

ILLINOIS POLLUTION CONTROL BOARD
April 6, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-134
)	(Enforcement - Air)
INTERSTATE BRANDS CORPORATION, a)	
Delaware corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On January 29, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Interstate Brands Corporation (IBC). The complaint concerns IBC's bakery product production and packaging facility at 9555 W. Soreng, Schiller Park, Cook County. The Board accepted the complaint for hearing on February 5, 2004.

In the complaint, the People allege that IBC violated Sections 9(a) and 9.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 9.1(d)(1) (2004)) and 40 C.F.R. 61.145(b), (c)(1), (c)(3), (c)(6), and (c)(8) and 61.150(a) by: (1) conducting removal of regulated asbestos-containing material (RACM) while failing to provide written notice to the Illinois Environmental Protection Agency (Agency); (2) failing to remove all RACM before engaging in building demolition or renovation that would dislodge or disturb the material; (3) failing to engage in emissions controls such as maintaining the RACM wet during removal; (4) failing to have a person on hand who was trained for RACM removal; (5) failing to properly contain the RACM removed in air-tight containers and disposing of the material in a dumpster as ordinary trash; and (6) causing or allowing air pollution.

On February 27, 2006, the People and IBC 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) (2004). These filings are authorized by Section 31(c)(2) of the Act. 415 ILCS 5/31(c)(2) (2004). See 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, IBC neither admits nor denies the violations alleged in the complaint, but agrees that a money judgment for \$90,000 be entered against it. The parties agree that IBC filed for Chapter 11 bankruptcy on September 22, 2004, and that the stipulation and proposal for settlement is subject to the allowance of a claim in the amount of \$90,000 in favor of the People by the Bankruptcy Court.

The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Franklin Park Herald/Pioneer Press West Zone* on March 1, 2006. 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) (2004); 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. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of the respondents' 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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

As previously stated, IBC neither admits nor denies the violations alleged in the complaint, but agrees that a money judgment for \$90,000 be entered against it. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004), *as amended by* P.A. 93-575, (eff. Jan. 1, 2004), which may mitigate or aggravate the civil penalty amount. The People determined that a civil penalty of \$90,000 was appropriate.

The People and IBC 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.

ORDER

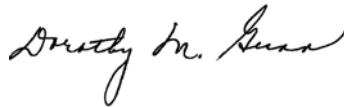
1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. A money judgment for a civil penalty of \$90,000 is entered against Interstate Brands Corporation (IBC).
3. IBC must file an amended proof of claim with the bankruptcy court reflecting that the People's previous disputed, contingent, and unliquidated claim (claim number 479) has now been liquidated and that a money judgment on the claim in the amount of \$90,000 has been entered against IBC by the Board. IBC will not object to the amended proof of claim, and will permit the amended proof of claim to relate back to the date that the original proof of claim was filed.
4. IBC must include the People's claim in its plan of reorganization and must classify the claim as a general, unsecured, non-priority claim. IBC agrees that the claim will be classified in its plan with other similarly situation claims and paid the same percentage as other similarly situation claims.
5. Any payments or distributions with respect to the claim must be made to the recipient and address identified on proof-of-claim number 479, in accordance with an effective plan of reorganization or, if the bankruptcy cases are subsequently converted to Chapter 7 cases, in accordance with applicable law.

6. IBC 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) (2004); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 6, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board