

ILLINOIS POLLUTION CONTROL BOARD  
April 10, 1986

|                                     |   |            |
|-------------------------------------|---|------------|
| PEOPLE OF THE STATE OF ILLINOIS     | ) |            |
| and the ILLINOIS ENVIRONMENTAL      | ) |            |
| PROTECTION AGENCY,                  | ) |            |
|                                     | ) |            |
| Complainants,                       | ) |            |
|                                     | ) |            |
| v.                                  | ) | PCB 83-226 |
|                                     | ) |            |
| ARCHER DANIELS MIDLAND CORPORATION, | ) |            |
| a Delaware corporation,             | ) |            |
|                                     | ) |            |
| Respondent.                         | ) |            |

MR. JAMES L. MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON  
BEHALF OF THE COMPLAINANTS.

MR. F. LOUIS BEHREND, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF THE  
RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W.J. Nega):

This matter follows a remand resulting from an interlocutory appeal by Archer Daniels Midland Corporation (ADM) and the People of the State of Illinois (People) and the Illinois Environmental Protection Agency (Agency) to the Third District of the Illinois Appellate Court from an Order of the Illinois Pollution Control Board (Board) entered March 22, 1985 which rejected a Stipulation and Proposal for Settlement submitted by ADM and the Complainants in the enforcement action in PCB 83-226. (See: Board Order of March 22, 1985 in People of the State of Illinois and the IEPA v. Archer Daniels Midland Corporation, PCB 83-226).

The Stipulation filed with the Board on November 19, 1984 included a provision which indicated that Archer Daniels Midland Corporation neither admitted nor denied the allegations of the Amended Complaint. Additionally, the proposed settlement agreement included a compliance plan (i.e., the installation and operation of a gas chromatograph to monitor benzene emissions) and provided for a stipulated penalty of \$12,500.00 to be paid into the Illinois Environmental Protection Trust Fund.

In its Order of March 22, 1985, the Board on a 4-2 vote (with Chairman Jacob D. Dumelle and W.J. Nega dissenting) rejected the proposed Stipulation because it was believed that the Board lacked the statutory authority to accept settlements requiring the payments of stipulated penalties and imposing compliance conditions without a Board finding of violation. In support of this viewpoint, the Board cited its February 20, 1985 decision in IEPA v. Chemetco, Inc., PCB 83-2.

However, realizing that an important legal issue was involved, the Board allowed immediate interlocutory appeal. On pages five and six of its March 22, 1985 Order rejecting the proposed settlement agreement in PCB 83-226, the Board certified the following question of law for interlocutory appeal:

"Whether the Board correctly determined that it lacks statutory authority, pursuant to Ill. Rev. Stat. ch. 112-1/2, Sections 1032, 1033 and 1042 as they relate to Board acceptance of stipulations of fact and proposals for settlement in enforcement cases, to issue Opinions and Orders in which any Board findings of violation are precluded by the terms of the stipulation and proposal, but in which respondent is ordered to pay a stipulated penalty and to timely perform agreed-upon compliance activities."

After the Board entered its March 22, 1985 Order in PCB 83-226, the parties filed an interlocutory appeal request with the Third District of the Illinois Appellate Court on April 5, 1985.

The Illinois Appellate Court docketed the interlocutory appeal request as General Case No. 3-85-0222; granted the parties leave to appeal pursuant to Illinois Supreme Court Rule 308 (see: 87 Ill. 2d R. 308), and entered a final judgment on March 5, 1986 (see: Modified Opinion of March 5, 1986 in People of the State of Illinois and the IEPA v. Archer Daniels Midland Corporation, No. 3-85-0222, consolidated with No. 3-85-0224, 3rd District 1986) which reversed the March 22, 1985 decision of the Illinois Pollution Control Board in PCB 83-226 and remanded the instant case back to the Board for further proceedings consistent with the court's views.

In its March 5, 1986 decision, the Third District of the Illinois Appellate Court concluded that "a finding of violation is not required before the Board may approve a settlement agreement".

The Board will now accept in its entirety the Stipulation and Proposal for Settlement filed by the parties on November 19, 1984.\*

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\*In reference to the same legal issue of the Board's statutory authority to accept settlement agreements absent a finding or admission of violation, the Fifth District of the Illinois Appellate Court vacated the Board's February 20, 1985 Order in PCB 83-2 (i.e., the Chemetco case) and concluded on January 14, 1986 in Chemetco v. IPCB and IEPA, No. 5-85-0143, (continued)

### LEGAL HISTORY OF THIS CASE

This case initially came before the Board on the December 9, 1983 Complaint brought by the People of the State of Illinois.

