

ILLINOIS POLLUTION CONTROL BOARD
February 4, 1999

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 93-3
)	(Enforcement - Air)
ARCHER DANIEL MIDLAND COMPANY,)	
a Delaware corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On December 28, 1998, the parties filed a stipulation and proposal for settlement. The Board accepts the stipulation and proposal for settlement filed by the parties in this matter. The complaint alleged that the respondent violated Sections 9(a) and 9(b) of the Environmental Protection Act (Act) (415 ILCS 5/9(a), 9(b) (1996)) and 35 Ill. Adm. Code 201.141, 201.142, 201.302(a), and 212.123 by causing or allowing air pollution, constructing a new emission source without a permit, violating opacity limits, violating special permit conditions, and operating a major stationary source without a permit.

Pursuant to Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (1996)), the Board caused publication of the required newspaper notice of the stipulation and proposal for settlement and request for relief from the hearing requirement. The Board did not receive any requests for hearing. Accordingly, the Board grants a waiver from the hearing requirement.

The stipulation and proposal for settlement sets forth the facts relating to the nature, operations, and circumstances surrounding the allegations in the complaint. The respondent "does not admit to" the alleged violations and agrees to pay the sum of \$75,000. Respondent must continue to comply with any federal, State, or local regulations including, but not limited to, the Act and the Board's regulations.

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

ORDER

1. The Board hereby accepts the stipulation and settlement agreement executed by the People of the State of Illinois and the Archer Daniel Midland Company, a Delaware corporation, regarding its facility located in Peoria, Peoria County, Illinois. The stipulation and settlement agreement is incorporated by reference as though fully set forth herein.

2. The respondent shall pay the sum of \$75,000 within 30 days of the date of this order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund. The case number, case name, and the respondent's federal employer identification number 41-0129150 shall also be included on the check (or money order) and should clearly indicate that payment is directed to the Environmental Protection Trust Fund.
3. The check (or money order) shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the payment transmittal and check shall be simultaneously submitted to:

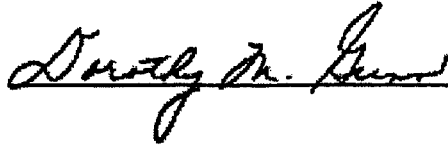
Thomas S. Gozdzik
Assistant Attorney General
Environmental Bureau
Attorney General's Office
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

4. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.
5. Respondent shall cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establish such filing requirements. See 172 Ill. 2d R. 335; see also Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 4th day of February 1999 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

DEC 29 1998

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB 93-3
)	(Enforcement - Air)
ARCHER DANIELS MIDLAND COMPANY,)	
a Delaware corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, THE PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, ARCHER DANIELS MIDLAND COMPANY ("ADM"), by its attorneys, Gardner, Carton & Douglas, do hereby submit this Stipulation and Proposal for Settlement ("Stipulation").

The parties stipulate that settlement of this matter is in the public interest and that acceptance of this Stipulation and Proposal for Settlement without litigation is the most appropriate means of resolving this matter. The parties agree that the statement of facts contained herein is agreed to only for purposes of settlement. The parties further state that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose,

in this or any other proceeding, except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement, and any Illinois Pollution Control Board ("Board") order accepting same, may be used in any future enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act"), for purposes of Section 42(h) of the Act, 415 ILCS 5/42(h) (1996). This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (1996).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to bind them legally to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to, and be binding upon, the Complainant and Respondent, as well as the successors and assigns of Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement; provided, however, that nothing in this settlement shall be deemed a waiver by ADM of its right to assert any and all other defenses available to it in any action to enforce this settlement or any of the requirements contained herein.

IV.

STATEMENT OF FACTS

1. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1996), and charged, *inter alia*, with the duty of enforcing the Act.

2. Respondent, ADM, is a Delaware corporation in good standing and qualified to conduct business under the laws of the State of Illinois. The ADM facility which is the subject of the Complaint is located at the foot of Edmund Street in Peoria, Peoria County, Illinois ("Peoria facility").

3. ADM is in the business of producing ethanol at its Peoria facility. ADM's ethanol production process involves the conversion of components of corn into alcohol.

V.

