

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )  
by LISA MADIGAN, Attorney General )  
of the State of Illinois, )

Complainant, )

v. )

KRAFT FOODS GLOBAL, INC., a )  
Delaware corporation, )

Respondent. )

PCB No. 07-124

(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 18th day of November, 2009, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS  
by LISA MADIGAN  
Attorney General of the State of Illinois

BY:



STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-2087  
[ssylvester@atg.state.il.us](mailto:ssylvester@atg.state.il.us)

DATE: November 18, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Andrew H. Perellis, Esq.  
Elizabeth Leifel Ash, Esq.  
Seyfarth Shaw LLP  
131 S. Dearborn St., Suite 2400  
Chicago, IL 60603

Katherine P. O'Halleran, Esq.  
Senior Counsel, Environmental & Safety  
Kraft Foods Global, Inc.  
Three Lakes Drive  
Northfield, Illinois 60093

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter as to Respondent, KRAFT FOODS GLOBAL, INC., a Delaware corporation. In support thereof, the Complainant states as follows:

1. On June 5, 2007, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On November 18, 2009, a Stipulation and Proposal for Settlement was filed with the Board in this matter.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.
3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2008), provides as follows:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing

pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is currently scheduled in the instant case.


5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

ILCS 5/31(c)(2) (2008).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
by LISA MADIGAN  
Attorney General of the State of Illinois

BY:   
STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-2087  
[ssylvester@atg.state.il.us](mailto:ssylvester@atg.state.il.us)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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by LISA MADIGAN, Attorney General	)	
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	)	
Respondent.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Kraft Foods Global, Inc. ("Respondent") ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On June 5, 2007, a Complaint was filed 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 upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008), against the Respondent.

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 (2008).

3. At all times relevant to the Complaint, Respondent was and is a Delaware corporation that is authorized to transact business in the State of Illinois.

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

**B. Allegations of Non-Compliance**

Complainant alleges that the Respondent has violated the following provisions of the Act and Board Water Pollution Regulations:

Count I: WATER POLLUTION: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a);

Count II: VIOLATION OF THE GENERAL USE WATER QUALITY STANDARDS: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and Sections 302.203, 304.105, and 304.106 the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203, 304.105, and 304.106;

Count III: WATER POLLUTION HAZARD: in violation of Section 12(d) of the Act, 415 ILCS 5/12(d);

Count IV: DISCHARGING TO WATERS OF THE STATE WITHOUT AN NPDES PERMIT: in violation of Section 12(f) of the Act, 415 ILCS 5/12(f), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

- Count V: SYSTEMS RELIABILITY VIOLATIONS: FAILURE TO PREVENT MALFUNCTIONS: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a);
- Count VI: SYSTEMS RELIABILITY VIOLATIONS: FAILURE TO PREVENT SPILLAGE OF CONTAMINANTS: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 306.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(b);
- Count VII: VIOLATION OF EFFLUENT LIMITATIONS: in violation of Section 12(") of the Act, 415 ILCS 5/12(a), and Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a).

Additionally, Complainant alleges that Respondent has violated the following provisions of the Act and Board Water Pollution Regulations, as Respondent reported to the Illinois EPA during a July 31, 2008 Illinois EPA inspection of the Facility in regard to a spill at the Site, which occurred on May 5, 2007:

- Violation I: WATER POLLUTION: in violation of Section 12(a) of the Act, 415 ILCS 5/12(a);
- Violation II: WATER POLLUTION HAZARD: in violation of Section 12(d) of the Act, 415 ILCS 5/12(d);
- Violation III: DISCHARGING TO WATERS OF THE STATE WITHOUT AN NPDES PERMIT: in violation of Section 12(f) of the Act, 415 ILCS 5/12(f), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

**C. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within

Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

## III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), provides as follows:

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:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.



In response to these factors, the Parties to the Stipulation state the following:

1. Respondent's discharges of untreated wastewater into the West Branch of the DuPage River via a storm sewer threatened the environment.
2. Respondent's Facility has social and economic benefit.
3. Respondent's operation of the Facility was suitable for the area in which it occurred.
4. Upgrading its wastewater treatment lines at Respondent's Facility to prevent spills and unpermitted discharges is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Water Pollution Regulations by upgrading its wastewater treatment lines.

#### IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2008), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . 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 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.

In response to these factors, the Parties to the Stipulation state as follows:

1. The Respondent's discharges of untreated wastewater into the West Branch of the DuPage River via a storm sewer threatened the environment. The alleged violations set forth in the Complaint occurred on three separate occasions: 1) on or about June 6, 2005; 2) on or about June 23, 2005; and 3) on or about October 13, 2005. An additional violation occurred on or about May 5, 2007, also involving Respondent's potential discharge of untreated wastewater into the West Branch of the DuPage River via a storm sewer.
2. Once the Illinois EPA notified it of its noncompliance, Respondent Facility agreed to upgrade its wastewater treatment lines.
3. The civil penalty includes any economic benefit that Respondent may have accrued as a result of the delay in compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eighty-Four Thousand Five Hundred Seventy Dollars (\$84,570.00) will serve to deter violations and aid in future voluntary compliance with the Act and Board Water Pollution Regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations

of the Act.

6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Eighty Four Thousand Five Hundred Seventy Dollars (\$84,570.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **B. Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

### **C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order

payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

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

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondent shall cease and desist from future violations of the Act and Board Water Pollution Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$84,570.00 penalty, and its commitment to cease and desist as contained in Section V.D. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 5, 2007 and that were reported to the Illinois EPA during a July 31, 2008 inspection of the Facility in regard to a spill at the Site, which occurred on May 5, 2007 and that are described in Section I.B, above. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in

law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

**F. Enforcement and Modification of Stipulation**

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**G. Execution of Stipulation**

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

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF  
ILLINOIS,


THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

LISA MADIGAN, Attorney General  
State of Illinois

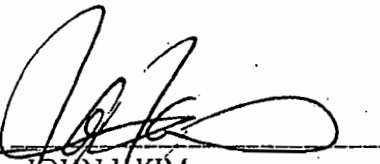
DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:

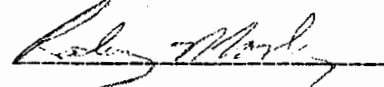
  
JOHN J. KIM  
Chief Legal Counsel

DATE: 11/5/09

DATE: 11/4/09

KRAFT FOODS GLOBAL, INC.

BY:

  
Name: RODNEY MOSLEY

Title: PLANT MANAGER

DATE: 13 NOVEMBER 2009

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 18th day of November, 2009, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
STEPHEN J. SYLVESTER