

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

Complainant, )

v. )

No. PCB 2011-105

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:

Gary S. Rovner  
Foley & Lardner LLP  
321 North Clark Street, Suite 2800  
Chicago, IL 60610

Gregory L. Berlowitz  
Foley & Lardner LLP  
321 North Clark Street, Suite 2800  
Chicago, IL 60610

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

Charles W. Gunnerson  
IEPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

R.A. Kolb-Lena Bresse Bleu, Inc.  
CT Corporation Systems  
208 South LaSalle Street  
Suite 814  
Chicago, Illinois 60601-1101

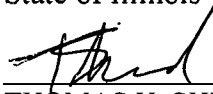
R.A. Zausner Foods Corp.  
Lewis D. Gitlin  
300 Martin Luther King Jr. Blvd.  
Suite B  
Wilmington, DE 19801

PLEASE TAKE NOTICE that on the 15<sup>th</sup> day of March, 2012, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Stipulation and Proposal for Settlement, a copy of which is hereby served upon you.

Respectfully submitted,

LISA MADIGAN,  
Attorney General of the  
State of Illinois

By:



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THOMAS H. SHEPHERD  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-5361

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

Complainant, )

v. )

No. PCB 2011-105  
(Enforcement)

KOLB-LENA BRESSE BLEU, INC., )  
an Illinois corporation, KOLB-LENA, )  
INC., a Delaware corporation, and )  
ZAUSNER FOODS CORP., a Delaware )  
corporation, )

Respondents. )

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Respondents, KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP. (“Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2010), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On June 30, 2011, a Complaint was filed 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 upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondents KOLB-LENA BRESSE BLEU, INC., KOLB-LENA, INC., and ZAUSNER FOODS CORP. (“Respondents”).

2. 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).

3. From August 31, 1961, through the date of filing of the Complaint, Respondent Kolb-Lena Bresse Bleu, Inc. (“KLBB”) was, through its predecessor by name change, Kolb-Lena Cheese Co. and is an Illinois corporation duly authorized to do business in Illinois.

4. From April 29, 2010, through the date of filing of the Complaint, Respondent Kolb-Lena, Inc. (“Kolb”), was and is a Delaware corporation. From January 19, 2011, through the date of filing of the Complaint, Kolb was and is authorized to do business in Illinois.

5. At all times relevant to the Complaint, Respondent Zausner Foods Corp. (“Zausner”), was and is a Delaware corporation.

6. At all times relevant to the Complaint, Zausner owned a portion of the property located at 3990 North Sunnyside Road, Lena, Stephenson County, Illinois (“Site”).

7. From at least July 26, 2004, through June 2010, 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”).

8. From at least July 2010, through the filing of the Complaint, Kolb was and is the operator of the Facility.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Air Pollution

Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2010);

Count II: Open Burning

Section 9(c) of the Act, 415 ILCS 5/9(c) (2010), and Section 237.102(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 237.102(a);

Count III: Water Pollution

Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);

Count IV: Creating a Water Pollution Hazard

Violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2010);

Count V: Discharge of Contaminants Without a NPDES Permit

Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010);

Count VI: Violation of Effluent Limitations

Violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), and Section 304.120(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.120(a);

Count VII: Offensive Discharge

Violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), and Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106;

Count VIII: Systems Reliability Violations

Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), and Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a);

Count IX: Use or Operation of Treatment Works Without a Permit

Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), and Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204.

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. On October 14, 2010, and November 15, 2010, the Illinois EPA issued spray irrigation and sludge disposal permits, respectively, for the Facility.
2. At some time prior to April 11, 2011, Respondents repaired the leak in the spray irrigation piping that allowed the discharge alleged in the Complaint.
3. At some time prior to April 11, 2011, Respondents repaired the broken air line pipe in the second wastewater lagoon at the Site.

