

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
)	
COLUMBUS FOODS COMPANY, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Christopher W. Matern
Attorney at Law
205 West Wacker Drive
Suite 1600
Chicago, Illinois 60606

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on this date I filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith serve upon you.

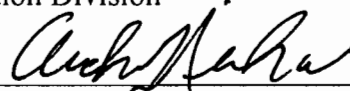
Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

Respectfully submitted,

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

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

BY:



ANDREW J. NICHOLAS
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069

DATE: February 14, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

3. At all times relevant to this Complaint, Respondent Columbus Foods Company, Inc. ("Respondent") was, and is, an Illinois corporation, duly authorized to transact business in the State of Illinois.

4. Beginning in 1996, on a date better known to the Respondent, the Respondent manufactured biodiesel from used vegetable oil at its facility located at 849 North Troy Street, Chicago, Cook County, Illinois ("Facility").

5. The Respondent's biodiesel manufacturing operation involved mixing used vegetable oil with methanol and sodium hydroxide.

6. The Respondent utilized storage tanks, reactors, settling tanks, and two process heaters ("emission units") in its biodiesel manufacturing operation.

7. Sometime prior to beginning operation in 1996, on a date best known by the Respondent, the Respondent installed or constructed the equipment identified in paragraph 6 above, for its biodiesel manufacturing operation.

8. At no time did the Respondent apply for or obtain a permit from the Illinois EPA to construct or operate the equipment identified in paragraph 6 above.

9. On July 21, 2009, an explosion occurred at the Facility causing considerable damage to the Facility. Since then, the building has been torn down and the site paved with crush rock.

10. On July 21, 2009, the Illinois EPA conducted an inspection of the Facility. During the inspection, the Illinois inspectors learned the Respondent was manufacturing approximately 300,000 lbs of biodiesel a month.

11. At the time of the July 21, 2009 inspection, there were approximately 20 storage tanks ranging in size from 300 to 25,000 gallon capacity at the Facility. In addition, there were

various process vessels, reactors and settling tanks, and two process heaters, which are the emission units described in paragraph 6 above.

12. On January 14, 2010, the Illinois EPA issued Violation Notice (“VN”) A 2009-00166 to the Respondent.

13. On February 19, 2010, the Respondent submitted a Compliance Commitment Agreement (“CCA”) to the Illinois EPA denying all of the alleged violations in the VN.

14. On March 10, 2010, representatives of the Illinois EPA and the Respondent met pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010).

15. On March 30, 2010, the Respondent supplemented its CCA.

16. On May 3, 2010, the Illinois EPA rejected the Respondent’s CCA.

17. On July 13, 2010, the Illinois EPA issued a Notice of Intent to Pursue Legal Action (“NITPLA”) to the Respondent.

18. Section 9 of the Act, 415 ILCS 5/9 (2010) provides, in pertinent part, as follows:

No Person Shall:

* * * * *

b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

* * * * *

19. Section 201.142 of the Illinois Pollution Control Board’s (“Board”) Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides, as follows:

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, without first obtaining a construction permit from the Agency,

except as provided in Section 201.146 or Section 201.170(b) of this Part.

20. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, as follows:

* * * * *

"Construction": commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

* * * * *

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

* * * * *

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

* * * * *

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emissions standards or other specific limitations.

* * * * *

21. Section 3.115 of the Act, 415 ILCS 5/3.115 (2010), contains the following definition:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

22. Section 3.165 the Act, 415 ILCS 5/3.06 (2010), provides, as follows:

"Contaminant" is any solid, liquid, gaseous matter, any odor, or any form of energy, from whatever source.

23. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

24. The Respondent, an Illinois corporation, is a “person” as that term is defined by 415 ILCS 5/3.315 (2010).

25. Respondent’s emission units are equipment capable of emitting volatile organic material (“VOM”), a specified air contaminant to the atmosphere, and are therefore “emission sources” as that term is defined by 35 Ill. Adm. Code 201.102.

