

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1993

NESTLE FOOD COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 93-170
)	(Provisional Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), the Illinois Environmental Protection Agency (Agency), by and through its Director, Mary A. Gade, seeks a provisional variance for Nestle Food Company in order to allow it to release water from the company-owned and operated wastewater treatment lagoons. While normal at the beginning of the annual production season those lagoons are empty, the saturation of 117 acres of spray fields due to heavy rains has made the discharge necessary to assure adequate holding capacity for the usual process season wastewater flows. The Agency Recommendation was filed September 8, 1993.

Specifically, the Agency recommends that we grant Nestle Food Company a 45-day provisional variance for its Tazewell County facility from the ammonia nitrogen (NH₃), biochemical oxygen demand (CBOD₅), and suspended solids (TSS) effluent requirements, as set forth in 35 Ill. Adm. Code 302.141(a), 35 Ill. Adm. Code 304.120(c) and 35 Ill. Adm. Code 304.105, for the period from when the Petitioner begins discharging water from its #2 and #4 lagoons, and continuing for longer than 45 days.

The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the repairs are necessary. The Agency anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream. The Agency is unaware of any public water supplies that the requested provisional variance would adversely impact. The Agency maintains that a grant of a provisional variance would violate no federal laws. The Agency finds that a denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the Petitioner.

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the

responsibilities in standard variances. See 415 ILCS 5/35 (b) & (c) (1992) (Ill. Rev. Stat. 1991, ch. 111½, pars. 1035(b) & (c)). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal Order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Having received the Agency recommendation finding that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants Petitioner a provisional variance from 35 Ill. Adm. Code 304.141(a), 35 Ill. Adm. Code 304.120(c) and 35 Ill. Adm. Code 304.105, on the following conditions:

1. The term of this provisional variance shall commence upon the date of this Board order and continue for a period of forty-five (45) days;
2. During the term of this provisional variance, the effluent from the Petitioner's treatment plant shall not exceed concentrations of 5.0 mg/l NH₃ (daily maximum concentration) or 4.0 mg/l (30-day average), or 30 mg/l BOD₅ (daily maximum concentration) or 20 mg/l (30-day average), or 70 mg/l TSS (daily maximum concentration) or 50 mg/l (30-day average);
3. The Petitioner shall notify Eric Ackerman of the Agency's Peoria Regional office by telephone, at 309/693-5463, when a discharge from lagoon #2 or lagoon #4 begins and when the discharge from these lagoons is completed. The Petitioner shall confirm this notice in writing within five days, addressed as follows:

Illinois Environmental Protection Agency
Division of Water Pollution Control
Compliance Assurance Section
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

Attention: Mark T. Books

4. The Petitioner shall operate its wastewater treatment plant during the term of this provisional variance in a manner that assures the best effluent practicable; and
5. The Petitioner shall continue to monitor, and maintain compliance with the other parameters, as addressed in NPDES Permit No. IL0060852; and

6. The Petitioner shall execute a copy of a Certificate of Acceptance of this provisional variance and forward that copy to the Agency addressed as is the written notice required in the above condition; the Petitioner shall forward that copy within 10 days of the date of this Order of the Board, and the Certificate of Acceptance shall take the following form:

CERTIFICATION

I (We), _____,
hereby accept and agree to be bound by all terms
and conditions of the Order of the Pollution
Control Board in PCB 93-170, September 9, 1993.

Petitioner

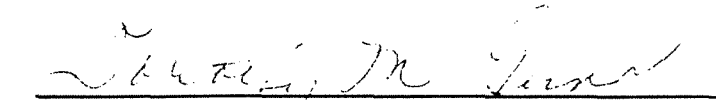
Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 9th day of September, 1993, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board