4. At some time prior to April 11, 2011, Respondents removed the burn pile from the Site.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

## **III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such

pollution source; and

5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Complainant asserts that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility is suitable for the area in which it is located.
4. Operating the Facility in compliance with all applicable statutory and regulatory requirements is both technically practicable and economically reasonable.
5. Respondents complied with the Act and the Board Regulations after Respondents were notified of the alleged violations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations



by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Parties to the Stipulation state as follows:

1. Complainant asserts that Respondents' failure to properly maintain the piping of their spray irrigation system led to the discharge of contaminants into a water of the State; that Respondents' failure to maintain the air-line in their second wastewater storage lagoon resulted in reduced aeration, foul odors, and discolored contents; and that Respondents caused or allowed open burning of refuse on the Site that resulted in air pollution. Complainant asserts that the Respondents failed to obtain permits for the operation of their spray irrigation system and the disposal of sludge on the Site. Complainant further asserts that the violations began at least on March 17, 2010, and were individually resolved on dates better known to Respondents, but at least before April 11, 2011.

2. Complainant asserts that Respondents were not diligent in complying with the requirements of the Act and Board regulations before being contacted by the Illinois EPA. However, Respondents were diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified them of their noncompliance.

3. The Illinois EPA has determined that the economic benefit to the Respondents associated with the alleged violations was less than the penalty of Twenty Seven Thousand Dollars (\$27,000.00) referenced in paragraph 4, below.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Twenty Seven Thousand Dollars (\$27,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Respondents did not self-disclose the violations.

7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondents shall pay a civil penalty in the sum of Twenty Seven Thousand Dollars (\$27,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **B. Interest and Default**

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments 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 Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Thomas H. Shepherd  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, 18<sup>th</sup> Floor  
Chicago, Illinois 60602

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right

of entry into and upon the Respondents' facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$27,000.00 penalty, their commitment to cease and desist as contained in Section V.D. above and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 30, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or

regulations;

c. liability for natural resources damage arising out of the alleged violations; and

d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), or entity other than the Respondents.

**F. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**G. Execution of Stipulation**

This Stipulation may be executed by the Parties to the Stipulation in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

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

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

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

BY:   
JOHN J. KIM  
Interim Director

BY:   
MATTHEW J. DUNN, Chief

DATE: 2/22/12

DATE: 3/7/12

**KOLB-LENA BRESSE BLEU, INC.**

**KOLB-LENA, INC.**

BY: \_\_\_\_\_  
Its \_\_\_\_\_

BY: \_\_\_\_\_  
Its \_\_\_\_\_

DATE:

DATE:

**ZAUSNER FOODS CORP.**

BY: \_\_\_\_\_  
Its \_\_\_\_\_

DATE:

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

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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

BY: \_\_\_\_\_  
JOHN J. KIM  
Interim Director

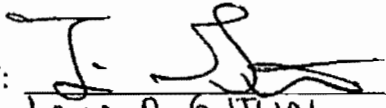
BY: \_\_\_\_\_  
MATTHEW J. DUNN, Chief

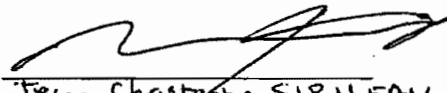
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DATE: \_\_\_\_\_

KOLB-LENA BRESSE BLEU, INC.

KOLB-LENA, INC.

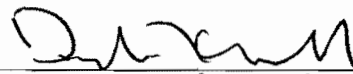
BY:   
Lewis D. GITLIN  
Its \_\_\_\_\_

BY:   
Jean-Christophe SIBILEAU  
Its \_\_\_\_\_

DATE:

DATE: 02/08/12

ZAUSNER FOODS CORP.

BY:   
F. Douglas KIRCHOFF  
Its TREASURER

DATE: 2/13/12

**CERTIFICATE OF SERVICE**

I, THOMAS H. SHEPHERD, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing and Stipulation and Proposal for Settlement and caused them to be served this 15<sup>th</sup> day of March, 2012, upon the persons listed on the foregoing Notice of Filing by depositing true and correct copies of same in an envelope, certified mail postage prepaid, with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601, at of before the hour of 5:00 p.m.

  
\_\_\_\_\_  
THOMAS H. SHEPHERD