

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
By LISA MADIGAN, Attorney General of the)	
State of Illinois)	
)	
Complainant,)	
)	
vs.)	PCB No. 2011-
)	(Enforcement)
KOLB-LENA BRESSE BLEU, INC., an Illinois)	
corporation, KOLB-LENA, INC., a Delaware)	
corporation, and ZAUSNER FOODS CORP., a)	
Delaware corporation,)	
)	
Respondents.)	

NOTICE OF FILING

TO: C T Corporation System	C T Corporation System
Registered Agent for Kolb-Lena Bresse Bleu, Inc.	Registered Agent for Kolb-Lena, Inc.
208 S LaSalle Street	208 S. LaSalle Street
Chicago, Illinois 60604	Chicago, Illinois 60604
Lewis D. Gitlin	Mr. Dennis Brown, Esq.
Registered Agent for Zausner Foods Corp.	Assistant Counsel
300 Martin Luther King Jr. Blvd., Suite B	Illinois Environmental Protection
Wilmington, Delaware 19801	Agency
	1021 North Grand Avenue East
	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today 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 served upon you.

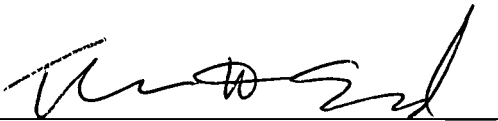
Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes 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
State of Illinois

BY:



THOMAS H. SHEPHERD
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Fl.
Chicago, IL 60602
(312) 814-5361

DATE: June 30, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN, Attorney)
 General of the State of)
 Illinois,)
)
 Complainant,)
)
 v.)
)
 KOLB-LENA BRESSE BLEU, INC.,)
 an Illinois corporation, KOLB-LENA,)
 INC., a Delaware corporation, and)
 ZAUSNER FOODS CORP., a Delaware)
 corporation,)
)
 Respondents.)

No.

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP., as follows:

COUNT I

AIR POLLUTION

1. This Complaint 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") against KOLB-LENA BRESSE BLEU, INC. ("KLBB"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

2. This Complaint is brought 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 (2010). KLBB, Kolb and Zausner are collectively referred to herein as the “Respondents.”

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

4. From August 31, 1961, through the file date of this Complaint, KLBB was and is an Illinois corporation duly authorized to do business in Illinois.

5. From April 29, 2010, through the file date of this Complaint, Kolb was and is a Delaware corporation. From January 19, 2011, through the file date of this Complaint, Kolb was and is authorized to do business in Illinois.

6. At all times relevant to this Complaint, Zausner was and is a Delaware corporation.

7. At all times relevant to this Complaint, Zausner was and is the owner of the property located at 3990 North Sunnyside Road, Lena, Stephenson County, Illinois (“Site”).

8. Upon information and belief, from at least July 26, 2004, through January 2011, on dates better known to Respondents, KLBB operated a cheese processing plant on the Site with a wastewater treatment system consisting of an activated sludge sequencing batch reactor, two aerated wastewater storage lagoons, and a spray irrigation system (“Facility”).

9. Upon information and belief, from at least January 2011, through the filing of this Complaint, on dates better known to Respondents, Kolb was and is the operator of the Facility.

10. Yellow Creek runs along the west boundary of the Site. A tributary to Yellow Creek runs south of the Facility on the Site.

11. On July 26, 2004, the Illinois EPA issued KLBB permit number 2004-SC-0543 authorizing the operation of a spray irrigation system ("Spray Irrigation Permit"). The Spray Irrigation Permit contained an expiration date of June 30, 2009.

12. On August 12, 2004, the Illinois EPA issued KLBB permit number 2004-SC-1028 authorizing land application of sludge generated by the Site's wastewater treatment system ("Sludge Disposal Permit"). The Sludge Disposal Permit contained an expiration date of July 31, 2009.

13. On or about March 12, 2010, the Illinois EPA received a complaint of foul odors coming from the Facility.

14. On March 17, 2010, the Illinois EPA inspected the Site. At this time, a strong foul odor was present at the area of the two aerated wastewater storage lagoons. In particular, a strong foul odor existed at the first lagoon cell, where the contents were milky white with white solids on the edges.

