ILLINOIS POLLUTION CONTROL BOARD January 7, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 07-124
)	(Enforcement - Water)
KRAFT FOODS GLOBAL, INC.,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD: (by C.K. Zalewski):

On June 5, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a seven-count complaint against Kraft Foods Global, Inc. (Kraft). *See* 415 ILCS 5/31(c)(1) (2008); 35 Ill. Adm. Code 103.204. The complaint concerns discharges in 2005 of various process wastewaters from respondent's food processing and production facility, located at 1555 West Ogden Avenue, Naperville, DuPage County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008¹)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that Kraft violated Section 12(a), 12(d), and 12(f) of the Act (415 ILCS 12(a), 12(d), 12 (f) (2008)) and the Board's regulations at 35 Ill. Adm. Code 302.203, 304.105, 304.106, 304.120(a), 306.102(a), 306.102(b) and Section 309.102(a) by (1) causing, allowing or threatening to cause water pollution, and (2) depositing process wastewater on the land in such place and manner so as to create a water pollution hazard, (3) discharging process wastewater without a permit under the National Pollutant Discharge Pollution Elimination System, (4) failing to take remedial action to repair its treatment works and associated facilities in a timely manner, (5) to avoid causing violations of applicable standards, including the (6) failing to employ entrapment dikes in sewers or to take other reasonable measures to prevent any spillage of contaminants from causing water pollution, and (7) discharging effluent at levels in excess of the standards for five-day biochemical oxygen demand and total suspended solids.

On November 12, 2009, the People and Kraft 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) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

5/31(c)(2) (2008)), which requires that the public have an opportunity to request a hearing whenever the State and a respondents 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. The newspaper notice was published in the *Naperville Sun* on December 4, 2009. 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) (2006); 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. *See* 35 III. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent'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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. Kraft does not admit the alleged violations, but agrees to pay a civil penalty of \$84,570.00. The People and respondent have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

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

<u>ORDER</u>

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement filed with the Board November 12, 2009.
- 2. Kraft Foods Global, Inc. must pay a civil penalty of \$84,570.00 for the alleged violations no later than February 8, 2010, which is the first business day following the 30th day after the date of this order. Respondent Kraft must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and respondent Kraft's Federal Tax Identification Number must appear on the face of the certified check or the money order.
- 3. Respondent Kraft must submit payment of the civil penalty to:

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

Respondent Kraft must send a copy of the certified check or money order and any transmittal letter to:

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

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
- 5. Respondent Kraft 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) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 7, 2010, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board

John T. Therrian