station and the Jaguar storm sewer line contained deoxygenated wastes in the form of five-day biochemical oxygen demand ("BODs") and total suspended solids ("TSS").

**RESPONSE:**

Respondent denies the allegations contained in paragraph 13 of the Complaint.

14. On October 18, 2005, the Illinois EPA inspected the Site. At that time, Kraft informed the Illinois EPA inspector that it had discovered an additional leak north of the south lift station in the process wastewater line. Also, there was still a flow of slightly colored liquid that had a sewage type odor in the Jaguar storm sewer.

**RESPONSE:**

Respondent admits that personnel from the Illinois EPA were present at the Site on or about October 18, 2005. Respondent denies the remaining allegations contained in paragraph 14 of the Complaint.

15. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant 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.

**RESPONSE:**

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Respondent affirmatively states that the allegations contained in paragraph 15 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 15 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides the following definition:

“PERSON” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency or any other legal entity, or their legal representative, agent or assigns.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 16 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 16 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

17. Respondent Kraft, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 17 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent admits the allegations contained in paragraph 17 of the Complaint.

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

“CONTAMINANT” is any solid, liquid or gaseous matter, any odor or any form of energy, from whatever source.

**RESPONSE:**

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Respondent affirmatively states that the allegations contained in paragraph 18 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 18 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

19. Process wastewater from Kraft's Facility, containing wheat, cooked wheat water, sugar water, a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, BODs and TSS are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 19 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 19 of the Complaint.

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), contains the following definition:

WATERS" means 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."

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 20 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 20 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

21. The West Branch of the DuPage River is a "water" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

**RESPONSE:**

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Respondent affirmatively states that the allegations contained in paragraph 21 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent admits the allegations contained in paragraph 21 of the Complaint.

22. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

“Water pollution” is 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 of [sic] 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.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 22 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 22 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

23. Kraft caused, threatened and/or allowed process wastewater containing wheat, cooked wheat sugar, sugar water, a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, BODs and TSS to be discharged into a ditch tributary to the Jefferson storm sewer, into the western storm sewer, and into the Jaguar storm sewer and thereupon into West Branch of the DuPage River. Such process wastewater containing wheat, cooked wheat water, sugar water, a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, BODs and TSS altered, or threatened to alter, the physical, thermal, chemical, or radioactive properties of the West Branch of the DuPage River, or was likely to render, the West Branch of the DuPage River harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life; or created, or was likely to create, a nuisance.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 23 of the Complaint.

24. On June 6, 2005 through June 7, 2005, on dates better known to Kraft, Kraft caused or allowed the discharge of process wastewater containing cooked wheat water and sugar

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water into a ditch tributary to Jefferson storm sewer and thereupon into West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 24 of the Complaint.

25. On June 23 through June 24, 2005, on dates better known to Kraft, Kraft caused or allowed the discharge of process wastewater in the form of a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, into the western storm sewer at the Site which flowed to the Jefferson storm sewer and thereupon into West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 25 of the Complaint.

26. On October 13, 2005, Kraft caused or allowed the discharge of process wastewater containing cooked wheat water into the Jaguar storm sewer, and flowed or threatened to flow to the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 26 of the Complaint.

27. On October 14, 2005, Kraft caused or allowed the discharge of process wastewater containing at least BODs and TSS into the Jaguar storm sewer and thereupon to the Jefferson storm sewer at the Site and flowed to the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 27 of the Complaint.

28. By its actions and omissions, Kraft caused, threatened, or allowed water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 28 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 28 of the Complaint.

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WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

**COUNT II**  
**VIOLATION OF THE GENERAL USE WATER QUALITY STANDARDS**

1.-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count II.

**RESPONSE:**

Respondent restates its answers to paragraphs 1 through 27 of Count I as if fully set forth herein in response to paragraphs I through 27 of this Count II.

28. Kraft's discharges at the Site are subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board") and the Illinois EPA. The Board's regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code ("Board Water Pollution Regulations").

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 28 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent admits the allegations contained in paragraph 28 of the Complaint.

29. Part 304, Subpart A, of the Board Water Pollution Regulations, 35 Ill. Adm. Code Part 304, Subpart A, establishes general effluent standards for waters of the State.

**RESPONSE:**

Respondent admits that the Board has promulgated certain regulations related to water quality at 35 Ill. Adm. Code Part 304, Subpart A but denies any allegations contained in paragraph 29 of the Complaint that are inconsistent with the Illinois Administrative Code as cited.

30. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides, in pertinent part, as follows:

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In 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. . . .