15. During the March 17, 2010 inspection, the discharge from the first lagoon cell to the second cell was milky white. Aeration to the second cell was lacking due to a broken air line protruding above the water's surface.

16. Also during the March 17, 2010 inspection, the contents of the second lagoon cell had a light green tint.

17. Also during the March 17, 2010 inspection, foul odors were present at the northwest corner of the second lagoon cell. At the north side of the cell, the Illinois EPA observed flowing water from the spray irrigation piping near the north edge of the second cell. The piping had discharged water to the surrounding ground when the irrigation system was shut off. Water puddling was present at the point of discharge and water was flowing into Yellow Creek via a drainage path.

18. Also at the March 17, 2010 inspection, the Illinois EPA took a water sample at the point of discharge from the spray irrigation piping. The sample had a yellowish tint and a very strong foul odor. Analytical lab results showed the sample to contain levels of biochemical oxygen demand (“BOD₅”) at 375 milligrams per liter (“mg/l”), ammonia nitrogen at 30.2 mg/l and total suspended solids at 130 mg/l.

19. At all times relevant to this Complaint, the Site was not permitted under the National Pollutant Discharge Elimination System (“NPDES”) for the discharge of a contaminant from a point source into the waters of Illinois.

20. Also during the March 17, 2010 inspection, there was a large burn pile of debris, including a melted plastic crate, in the open area between the two wastewater storage lagoons. This area drained south toward Yellow Creek.

21. At the time of the March 17, 2010 inspection, the Spray Irrigation Permit 2004-SC-0543 and the Sludge Disposal Permit 2004-SC-1028 were expired.

22. On October 14, 2010, the Illinois EPA issued KLBB permit number 2010-SC-073, authorizing the operation of a spray irrigation system and renewing and replacing the expired Spray Irrigation Permit 2004-SC-0543.

23. On November 15, 2010, the Illinois EPA issued KLBB permit number 2010-SC-0912 authorizing the land application of sludge generated by the Site's wastewater treatment system and renewing and replacing the expired Sludge Disposal Permit 2004-SC-1028.

24. On April 11, 2011, the Illinois EPA reinspected the Site. At this time, the leak in the spray irrigation piping had been repaired with the installation of new piping. Also, the broken aeration piping in the second lagoon cell had been repaired. The contents of the first lagoon cell were not milky white and no white solids or odors were present. Finally, the open burn pile in the area between the two wastewater storage lagoons had been removed.

25. Section 9(a) of the Act, 415 ILCS 5/9(a) (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 and standards adopted by the Board under this Act;

26. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides the following definition:

"Person" means 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.

27. Respondents, corporations, are each a “person” as that term is defined in Section 3.315 of the Act.

28. Section 3.115 of the Act, 415 ILCS 5/3.115(2010), provides 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.

29. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

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

30. Emissions from the burning of the debris at the open area between the two wastewater storage lagoons at the Site are a “contaminant” as that term is defined under Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

31. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, Respondents caused or allowed the burning of debris at the open area between the two wastewater storage lagoons at the Site, and thereby Respondents caused, threatened, or allowed the emission of contaminants into the environment.

32. The foul odors at the area of the two wastewater storage lagoons at the Site are a “contaminant” as that term is defined under Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

33. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, Respondents caused or allowed the emission of foul odors at the

area of the two aerated wastewater storage lagoons at the Site, and thereby Respondents caused, threatened, or allowed the emission of contaminants into the environment.

34. The emission of contaminants into the environment from the burning of debris at the Site and the foul odors at the area of the two wastewater treatment lagoons were 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. The emission of contaminants into the environment from the open burning of debris at the Site and the foul odors at the area of the wastewater storage lagoons constitute "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115(2010).

35. By causing, threatening or allowing air pollution in Illinois, Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP., on this Count I:

1. Authorizing a hearing in this matter at which Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 9(a) of the Act;
3. Ordering Respondents to cease and desist from any further violations of Section 9(a) of the Act;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondents to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

OPEN BURNING

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 18, and 20, 24, 26 and 27 of Count I as paragraphs 1 through 20 of this Count II.