ALLEGED VIOLATIONS

The Complaint alleges the following violations:

COUNT I: AIR POLLUTION; 415 ILCS 5/9(a) (1996) and 35 Ill. Adm. Code 201.141. From October 1988, and continuing until at least December 1988, ADM emitted soot and fly ash from its boiler stack to the environment in sufficient quantities and of such characteristics and duration so as to cause or tend to cause air pollution in Illinois.

COUNT II: VIOLATION OF OPACITY LIMITS; 415 ILCS 5/9(a) (1996) and 35 Ill. Adm. Code 212.123. In October, November and December 1988, ADM's boiler stack opacity monitor strip charts indicated numerous occasions when opacity was greater than 60 percent, and also when opacity was greater than 30 percent, but not greater than 60 percent, for periods aggregating more than 8 minutes in a 60 minute period, and more than 3 times in a 24 hour period.

COUNT III: VIOLATION OF SPECIAL PERMIT CONDITION; 415 ILCS 5/9(b) (1996). On December 20, 1988, ADM conducted a stack test without proper notification to the Illinois EPA in violation of special condition number three of ADM's operating permit number 87070036.

COUNT IV: CONSTRUCTION OF EMISSION SOURCES WITHOUT A PERMIT; 415 ILCS 5/9(a) and (b) (1996) and 35 Ill. Adm. Code 201.142. On or before June 17, 1987, ADM began excavating activities related to the construction of new distillation columns without an Illinois EPA construction permit. On or before

September 10, 1987, ADM placed at least three new distillation columns onto their foundations without an Illinois EPA construction permit. On or before September 10, 1987, ADM commenced construction of two new feed dryers, three new fermentation tanks and two gas-turbine powered electric generating units without an Illinois EPA construction permit.

This Stipulation and Proposal for Settlement is intended to resolve the allegations set forth in the People's Complaint filed in this matter (as summarized above) and the additional alleged violations set forth below, which Complainant became aware of subsequent to filing the Complaint:

1. Violations of 415 ILCS 5/9(a) (1996) and 35 Ill. Adm. Code 201.141 resulting from the emission of smoke and odor by ADM's Peoria facility between approximately October 1984 and January 1991.
2. Violations of 415 ILCS 5/9(b) (1996) and 35 Ill. Adm. Code 201.143 based upon operation, at ADM's Peoria facility, of boiler #4, 2 grain scalpers and 2 drag conveyors without an operating permit from December 10, 1991, when its existing operating permit expired, until it obtained its current operating permit no. 72110062 on June 18, 1993.
3. Violations of 415 ILCS 5/9(a) and (b) (1996) and 35 Ill. Adm. Code 201.141 based upon emission of nitrogen oxide from boilers #5 and #6 in excess of the limits contained in special conditions of permits number 85010056 and 87110032, during the years 1989 through 1993.
4. Violations of 415 ILCS 5/9.1(d) (1996), and Section 165 of the Clean Air Act, 40 CFR 52.21(j) (3) based on ADM exceeding the 40 tpy threshold for nitrogen oxide in boilers #5 and #6 during the years 1989 through 1993.

5. Violations of 415 ILCS 5/9(b) (1996), based on the exceedance of the permitted limit of 776 million cubic feet per year of natural gas set forth in permit number 85010056, during the years 1989 through 1992.
6. Violations of 415 ILCS 5/9(b) (1996) and 35 Ill. Adm. Code 201.161 and 214.141(b), based on sulfur dioxide emissions generated by ADM's exceedances of the 5.5 lbs/mmBtu limit set forth within permit special condition 2(b) of operating permit number 83020045 and contained in 35 Ill. Adm. Code 214.141(b), during the periods of January 1997 through March 1997, and April 1997 through June 1997.
7. Violations of 415 ILCS 5/9(b) (1996) and 35 Ill. Adm. Code 201.161, based on ADM's failure to keep adequate data of coal usage to demonstrate compliance with special condition 5 of operating permit number 83020045, during the periods of January 1997 through March 1997, and April 1997 through June 1997.

VI.

NATURE OF RESPONDENT'S OPERATION

ADM is in the business of producing ethanol at its Peoria, Illinois facility.

VII.