26. Respondent’s emission sources were installed after April 14, 1972, and therefore are “new emission sources” as that term is defined by 35 Ill. Adm. Code 201.102.

27. From at least 1996, on a date better known by the Respondent, and continuing to July 17, 2009, the Respondent discharged or emitted VOM from its Facility into the environment.

28. Because Respondent’s emission sources were capable of emitting VOM, the Respondent was capable of causing or contributing to air pollution.

29. The Respondent installed its emission sources without obtaining a construction permit from the Illinois EPA.

30. By installing the emission sources capable of causing or contributing to air pollution at its Facility without a construction permit, the Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Section 201.142 of the Board’s Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, COLUMBUS FOODS company, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and 35 Ill. Adm. Code 201.142;
3. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
5. Awarding to Complainant its costs and reasonable attorney's fees; and
6. Granting such other relief as the Board may deem appropriate and just.

COUNT II

OPERATION OF EMISSION SOURCES WITHOUT A PERMIT

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 and 20 through 28 of Count I, as paragraphs 1 through 27 of this Count II.

28. Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides, as follows:

No person shall cause or allow the operation of any new emission source or any new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit.

29. Beginning in 1996, on a date best known to the Respondent, and continuing to July 17, 2009, the Respondent operated new emission sources without obtaining an operating permit from the Illinois EPA.

30. By operating new emission sources without obtaining an operating permit from the Illinois EPA, the Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, COLUMBUS FOODS COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and 35 Ill. Adm. Code 201.143;
3. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
5. Awarding to Complainant its costs and reasonable attorney's fees; and
6. Granting such other relief as the Board may deem appropriate and just.

COUNT III

FAILURE TO SUBMIT ANNUAL EMISSIONS REPORTS

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 17, and 20 through 28 of Count I, as paragraphs 1 through 26 of this Count III.

27. Section 9 of the Act, 415 ILCS 5/9 (2010), provides, in pertinent part as follows:

No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

28. Section 201.302(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), provides, as follows:

The owner or operator of any emission unit or air pollution control equipment, unless specifically exempted in this Section, shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports where necessary to accomplish the purpose of the Act and this Chapter.

29. Section 254.137 of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.137, provides, in pertinent part, as follows:

Reporting Schedule

- a) All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

* * * * *

30. Section 254.132(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides, in pertinent part, as follows:

- a) Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a).

* * * * *

31. Section 211.1950 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 211.1950, provides the following definition:

"Emission unit" means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

32. Section 211.6370 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code

211.6370, provides the following definition:

"Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

33. Section 211.370 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code

211.370, provides, in relevant part, as follows:

"Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the atmosphere.

34. Section 211.4370 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code

21.4370, provides the following definition:

"Owner or operator" means any person who owns, operates, leases, controls, or supervises a source, an emission unit or air pollution control equipment.

35. Respondent's storage tanks, reactors, settling tanks, and process heaters have the potential to emit air pollutants, and therefore are "emission units" as that term is defined by 35 Ill. Adm. Code 211.1950.

36. The Respondent is an "owner or operator" as those terms are defined by 35 Ill. Adm. Code 211.4370.

37. Respondent's Facility is a "stationary source" as that term is defined by 35 Ill. Adm. Code 211.6370.

38. The Respondent failed to file Annual Emissions Reports ("AER") with the Illinois EPA, for the calendar years 1996 through 2009.

39. By failing to file AERs for the calendar years 1996 through 2009, the Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), and Section 201.302(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.137 of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.137.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, COLUMBUS FOODS COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), and 35 Ill. Adm. Code 201.302(a), and 254.137;
3. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;

5. Awarding to Complainant its costs and reasonable attorney's fees; and
6. Granting such other relief as the Board may deem appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General
of the State of Illinois

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

BY:



ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL

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69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312-814-2069

CERTIFICATE OF SERVICE

People of State of Illinois v. Columbus Foods, Co., Inc.

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 14th day of February, 2011, the foregoing Notice of Filing, Complaint, and a Certificate of Service, 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.



ANDREW J. NICHOLAS