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

No person shall:

* * *

- c. Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning;

22. Section 3.300 of the Act, 415 ILCS 5/3.300 (2010) contains the following definition:

“Open burning” is the combustion of any matter in the open or in an open dump.

23. The burning of debris in the open area between the two wastewater storage lagoons constitutes “open burning” as that term is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2010).

24. Section 3.385 of the Act, 415 ILCS 5/3.385 (2010) contains the following definition:

“Refuse” means waste.

25. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010), defines “waste,” in pertinent part as follows:

“Waste” means any garbage ... or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities ...

26. The debris that was burned at the open area between the two wastewater storage lagoons at the Site is “waste” as that term is defined under Section 3.535 of the Act, 415 ILCS 5/3.535 (2010) and “refuse” as that term is defined under Section 3.385 of the Act, 415 ILCS 5/3.385 (2010).

27. From at least March 17, 2010, through April 11, 2011, on dates better known by Respondents, Respondents caused or allowed the open burning of waste at the area between the two wastewater lagoons at the Site and thereby Respondents caused or allowed the open burning of refuse.

28. By causing or allowing the open burning of refuse at the Site, Respondents have violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2010).

29. Section 237.102(a) of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 237.102(a), provides as follows:

No person shall cause or allow open burning, except as provided in this Part.

30. Section 237.101 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 237.101, provides the following definition:

"Open Burning": The combustion of any matter in such a way that the products of the combustion are emitted to the open air without originating in or passing through equipment for which a permit could be issued under Section 9(b) of the Act.

31. From at least March 17, 2010, through April 11, 2011, on dates better known by Respondents, Respondents caused or allowed the burning of debris at the open area between the two wastewater storage lagoons at the Site in a way that allowed emissions to the open air without originating in or passing through equipment for which a permit could be issued.

32. Respondents' burning of the debris at the open area between the two wastewater lagoons at the Site in a way that allowed emissions to the open air without originating in or passing through equipment for which a permit could be issued constitutes "open burning" as that term is defined in Section 237.101 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 237.101.

33. From at least March 17, 2010, through April 11, 2011, on dates better known by Respondents, Respondents caused or allowed the open burning of the debris at the Site, in violation of Section 237.102(a) of the Board Air Pollution Regulations, 35 Ill.

Adm. Code 237.102(a), and thereby also violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP., on this Count II:

1. Authorizing a hearing in this matter at which Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 9(c) of the Act and Section 237.102(a) of the Board Air Pollution Regulations;
3. Ordering Respondents to cease and desist from any further violations of Section 9(c) of the Act and Section 237.102(a) of the Board Air Pollution Regulations;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

WATER POLLUTION

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 18, and 20, 24, 26, 27 and 29 of Count I as paragraphs 1 through 21 of this Count III.

22. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment of 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.

23. The cheese processing wastewater discharged from the spray irrigation piping at the Site is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

24. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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 or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

25. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides 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 the State.

26. The cheese processing wastewater discharged from the spray irrigation piping at the Site flowed into the Yellow Creek through a drainage path at the Site.

27. Yellow Creek constitutes “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

28. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, Respondents caused, threatened, or allowed the discharge of cheese processing wastewater from the spray irrigation piping on and into the land on the Site, into the drainage way leading to Yellow Creek, and into Yellow Creek.

29. The discharge of cheese processing wastewater from the spray irrigation piping on and into the land on the Site, into the drainage way leading to Yellow Creek, and into the Yellow Creek has caused or tended to cause water pollution, in that such discharges have likely rendered the waters of the State 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, and have likely created a nuisance.

30. By causing or allowing the discharge of contaminants in such a manner as to cause or tend to cause water pollution in the waters of the State, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP., on this Count III:

1. Authorizing a hearing in this matter at which Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(a) of the Act;
3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondents to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

CREATING A WATER POLLUTION HAZARD

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 18, and 20, 24, 26, 27 and 29 of Count I and paragraphs 23 through 28 of Count III as paragraphs 1 through 27 of this Count IV.

28. Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), provides as follows:

No person shall:

* * *

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

29. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed cheese processing wastewater from the spray irrigation piping to be released onto the ground at the Site and into the drainage way leading to Yellow Creek, and thereby deposited contaminants upon the land in such place and manner as to create a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., and KOLB-LENA, INC., on this Count IV:

1. Authorizing a hearing in this matter at which Respondents KLBB and Kolb will be required to answer the allegations herein;
2. Finding that Respondents KLBB and Kolb have violated Section 12(d) of the Act;
3. Ordering Respondents KLBB and Kolb to cease and desist from any further violations of Section 12(d) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents KLBB and Kolb for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents KLBB and Kolb to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT V

DISCHARGE OF CONTAMINANTS WITHOUT A NPDES PERMIT

1- 27. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 20, and 24, 26, 27 and 29 of Count I and paragraphs 23 and 25 through 28 of Count III as paragraphs 1 through 27 of this Count V.

28. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), provides 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, any 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 NPDES permit filing requirement 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.

29. Section 401.11(d) of the Code of Federal Regulations ("C.F.R."), 40 C.F.R. 401.11(d), provides as follows:

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.

30. The spray irrigation piping is a "point source," within the meaning of 40 C.F.R. 401.11(d), but has never been permitted as such by Illinois EPA.

31. From at least March 17, 2010, through April 11, 2011, on dates better known by Respondents, Respondents caused, threatened, or allowed the discharge of cheese processing wastewater from the spray irrigation piping at the Site into the drainage way leading to the Yellow Creek and into the Yellow Creek, and thereby Respondents caused, threatened or allowed the discharge of a contaminant from a point source into the waters of the State.

32. From at least March 17, 2010, through April 11, 2011, on dates better known by Respondents, the Illinois EPA had not issued a NPDES permit authorizing wastewater discharges from the spray irrigation piping to the drainage way leading to the Yellow Creek or to the Yellow Creek.

33. By causing, threatening, or allowing the discharge of a contaminant from a point source into the waters of the State without a NPDES permit, Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP., on this Count V:

1. Authorizing a hearing in this matter at which Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(f) of the Act;
3. Ordering Respondents to cease and desist from any further violations of Section 12(f) of the Act;
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) against Respondents for each day of violation of Section 12(f) of the Act;
5. Ordering Respondents to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VI

VIOLATION OF EFFLUENT LIMITATIONS

1- 26. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 18, and 24, 26, 27 and 29 of Count I and paragraphs 22, 23 and 25 through 28 of Count III as paragraphs 1 through 26 of this Count VI.

27. Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 304.120(a), provides as follows:

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

- a) No effluent shall exceed 30 mg/L of five day biochemical oxygen demand (BOD₅) (STORET number 00310) or 30 mg/L of suspended solids (STORET number 00530), except that treatment works employing three stage lagoon treatment systems which are properly designed, maintained and operated, and whose effluent has a dilution ratio no less than five to one or who qualify for exceptions under subsection (c) shall not exceed 37 mg/L of suspended solids.

28. Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 301.275, provides as follows:

"Effluent" means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater or sludges, but does not otherwise include nonpoint source discharges such as runoff from land or any livestock management facility or livestock wastehandling facility subject to regulation under Subtitle E.

29. Section 301.425 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 301.425, provides as follows:

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

30. Section 301.285 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 301.285, provides as follows

"Industrial Wastes" means any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business or from the development, processing, or recovery, except for agricultural crop raising, of any natural resource.

31. The cheese processing wastewater discharged from the spray irrigation piping at the Site is a liquid waste resulting from a process of industry, manufacturing, trade or business, and thereby the cheese processing wastewater discharged from the spray irrigation piping is an "industrial waste" as that term is defined in Section 301.285 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.285.

32. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed the discharge of industrial waste from the spray irrigation piping at the Site, and thereby KLBB and Kolb caused or allowed the discharge of "wastewater" at the Site, as that term is defined in Section 301.425 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.425.

33. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed the discharge of wastewater from the spray irrigation piping at the Site, and thereby KLBB and Kolb caused or allowed the discharge of "effluent" at the Site as that term is defined in Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275.

34. On March 17, 2010, the discharged effluent from the pray irrigation piping at the Site contained levels of BOD₅ at 375 mg/L, exceeding the 30 mg/L limitation in 35 Ill. Adm. Code 304.120(a).

35. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed the discharge of effluent from the spray irrigation piping at the Site containing levels of BOD₅ exceeding 30 mg/L, and thereby KLBB and Kolb violated Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a).

36. By causing, threatening or allowing the discharge of effluent, a contaminant, with levels of BOD₅ of 375 mg/L, which violates a Board regulation, KLBB and Kolb violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., and KOLB-LENA, INC., on this Count VI:

1. Authorizing a hearing in this matter at which Respondents KLBB and Kolb will be required to answer the allegations herein;
2. Finding that Respondents KLBB and Kolb have violated Section 12(a) of the Act and Section 304.120(a) of the Board Water Pollution Regulations;
3. Ordering Respondents KLBB and Kolb to cease and desist from any further violations of Section 12(a) of the Act and Section 304.120(a) of the Board Water Pollution Regulations;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents KLBB and Kolb for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents KLBB and Kolb to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VII

OFFENSIVE DISCHARGE

1- 32. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 18, and 24, 26, 27 and 29 of Count I, paragraphs 22, 23 and 25 through 28 of Count III and paragraphs 28 through 33 of Count VI as paragraphs 1 through 32 of this Count VII.

33. Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides as follows:

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.

34. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed cheese processing wastewater to be discharged from the spray irrigation piping at the Site with a yellowish tint and very strong odor, and thereby KLBB and Kolb failed to reduce color, odor, and turbidity to below obvious levels in the effluent discharged from the spray irrigation piping at the Site.

35. By causing or allowing the discharge of effluent from the spray irrigation piping at the Site with color, odor and turbidity above obvious levels, KLBB and Kolb violated Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

36. By discharging contaminants so as to violate a Board regulation, KLBB and Kolb violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., and KOLB-LENA, INC., on this Count VII:

1. Authorizing a hearing in this matter at which Respondents KLBB and Kolb will be required to answer the allegations herein;
2. Finding that Respondents KLBB and Kolb have violated Section 12(a) of the Act and Section 304.106 of the Board Water Pollution Regulations;
3. Ordering Respondents KLBB and Kolb to cease and desist from any further violations Section 12(a) of the Act and Section 304.106 of the Board Water Pollution Regulations;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents KLBB and Kolb for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents KLBB and Kolb to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VIII

SYSTEMS RELIABILITY VIOLATIONS

1- 32. Complainant realleges and incorporates by reference herein paragraphs 1 through 10, 13 through 18, and 24, 26, 27 and 29 of Count I, paragraphs 22, 23 and 25 through 28 of Count III, and paragraphs 28 through 33 of Count VI as paragraphs 1 through 32 of this Count VIII.

33. Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 306.102(a), provides as follows:

- 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.

34. Section 301.415 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 301.415, provides as follows:

"Treatment Works" means individually or collectively those constructions or devices (except sewers, and except constructions or devices used for the pretreatment of wastewater prior to its introduction into publicly owned or regulated treatment works) used for collecting, pumping, treating, or disposing of wastewaters or for the recovery of byproducts from such wastewater.

35. The first aerated wastewater storage lagoon cell, the second aerated wastewater storage lagoon cell, and the cheese processing wastewater spray irrigation system at the Site are collectively and individually constructions or devices used for collectively pumping, treating or disposing of wastewaters or for the recovery of byproducts for such wastewater and constitute "treatment works" as that term is defined in Section 301.415 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.415.

36. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed a white color, white solids, and strong odors in the first aerated wastewater storage lagoon cell at the Site, and thereby KLBB and Kolb failed to construct or operate treatment works and associated

facilities as to minimize violations of applicable standards during equipment failure or maintenance.

37. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed a broken aeration pipe in the second aerated wastewater storage lagoon cell at the Site, and thereby KLBB and Kolb failed to construct or operate treatment works and associated facilities as to minimize violations of applicable standards during equipment failure or maintenance.

38. From at least March 17, 2010, through April 11, 2011, on dates better known to Respondents, KLBB and Kolb caused or allowed the discharge of water from the spray irrigation piping at the Site, and thereby KLBB and Kolb failed to construct and operate treatment works and associated facilities as to minimize violations of applicable standards during equipment failure or maintenance.