EXPLANATION OF ALLEGED PAST FAILURES TO COMPLY

1. As to the violation alleged in Count I, ADM acknowledges that high levels of opacity occurred in part due to mechanical problems associated with excessively wet coal that was delivered during the time period alleged. The wet coal exacerbated the physical limitations of the boilers and their particulate control system. However, ADM asserts that its boiler emissions were in

compliance with applicable particulate limitations, and it worked with the Illinois EPA to develop a voluntary plan to reduce the opacity emissions from its coal-fired boilers, which ADM carried out. ADM further asserts that such emissions did not cause any unreasonable interference with the public health, safety or welfare.

2. The violations alleged in Count II are closely related to those in Count I and were resolved through the installation of a second electrostatic precipitator after less costly actions failed to reduce the particulate emissions sufficiently. ADM asserts that violations of the 60% opacity limit cannot be proven by instantaneous peak readings when the levels averaged below 60% over a limited time period.

3. As to the violation alleged in Count III, ADM sent a letter to the Illinois EPA dated December 2, 1988, advising the Illinois EPA that it intended to conduct stack testing of waste heat evaporator Number One, but it inadvertently failed to provide further notice of the particular testing date. The results of the stack tests were subsequently submitted to the Illinois EPA.

4. As regards the violations alleged in Count IV, ADM believed that it could proceed with its construction activities short of actual connection, prior to obtaining Illinois EPA construction permits. ADM also asserts that all of the construction permits for the relevant equipment were subsequently issued by the

Illinois EPA, with the exception of the permit for the corn germ drier which ADM asserts issued by operation of law since more than 90 days elapsed from the date of the application on May 5, 1988 and the subsequent denial dated August 4, 1988.

VIII.

FUTURE PLANS OF COMPLIANCE

ADM shall comply with all air related requirements of the Act, 415 ILCS 5/1 et seq. (1996), the Clean Air Act, 42 U.S.C. §§ 7401 et seq. (1996), and the Illinois Pollution Control Board Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1996), 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 state as follows:

1. The odor and smoke emissions from ADM's Peoria facility resulted in citizen complaints possibly related to these emissions.
2. The social and economic value of ADM's Peoria facility is great. ADM employs approximately 230 people in the Peoria facility, is a major purchaser of Illinois grain, and provides food products internationally.
3. The Peoria facility is suitable to the area in which it is located, in that it is largely surrounded by commercial and industrial properties and has few residences within three blocks. It has been in operation since 1937.
4. It was technically practicable and economically feasible for ADM to reduce its emissions.
5. ADM has resolved, or is in the process of resolving, all compliance issues.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1996), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) of 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 violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The violations that are the subject of this Stipulation and Proposal for Settlement include permitting and emission violations that are of various durations beginning in 1984 and ending in 1997. While the State views permit and reporting

violations as being serious in that the permit process and reporting requirements lie at the heart of the State's air pollution control program, the duration and gravity of the alleged violations are, in part, off-set by the following factors:

- a. None of that equipment was physically connected to allow operation until after the construction permits were obtained; and
- b. There are no alleged violations of National Ambient Air Quality Standards.

2. ADM has shown increased diligence in responding to the more recent alleged violations. ADM took the following actions to resolve the alleged violations:

- a. As regards the alleged opacity violations:
 - i. made repairs to the boiler #3 to eliminate or substantially reduce the amount of excess air being drawn into the system and retubed the air heater of that boiler;
 - ii. replaced the internal ash collecting cyclone of that boiler;
 - iii. began external calibration of the stacks' opacity meter on a quarterly basis;
 - iv. assigned a full-time instrument technician to the powerhouse;
 - v. replaced the internal cyclones on boiler #1 and #2; and
 - vi. installed a second electrostatic precipitator to control boiler #3 and used the existing unit to control boilers #1 and #2;

b. As regards the alleged construction permit violations, ADM worked cooperatively with the Illinois EPA to obtain all necessary permits, and all permits were ultimately issued.

3. ADM accrued some economic benefit by postponing expenditures with respect to resolving the alleged opacity and PSD violations.

4. Based upon all of the factors set forth in Sections 33(c) and 42(h) of the Act, the parties have agreed that ADM's payment of \$75,000 to the Environmental Protection Trust Fund is appropriate to deter future violations and to enhance voluntary compliance with the Act.

