

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)	
<i>ex rel.</i> KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Plaintiff,)	
)	
v.)	No. 22-CH-11
)	
BRAINERD CHEMICAL MIDWEST LLC,)	
an Oklahoma limited liability company,)	
)	
Defendant.)	

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and Defendant, BRAINERD CHEMICAL MIDWEST LLC, an Oklahoma limited liability company, (collectively “Parties to the Consent Order”), have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive 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.* (2022), and the Illinois Pollution Control Board (“Board”) regulations, alleged in the Complaint except as

otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter including the Agreed Interim Order and its modifications.

A. Background

1. On August 5, 2022, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2022), against the Defendant.

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 (2022).

3. At all times relevant to the Complaint, Defendant, BRAINERD CHEMICAL MIDWEST LLC (“BCM” or “Defendant”) was and is an active Oklahoma limited liability company registered to do business in the State of Illinois and in good standing with the Illinois Secretary of State.

4. BCM operates a commercial chemical distribution facility located at 209 Brewer Road, Danville, Vermilion County, Illinois (“Facility”). The Facility is located between Brewer Road to the west, and a rail line to the east.

5. The Facility is located in an area of Environmental Justice (“EJ”) concern as identified by EJ Start, a mapping tool utilized by Illinois EPA.

6. As of the date of filing of the Complaint, the Facility handled various chemicals, including hydrofluoric acid, in a commercial setting. BCM operated the Facility as a batch facility, primarily blending hydrofluoric acid and repackaging it for use elsewhere.

7. Hydrofluoric acid is formed when hydrogen fluoride (“HF”) is dissolved in water. The National Institute for Occupational Safety and Health states that HF is a colorless fuming

liquid below 67 degrees Fahrenheit, or a colorless gas. When HF is combined with water, it is known as hydrofluoric acid. Hydrofluoric acid that is more than 40 percent HF fumes in air.

8. The National Center for Environmental Health states that HF is a caustic and corrosive agent. HF goes easily and quickly through the skin and into the tissues in the body. There it damages the cells and causes them to not work properly. HF gas can, at low levels, irritate the eyes, nose, and respiratory tract and, at high levels, cause death from an irregular heartbeat or from fluid buildup in the lungs.

9. At the Facility, BCM received shipments of hydrofluoric acid; diluted the acid down to a lower concentration of HF; and repackaged the hydrofluoric acid for use elsewhere.

10. The Illinois EPA issued air pollution control permits for several air emission units at the Facility, including three (3) above ground 8,700-gallon capacity HF storage tanks and one (1) liquid fill station; and a permit for a packed wet scrubber to control emissions of HF from the Facility.

B. Allegations of Non-Compliance

Plaintiff contends that the Defendant has violated the following provisions of the Act and Board regulations:

Count I: **Substantial Endangerment to the Environment and to Public Health and Welfare**

Section 43(a) of the Act, 415 ILCS 5/43(a) (2022)

Count II: **Air Pollution**

Section 9(a) of the Act, 415 ILCS 5/9(a) (2022)

Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141

Count III: **Failure to Maintain and Operate Emission Units and Air Pollution Control Equipment In A Manner Consistent With Good Air Pollution Control Practices**

Section 9(b) of the Act, 415 ILCS 5/9(b) (2022)

Condition 4(a) and Standard Condition 7 of construction permit no. 20100022,
Conditions 6(a) and 6(c) and Standard Condition 7 of operating permit no. 72100740

Count IV: **Failure to Keep Required Records**

Section 9(b) of the Act, 415 ILCS 5/9(b) (2022)
Conditions 7(a) and 7(b) and Standard Condition 8 of construction permit no. 20100022
Conditions 9(a) and 9(b) and Standard Condition 8 of operating permit no. 72100740

Count V: **Failure to Submit Complete and Accurate Annual Emissions Reports**

Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b) (2022)
Section 201.302(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a)
Section 254.132(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a)
Standard Condition 11 of construction permit no. 20100022

Count VI: **Failure to Submit Deviation Reports**

Section 9(b) of the Act, 415 ILCS 5/9(b) (2022)
Condition 8 of construction permit no. 20100022
Condition 10 of operating permit no. 72100740

Count VII: **Failure to Obtain Construction Permit**

Sections 9(b) and 9.12 of the Act, 415 ILCS 5/9(b) and 9.12 (2022)
Section 201.142 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.142

C. Non-Admission of Violations

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. The Parties entered into an Agreed Interim Order (“AIO”) on August 23, 2022, and Defendant timely completed immediate compliance measures consistent with the First and Second Agreed Modifications to the AIO dated October 11, 2022 and April 21, 2023.

2. On December 7, 2022, BCM completed removal of all HF Product from the Facility’s HF tanks.

3. On January 30, 2023, BCM notified the Attorney General’s Office that it would cease all HF operations at its Facility.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Parties to the Consent Order. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against the Defendant 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 (2022).

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Civil Penalty

1. The Defendant shall pay a civil penalty of ONE HUNDRED AND TWENTY-FOUR THOUSAND DOLLARS (\$124,000.00) and ONE THOUSAND DOLLARS (\$1,000.00) for avoided construction permit fees. Payment shall be tendered at time of entry of the Consent Order.

2. The civil penalty payment, in the amount of ONE HUNDRED AND TWENTY-FOUR THOUSAND DOLLARS (\$124,000.00), 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, Illinois 62794-9276

3. The ONE THOUSAND DOLLARS (\$1,000.00) payment for avoided construction permit fees shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Permit and Inspection Fund. 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, Illinois 62794-9276

4. The case name and case number shall appear on the face of each certified check or money order.

B. Interest and Default

1. If the Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, the Defendant 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 Plaintiff 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 Defendant 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. Future Compliance

1. The Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Defendant's Facility (or Site) which is the subject of this Consent Order, 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, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Consent Order in no way affects the responsibilities of the Defendant 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 Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

4. The Defendant shall permanently cease and desist use of HF at the Facility.

D. Enforcement of Consent Order

This Consent Order is a binding and enforceable order of this Court. This Court shall retain

jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

E. Release from Liability

In consideration of the Defendant's payment of a ONE HUNDRED AND TWENTY-FOUR THOUSAND DOLLAR (\$124,000.00) penalty, its ONE THOUSAND DOLLAR (\$1,000.00) payment of avoided permit fees, its commitment to cease and desist as contained in Section III.C.3 above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendant 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 Plaintiff's Complaint filed on August 5, 2022. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order 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, other than the Defendant.

F. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. 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 Consent Order and to legally bind them to it.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

(intentionally left blank)

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JAMES JENNINGS, Acting Director
Illinois Environmental Protection Agency

BY: _____
RACHEL R. MEDINA
Chief
Environmental Bureau
Assistant Attorney General

BY: _____
ANDREW B. ARMSTRONG
Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE DEFENDANT:

BRAINERD CHEMICAL MIDWEST LLC

BY: *B Miller*

Name *Brian Miller*
Title *President*

DATE: *9/25/24*

ENTERED:

JUDGE

DATE: _____

AGREED:


FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JAMES JENNINGS, Acting Director
Illinois Environmental Protection Agency

BY: 
RACHEL R. MEDINA
Chief
Environmental Bureau
Assistant Attorney General

BY: 
ANDREW B. ARMSTRONG
Chief Legal Counsel

DATE: 10/2/24

DATE: 09/27/2024

FOR THE DEFENDANT:

BRAINERD CHEMICAL MIDWEST LLC

BY: _____

Name _____
Title _____

DATE: _____

ENTERED:


JUDGE

DATE: 11/5/2024