On June 11, 1984, the People and the Illinois Environmental Protection Agency filed a Motion to Amend the Complaint and an Amended Complaint.

On June 18, 1984, the Hearing Officer entered an Order granting the Complainants leave to file an Amended Complaint.

Count I of the Amended Complaint alleged that, on or about April 14, 1983, the Respondent discharged an unknown quantity of wastewater containing approximately 300 parts per million (ppm) of benzene from its grain distillery near downtown Peoria, Illinois into the Illinois River, thereby causing and/or allowing the discharge of a contaminant into the environment so as to cause, or tend to cause, water pollution in violation of Section 12(a) of the Illinois Environmental Protection Act (Act).

Count II alleged that, as a result of the Respondent's discharge of contaminated water on or about April 14, 1983 containing approximately 300 ppm of benzene, a listed hazardous waste delineated in 35 Ill. Adm. Code 721.133, the Respondent thereby illegally disposed of a hazardous waste in violation of Section 21(f)(1) of the Act.

Count III alleged that: (1) commencing some time before February 5, 1981 and continuing until April 30, 1982, the Respondent violated 35 Ill. Adm. Code 201.142 (formerly Rule 103(a) of Chapter 2: Air Pollution Regulations) and Section 9(b) of the Act by constructing new grain dryers; a new boiler; a drag conveyor for grain; a new distillation system; new grain scalpers; and a modification of a pneumatic grain conveying system without first obtaining the necessary Construction Permits from the Agency, and (2) on, or about, April 6, 1983, the Respondent began construction of a second new set of anhydrous distillation equipment and continued construction to a date better known only to the Respondent, thereby violating 35 Ill. Adm. Code 201.142 and Section 9(a) of the Act.

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Fifth Dist. 1986) that "The Board has the statutory authority to accept settlement agreements in enforcement cases where findings of violation are precluded by the terms of the stipulation and proposal but where the respondent is ordered to pay a stipulated penalty and to timely perform agreed upon compliance activities". (See: Opinion and Order of the Board of March 27, 1986 in IEPA v. Chemetco, PCB 83-2).

Count IV alleged that: (1) commencing on December 1, 1982 and continuing intermittently on dates better known only to the Respondent, the company violated 35 Ill. Adm. Code 201.143 (formerly Rule 103(b)(1) of Chapter 2: Air Pollution Regulations) by operating grain dryers, a feed load-out system, a drag conveyor, anhydrous distillation equipment, grain scalpers, and ethanol storage tanks without the requisite Operating Permits from the Agency authorizing the operation of new emission sources, and (2) from December 1, 1982 until June 11, 1984, the Respondent has continued to operate its ethanol plant equipment (including grain dryers, the feed load-out, its drag conveyor, anhydrous distillation equipment, grain scalpers, and ethanol storage tanks) even though Construction Permits #81070034 and #81070040 issued by the Agency on May 28, 1982 only authorized such operations for 181 days, thereby operating such ethanol plant equipment without first obtaining the required Operating Permit from the Agency in violation of 35 Ill. Adm. Code 201.143 and Section 9(b) of the Act.

A hearing was held on November 15, 1984 and the parties filed their Stipulation and Proposal for Settlement on November 19, 1984.

The subsequent developments are laid out earlier in this Opinion.

#### COMPANY OPERATIONS

The Respondent, Archer Daniels Midland Corporation, is a Delaware corporation duly authorized by the Illinois Secretary of State to transact business in Illinois. ADM operates a grain distillery and manufactures grain alcohol at its plant located on the Illinois River near downtown Peoria, at the foot of Edmund Street, in Peoria County, Illinois. The Respondent began its operations at this site during mid-1982 after ADM took over the plant from the Hiram Walker Distillery Company which also utilized the facility to produce alcohol. (Stip. 2-3).

Using approximately 80,000 bushels of grain per day, the Respondent's facility can produce about 300,000 gallons per day of 190 and/or 200 proof ethanol. Depending on the particular manufacturing process that is used, the alcohol manufactured at the company's facility can be sold for fuel, industrial, and beverage uses. The parties have stipulated that "therefore, it is evident ADM is an asset to the area agri-business". (Stip. 3).

The Respondent's ethanol production process involves the conversion of the components of corn into alcohol. First, the corn is transferred by a drag conveyor from the Tabor Grain Company grain elevator. This grain elevator is located next door to the ADM alcohol plant. Secondly, grain scalpers remove

foreign matter from the corn. Thirdly, the corn is then mixed with water and this corn/water mixture is subsequently fermented in fermentation tanks where the ethanol is produced. (Stip. 3).