5. Past adjudicated violations of the Illinois Environmental Protection Act by ADM:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY v. ARCHER DANIELS
MIDLAND PCB 80-151 Opinion Dated: March 24, 1983

The Illinois Pollution Control Board found that ADM had violated Rules 203, 402, 403, 404(c), 408(a) and 901 of Chapter 3: Water Pollution and Sections 12(a) and (f) of the Illinois Environmental Protection Act. The effluent, water quality and NPDES permit violations related to discharges from at least 1976 through 1981 from ADM's Decatur facility.

RICHARD MOORE AND SALLY MOORE v. ARCHER DANIELS MIDLAND COMPANY
PCB 87-171 Opinion Dated: May 11, 1989

The Illinois Pollution Control Board found that noise emissions from ADM's Decatur, Illinois cogeneration plant constituted a violation of 35 Ill. Adm. Code 900.102 and Section 24 of the Illinois Environmental Protection Act.

XI.

TERMS OF SETTLEMENT

1. ADM does not admit to the violations alleged by the Complainant herein.

2. ADM shall pay the sum of Seventy Five Thousand Dollars (\$75,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days of the date of the Board's entry of a final opinion and order accepting this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designating it for deposit into the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

A copy of the check shall be sent to:

Thomas S. Gozdziaik
Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Floor
Chicago, IL 60601

ADM shall write its Federal Employer Identification Number ("FEIN"), 41-0129150, upon the certified check or money order.

For purposes of payment and collection, the Respondent may be reached at the following address:

Archer Daniels Midland Company
Attn: General Counsel
4666 Faries Parkway
Decatur, IL 62526

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1996), interest shall accrue on any amount not paid, within the time period prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1996).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Plaintiff, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI paragraph 2 herein.

4. ADM shall comply with all air related requirements of the Act, 415 ILCS 5/1 et seq. (1996), the Board Air Pollution Regulations, 35 Ill. Adm. Code Subtitle B, the Clean Air Act, 42 U.S.C. §§ 7401 et seq. (1996), and all standard and special

conditions contained in permits issued by the Illinois EPA to the Peoria ADM facility.

XII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local laws and regulations, including but not limited to, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (1996).

XIII.

RIGHT OF ENTRY

In addition to any authority of law, the Illinois EPA, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have the right of entry to the facility at all reasonable times, for the purposes of conducting inspections of Respondent's operations. The Illinois EPA, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples they deem necessary in order to conduct their inspection, provided that: (1) upon request ADM will be provided with split samples and copies of photographs and (2) ADM is not waiving any rights it may have to request that any documents or photographs obtained by the Illinois

EPA or the Attorney General pursuant to this provision be held and maintained as confidential information.

XIV.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of Seventy Five Thousand Dollars (\$75,000.00) into the Illinois Environmental Protection Trust Fund and commitment to refrain from further air related violations of the Act, the Board Air Pollution Regulations and the Clean Air Act, upon receipt by Complainant of the payment required by Section XI.2., the Complainant releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties from claimed violations of the Act, the Board Air Pollution Regulations and the Clean Air Act which were the subject matter of the Complaint, as well as the additional alleged violations set forth in Section V of this Stipulation and Proposal for Settlement. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

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


AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

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

By: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

Dated: 12/23/98


FOR THE RESPONDENT:

ARCHER DANIELS MIDLAND COMPANY

By: SA Roberts
Assistant General Counsel

Dated: 12-18-98

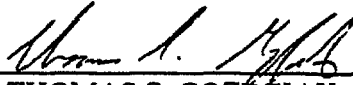
ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
JOSEPH E. SVOBODA
General Counsel
Division of Legal Counsel

Dated: 11-30-98

CERTIFICATE OF SERVICE

I, THOMAS S. GOZDZIAK, an Assistant Attorney General in this case, do certify that I caused to be served this 29th day of December, 1998, the foregoing Notice of Filing, Stipulation and Proposal for Settlement, and Agreed Motion Requesting Relief from the Hearing Requirement, upon the person(s) listed in the Notice of Filing by placing same in an envelope, postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois.



THOMAS S. GOZDZIAK

THIS FILING SUBMITTED ON RECYCLED PAPER