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 30 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 30 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

31. Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides, in pertinent part, as follows:

**Offensive Discharges**

In 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.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 31 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 31 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

32. Part 302, Subpart B, of the Board Water Pollution Regulations, 35 Ill. Adm. Code Part 302, Subpart B, establishes general use water quality standards for non-specified waters of the State of Illinois.

**RESPONSE:**

Respondent admits that the Board has promulgated certain regulations related to water quality at 35 Ill. Adm. Code Part 302, Subpart B and denies any allegations contained in paragraph 32 of the Complaint that are inconsistent with the Illinois Administrative Code as cited.

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33. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

**Offensive Conditions**

Waters 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 . . .

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 33 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 33 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

34. Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275, defines “effluent,” in pertinent part, as follows:

“Effluent” means any wastewater discharged directly or indirectly, to the waters of the State or to any storm sewer. . .

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 34 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 34 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

35. Section 301.425 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.425, defines “wastewater” as follows:

“Wastewater” means sewage, industrial waste or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 35 of the Complaint contain a statement of law, for which no answer is required. To the extent that an  
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answer is required, Respondent denies any allegations contained in paragraph 35 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

36. Kraft's discharge at the Site from its Facility was "wastewater" as that term is defined in Section 301.425 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.425.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 36 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 36 of the Complaint.

37. Kraft's discharge at the Site from its Facility into the western storm sewer, the Jaguar storm sewer, the Jefferson storm sewer, and the West Branch of the DuPage River was "effluent" as that term is defined in Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 37 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent admits the allegations contained in paragraph 37 of the Complaint.

38. On at least June 23 through June 24, 2005, on dates better known to Kraft, Kraft caused or allowed the discharge of its process wastewater in the form of a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, into the western storm sewer and flowed to the Jefferson storm sewer, and thereupon into the West Branch of the DuPage River, and caused the waters of the West Branch of the DuPage River, to contain sludge, sludge solids, and obvious and visible color and turbidity that was not of natural origin.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 38 of the Complaint.

39. Kraft, by its actions alleged herein, caused or allowed offensive discharges and offensive conditions in the waters of the West Branch of the DuPage River, in violation of

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Sections 302.203, and 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and 304.106.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 39 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 39 of the Complaint.

40. By discharging an effluent that caused violations of water quality standards Kraft violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 40 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 40 of the Complaint.

41. By causing or allowing the discharge of contaminants into the waters of the West Branch of the DuPage River in violation of Board regulations, Kraft violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 41 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 41 of the Complaint.

WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

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**COUNT III**  
**WATER POLLUTION HAZARD**

1.-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 and paragraphs 16 through 23 of Count I as paragraphs 1 through 22 of this Count III.

**RESPONSE:**

Respondent restates its answers to paragraphs 1 through 14 and paragraphs 16 through 23 of Count I as if fully set forth herein in response to paragraphs 1 through 22 of this Count III.

23. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides as follows:

No person shall:

\* \* \*

(d) Deposit any contaminant upon the land in such place and manner so as to create a water pollution hazard.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 23 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 23 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

24. From at least June 6, 2005, through at least June 7, 2005, on dates better known to Kraft, Kraft caused or allowed the discharge onto the ground at the Site, approximately two hundred fifty (250) gallons of its process wastewater containing cooked wheat water and sugar water.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 24 of the Complaint.

25. Kraft's process wastewater containing cooked wheat water and sugar water migrated to a ditch tributary to the Jefferson storm sewer, flowed through the Jefferson storm sewer and into the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 25 of the Complaint.

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26. By its actions as alleged herein, Kraft created a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 41 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 41 of the Complaint.

WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

**COUNT IV**  
**DISCHARGING TO WATERS OF THE STATE WITHOUT AN NPDES PERMIT**

1.-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 and paragraphs 16 through 21 of Count I and paragraph 28 of Count II as paragraphs 1 through 21 of this Count IV.

**RESPONSE:**

Respondent restates its answers to paragraphs 1 through 14 and paragraphs 16 through 21 of Count I and paragraph 28 of Count II as if fully set forth herein in response to paragraphs 1 through 21 of this Count IV.

22. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), provides, in pertinent part, as follows:

No person shall:

\* \* \* \*

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit,

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or in violation of any NPDES permit filing requirements established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program. . . .

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 22 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 22 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

23. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

**NPDES Permit Required**

(a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 23 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 23 of the Complaint that are inconsistent with the Illinois Environmental Protection Act, as cited.

24. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the following definition:

“CWA” means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the “Clean Water Act”, Public Law 95-217, enacted December 12, 1977, as amended.)