After the fermentation process is completed, the remaining mixture is then distilled into two parts. One part is a mixture of water and spent corn. This mixture, which is then processed to become dried distillers' grain, is used as an animal feed. (Stip. 3). The second part is approximately 95% ethanol which can be used for commercial alcohol or beverage alcohol. However, "most of the 95% ethanol is distilled in a second distillation system where benzene is added which removes the last part of the water to produce anhydrous ethanol which is used mostly as an octane booster in gasoline". (Stip. 3).

The primary environmental concern involved in this case is related to the part of the Respondent's process which uses benzene to remove the water from the alcohol. Benzene is a known cancer-causing agent (i.e., a carcinogen) and is highly toxic to humans. Scientists and medical doctors believe that exposure to benzene may result in narcosis, blood chemistry changes, fatigue and anorexia, central nervous system disorders, and an enhancement of mammary carcinomas and leukemia.

#### THE PROPOSED SETTLEMENT AGREEMENT

The Agency has indicated that it stands prepared to present evidence to conclusively establish that: (1) on, or about, April 14, 1983, the Respondent caused and/or allowed an unknown quantity of wastewater containing approximately 300 parts per million of benzene to be discharged from its plant into the Illinois River; (2) the Respondent did not, and does not now, possess a RCRA Permit issued by the Agency which would have authorized the previously mentioned discharge of benzene; (3) beginning some time before February 5, 1981 and continuing until April 30, 1982, the Respondent installed and constructed new emission sources (i.e., new grain dryers, a new boiler, a new grain drag conveyor, new grain scalpers, a new distillation system, and modification of a pneumatic grain system) capable of causing or contributing to air pollution without first obtaining the requisite Agency Construction Permit; (4) starting on December 1, 1982 and continuing intermittently thereafter, the company began operation of new emission sources (namely, grain dryers, a feed load-out system, a drag conveyor, grain scalpers, ethanol storage tanks, and anhydrous distillation equipment) without first obtaining the necessary Agency Operating Permits, and (5) beginning on December 1, 1982, the Respondent continued to operate the ethanol plant equipment without obtaining the required Operating Permit from the Agency. (Stip. 4-5).

However, in reference to the previously mentioned alleged violations, the Agency has indicated that the Respondent

currently "has applied for or presently has permits for all emission and discharge sources which are the subject of the First Amended Complaint filed in this cause." (Stip. 5).

Although Archer Daniels Midland Corporation has neither admitted nor denied the allegations of the First Amended Complaint, the proposed settlement agreement provides that the Respondent agrees to promptly pay a stipulated penalty of \$12,500.00 into the Illinois Environmental Protection Trust Fund. (Stip. 6). Additionally, the Respondent's compliance plan calls for the installation of a gas chromatograph monitoring device to analyze several emission points throughout the ADM facility to detect any potential leaks of benzene into the air or into the water of the Illinois River. To alert the Respondent when necessary corrective action needs to be taken, the company agreed to install a gas chromatograph with an alarm to indicate potential environmental problems.

The parties have stipulated that the Respondent already has installed, and is currently maintaining in good working order, a Beckman Model 6750 microprocessor-based process gas chromatograph in order to prevent and eliminate the discharge of benzene and other contaminated wastewaters into the Illinois River. (Stip. 5-6; see: Exhibit A of the Stipulation). This highly sophisticated instrument is designed to analyze air and water samples for ethanol (i.e., ethyl alcohol) and benzene and is programmed to analyze certain critical points in numerous air and water samples. Moreover, the alarm is pre-set to the Occupational Safety and Health Administration (OSHA) standard for ambient conditions for employees (i.e., which is ten parts per million of benzene) and the alarm will ring if the benzene concentration reaches that level so that company employees can take all necessary corrective actions to eliminate the problem. (See: Exhibit A of the Stipulation).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the proposed settlement agreement acceptable under 35 Ill. Adm. Code 103.180. Pursuant to the remand by the Illinois Appellate Court (Third District), the proposed settlement agreement originally filed by the parties on November 19, 1984 will be accepted in its entirety. The Respondent will, therefore, be ordered to pay the stipulated penalty of \$12,500.00 into the Environmental Protection Trust Fund.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. Within 35 days of the date of the Order, the Respondent, Archer Daniels Midland Corporation, shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the stipulated penalty of \$12,500.00 which is to be sent to:

Manager  
Division of Land Pollution Control  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

2. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on November 19, 1984, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of April, 1986 by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board