39. By failing to construct or operate treatment works and associated facilities as to minimize violations of applicable standards during equipment failure or maintenance, KLBB and Kolb violated Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a) (2010).

40. By failing to construct and operate treatment works and associated facilities so as to minimize violation of a Board regulation, KLBB and Kolb also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., and KOLB-LENA, INC., on this Count VIII:

1. Authorizing a hearing in this matter at which Respondents KLBB and Kolb will be required to answer the allegations herein;
2. Finding that Respondents KLBB and Kolb have violated Section 12(a) of the Act and Section 306.102(a) of the Board Water Pollution Regulations;
3. Ordering Respondents KLBB and Kolb to cease and desist from any further violations Section 12(a) of the Act and Section 306.102(a) of the Board Water Pollution Regulations;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents KLBB and Kolb for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents KLBB and Kolb to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IX

USE OR OPERATION OF TREATMENT WORKS WITHOUT PERMIT

1-43. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 and 21 through 24, 26, 27 and 29 of Count I, paragraphs 22, 23 and 25 through 28 of Count III, paragraphs 28 through 33 of Count VI, and paragraphs 34 through 38 of Count VIII as paragraphs 1 through 43 of this Count IX.

44. Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204, provides, in pertinent part, as follows:

- a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency, except as provided in subsections (b), (c) and (d).

45. From at least March 17, 2010, through October 14, 2010, on dates better known to Respondents, Respondents operated the cheese processing wastewater spray irrigation system at the Site without an operating permit issued by the Illinois EPA.

46. From at least March 17, 2010, through November 15, 2010, on dates better known to Respondents, Respondents applied sludge generated by the wastewater treatment works in and onto land at the Site without an operating permit issued by the Illinois EPA.

47. By using or operating treatment works at the Site without operating permits for the spray irrigation system and for sludge disposal, Respondents thereby violated Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204 (2010).

48. By using or operating treatment works at the Site so as to violate a Board regulation, Respondents also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order against Respondents KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP., on this Count IX:

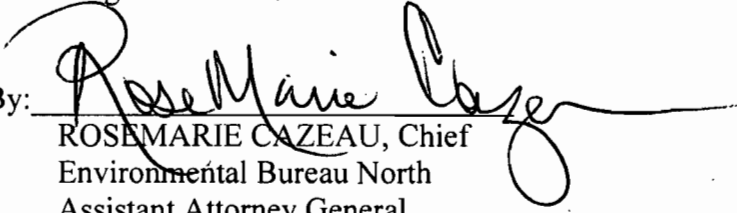
1. Authorizing a hearing in this matter at which Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(a) of the Act and Section 309.204 of the Board Water Pollution Regulations;

3. Ordering Respondents to cease and desist from any further violations
Section 12(a) of the Act and Section 309.204 of the Board Water Pollution Regulations;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against
Respondents for each violation of the Act and pertinent regulations, and an additional
civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents to pay all costs including attorney, expert witness
and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

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

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

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

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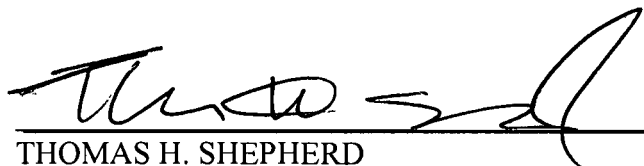
CERTIFICATE OF SERVICE

I, THOMAS H. SHEPHERD, an Assistant Attorney General, do certify that I caused to be served on this 30th day of June 2011, the foregoing Notice of Filing, Complaint, and a Certificate of Service, by U.S. Certified Mail (return receipt requested), upon the following persons:

C T Corporation System
Registered Agent for Kolb-Lena Bresse Bleu, Inc.
208 S LaSalle Street
Chicago, Illinois 60604

C T Corporation System
Registered Agent for Kolb-Lena, Inc.
208 S. LaSalle Street
Chicago, Illinois 60604

Lewis D. Gitlin
Registered Agent for Zausner Foods Corp.
300 Martin Luther King Jr. Blvd., Suite B
Wilmington, Delaware 19801


THOMAS H. SHEPHERD