**RESPONSE:**

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Respondent affirmatively states that the allegations contained in paragraph 24 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 24 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

25. Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14) (2007), provides the following definition:

(14) The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 25 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 25 of the Complaint that are inconsistent with the Clean Water Act, as cited.

26. The Jefferson storm sewer outfall at the Site that discharges to the West Branch of the DuPage River is a discernible, confined and discrete conveyance, and therefore constitutes a “point source,” as that term is defined in Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14) (2007).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 26 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 26 of the Complaint.

28. On June 6, 2005 through June 7, 2005, on dates better known to Kraft, Kraft caused or allowed the discharge of process wastewater, containing cooked wheat water and sugar

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water into a ditch tributary to the Jefferson storm sewer and thereupon into the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 28 of the Complaint.

29. On June 23 through June 24, 2005, on dates better known to Kraft, Kraft caused or allowed the discharge of process wastewater in the form of a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water into the western storm sewer at the Site flowing to the Jefferson storm sewer and thereupon into the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 29 of the Complaint.

30. On October 14, 2005, Kraft caused or allowed the discharge of process wastewater containing at least BODs and TSS into the Jaguar storm sewer and thereupon to the Jefferson storm sewer at the Site and flowed to the West Branch of the DuPage River.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 30 of the Complaint.

31. On June 6, 2005 through June 7, 2005, on June 23 through June 24, 2005, and October 14, 2005 on dates better known to Kraft, Kraft caused or allowed the discharge of its process wastewater containing wheat, cooked wheat water, sugar water, a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, BODs and TSS, contaminants, to the West Branch of the DuPage River, waters of the State, without an NPDES permit.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 31 of the Complaint.

32. By discharging process wastewater containing wheat, cooked wheat water, sugar water, a hot thick brown substance containing caramel, corn syrup, liquid sugar, and salt water, BODs and TSS, contaminants, into West Branch of the DuPage River, waters of the State, without an NPDES permit, Kraft violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 32 of the Complaint contain a statement of law, for which no answer is required. To the extent that an

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answer is required, Respondent denies the allegations contained in paragraph 32 of the Complaint.

33. On October 13, 2005, Kraft caused or allowed the discharge of process wastewater containing cooked wheat water, a contaminant, into the Jaguar storm sewer, and discharged, or threatened to discharge, to the West Branch of the DuPage River, waters of the State, without an NPDES permit.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 33 of the Complaint.

34. By discharging process wastewater containing cooked wheat water, a contaminant, into the Jaguar storm sewer, and discharging or threatening to discharge to the West Branch of the DuPage River, waters of the State, without an NPDES permit, Kraft violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 34 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 34 of the Complaint.

WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

**COUNT V**  
**SYSTEMS RELIABILITY VIOLATIONS: FAILURE TO PREVENT MALFUNCTIONS**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to the terms and provisions of Section 42 of the Act, 415 ILCS 5/42 (2004).

**RESPONSE:**

Respondent admits the allegations contained in paragraph 1 of the Complaint.

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2.-28. Complainant realleges and incorporates by reference herein paragraphs 2 through 27 of Count I and paragraph 28 of Count II as paragraphs 2 through 28 of this Count V.

**RESPONSE:**

Respondent restates its answers to paragraphs 2 through 27 of Count I and paragraph 28 of Count II as if fully set forth herein in response to paragraphs 2 through 28 of this Count V.

29. Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a), provides as follows:

Systems Reliability

(a) Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 29 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 29 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

30. At all times relevant to this complaint, process wastewater lines tributary to the treatment works at the Site were obsolete and deteriorated, in that they had become corroded and were leaking, and by continuing to operate the obsolete and deteriorated process wastewater lines, Kraft failed to minimize violations of applicable standards at the Site.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 30 of the Complaint.

31. By failing to take remedial action to repair its treatment works and associated facilities in a timely manner to avoid causing violations of applicable standards, including the violations as alleged in this complaint, Kraft violated Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a), thereby violating Section 12(a) of the Act, 415 ILCS 12(a) (2004).

**RESPONSE:**

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Respondent affirmatively states that the allegations contained in paragraph 31 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 31 of the Complaint.

WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

**COUNT VI**  
**SYSTEMS RELIABILITY VIOLATIONS;**  
**FAILURE TO PREVENTAGE [sic] SPILLAGE OF CONTAMINANTS**

1.-29. Complainant realleges and incorporates by reference herein paragraphs 1 through 28 of Count I and paragraph 28 of Count II as paragraphs 1 through 29 of this Count VI.

