ILLINOIS POLLUTION CONTROL BOARD January 19, 2012

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,))	
V.)	PCB 11-45
COLUMBUS FOODS COMPANY, INC., an))	(Enforcement – Air)
Illinois corporation)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On February 14, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Columbus Foods Company, Inc. (Columbus Foods). The complaint concerns Columbus Foods biodiesel manufacturing facility located at 849 North Troy Street in Chicago, Cook 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 (2010)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that Columbus Foods violated Sections 9(a) and 9(b) of the Act (415 ILCS 5/9(a), 9(b) (2010)), Sections 201.142, 201.143, and 201.302(a) of the Board's air pollution regulations (35 Ill. Adm. Code 201.142, 201.143, 201.302(a)), and Section 254.137 of the air pollution regulations of the Illinois Environmental Protection Agency (Agency) (35 Ill. Adm. Code 254.137). The People further allege that Columbus Foods violated these provisions by: 1) installing emission sources capable of causing or contributing to air pollution without obtaining a construction permit from the Agency; 2) operating new emission sources without obtaining an operating permit from the Agency; and 3) failing to file Annual Emission Reports (AERs) with the Agency for the calendar years 1996 through 2009.

On December 9, 2011, the People and Columbus Foods 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent 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 *Chicago Sun Times* on December 21, 2011. 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) (2008); 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 Columbus Foods' 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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Under the stipulation, Columbus Foods does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. Columbus Foods agrees to pay agrees to pay a civil penalty of \$50,000.00. The People and Columbus Foods 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.
- 2. Columbus Foods must pay a civil penalty of \$50,000.00 on or before February 21, 2012, which is the first business day following the 30th day after the date of this order. Columbus Foods must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and Columbus Foods' federal tax identification number must appear on the face of the certified check or money order.
- 3. The \$50,000.00 payment required by the stipulation to be made to Illinois Environmental Protection Agency shall be made by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The payment 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 each certified check or money order and any transmittal letter shall be sent to: 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

IT IS SO ORDERED.

Board Member J.A. Burke abstains.

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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 19, 2012, by a vote of.

In T. J

John T. Therriault, Assistant Clerk Illinois Pollution Control Board