**RESPONSE:**

Respondent restates its answers to paragraphs 1 through 28 of Count I and paragraph 28 of Count II as if fully set forth herein in response to paragraphs 1 through 29 of this Count VI.

30. Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b), provides as follows:

Systems Reliability

\* \* \*

b) Spills: All reasonable measures, including where appropriate the provision of catchment areas, relief areas, relief vessels, or entrapment dikes, shall be taken to prevent any spillage of contaminants from causing water pollution.

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 30 of the Complaint contain a statement of law, for which no answer is required. To the extent that an

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answer is required, Respondent denies any allegations contained in paragraph 30 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

31. On June 6, 2005 through June 7, 2005, on at least June 23 through June 24, 2005, and on October 14, 2005, on dates better known to Kraft, Kraft failed to employ entrapment dikes in the western storm sewer, the Jaguar storm sewer, or the Jefferson storm sewer or to take other reasonable measures to prevent any spillage of contaminants from causing water pollution.

**RESPONSE:**

Respondent denies the allegations contained in paragraph 31 of the Complaint.

32. By failing to employ entrapment dikes in the western storm sewer, the Jaguar storm sewer, or the Jefferson storm sewer or to take other reasonable measures to prevent any spillage of contaminants from causing water pollution, Kraft violated Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b), thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 32 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 32 of the Complaint.

WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

**COUNT VII**  
**VIOLATION OF EFFLUENT LIMITATIONS**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to the terms and provisions of Section 42 of the Act, 415 ILCS 5/42 (2004).

**RESPONSE:**

Respondent admits the allegations contained in paragraph 1 of the Complaint.

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2.-26. Complainant realleges and incorporates by reference herein paragraphs 2 through 21 of Count I, and paragraph 28 and paragraphs 34 through 37 of Count II as paragraphs 2 through 26 of this Count VII.

**RESPONSE:**

Respondent restates its answers to paragraphs 2 through 21 of Count I, and paragraph 28 and paragraphs 34 through 37 of Count II as if fully set forth herein in response to paragraphs 2 through 26 of this Count VII.

27. Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a), provides, in pertinent part, as follows:

**Deoxygenating Wastes**

Except as provided in 35 Ill. Adm. Code 306.Subpart C [sic], all effluents containing deoxygenating wastes shall meet the following standards:

- a) No effluent shall exceed 30 mg/L of five-day biochemical oxygen demand (BOD<sub>5</sub>) (STORET number 00310) or 30 mg/L of suspended solids (STORET number 00530). . .

**RESPONSE:**

Respondent affirmatively states that the allegations contained in paragraph 27 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies any allegations contained in paragraph 27 of the Complaint that are inconsistent with the Illinois Administrative Code, as cited.

28. In June 2005 and October 2005, Kraft discharged effluent from its Facility into the western storm sewer, the Jaguar storm sewer, the Jefferson storm sewer, and to the West Branch of the DuPage River from the Jefferson storm sewer at the times and in the amounts set forth below:

<b>Dates</b>	<b>Location of Samples Taken</b>	<b>BOD<sub>5</sub> 30 mg/l</b>	<b>TSS 30 mg/l</b>
June 7, 2005	Jefferson storm sewer outfall	915	54
June 23, 2005	Jefferson storm sewer outfall	2280	--
June 23, 2005	Jefferson storm sewer outfall	258	--

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October 14, 2005	Jaguar storm sewer outfall	690	54
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**RESPONSE:**

Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 28 of the Complaint.

29. By discharging its effluent to the West Branch of the DuPage River from the Jefferson storm sewer at levels of BODs and TSS in excess of 30 mg/L, Kraft violated Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a), thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

**RESPONSE:**


Respondent affirmatively states that the allegations contained in paragraph 29 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent denies the allegations contained in paragraph 29 of the Complaint.

WHEREFORE, Respondent, Kraft Foods Global, Inc., respectfully requests that the Board deny the relief requested by the Complainant, that this matter be dismissed in its entirety, and that the Board award other such relief as is just and appropriate.

Dated April 21, 2008

Respectfully submitted,

KRAFT FOODS GLOBAL, INC.

By:  \_\_\_\_\_  
One of its Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that she caused the foregoing ANSWER TO COMPLAINT to be served upon the following, by placing a true and correct copy of the same in the U.S. Mail, postage prepaid, on this 21<sup>st</sup> day of April, 2008:

Stephen J. Sylvester  
Assistant Attorney General  
Illinois Attorney General's Office  
Environmental Bureau North  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602

A handwritten signature in black ink, appearing to read "Elizabeth L. Sylvester", written over a horizontal line.

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