

ILLINOIS POLLUTION CONTROL BOARD
May 17, 2001

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 01-80
)	(Enforcement – Water)
NESTLE USA, INC., a Delaware)	
corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On November 9, 2000, the People of the State of Illinois (People) filed a three-count complaint against respondent Nestle USA, Inc. (Nestle). The complaint alleges that, on October 1, 2000, (and on several occasions prior to October 1, 2000) Nestle caused or allowed the discharge of approximately 200,000 gallons of pumpkin processing waste into Bull Run Creek near Morton, Tazewell County, Illinois. This activity was in alleged violation of Sections 12(a) and 12(d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a) and 5/12(d) (1998)), and the Board's regulations at 35 Ill. Adm. Code 302.203, 302.204, 302.206, and 304.106.

On April 13, 2001, the parties filed a stipulation and proposal for settlement, accompanied by a motion requesting relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (1998)). Pursuant to Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (1998)), 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 notice appeared in *The Morton Times-News* on April 18, 2001. 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. Nestle neither admits nor denies the violations alleged by the People, but agrees to pay a civil penalty of \$50,000. Nestle also agrees to pay \$499.82 for recovery of fish that were killed and for investigation expenses.

The Board accepts the stipulation and proposal for settlement filed by the parties in this matter. Nestle 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 Nestle. The stipulation and settlement agreement is incorporated by reference as though fully set forth herein.
2. Nestle must pay a civil penalty of \$50,000. Payment must be made within 30 days of the date of this order, that is, on or before June 16, 2001. Such payment must be made by certified check or money order payable to the Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund. The case number, case name, and Nestle's Federal Employer Identification number 95-1572209 must also be included on the certified check or money order and clearly indicate that payment is directed to the Environmental Protection Trust Fund.
3. The check or money order must 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:

Office of the Attorney General
Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
4. Any such penalty not paid within the time prescribed incurs interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1998)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest does not accrue during the pendency of an appeal during which payment of the penalty has been stayed.
5. Nestle must perform the corrective action plan outlined at Exhibit A of the stipulation and proposal for settlement.
6. Nestle must pay \$499.82 to the State of Illinois Fish and Wildlife Fund for recovery of the fish that were killed and for investigation expenses incurred as a result of the pumpkin processing waste spill into Bull Run Creek. Payment must be made within 30 days of the date of this order, that is, on or before June 16,

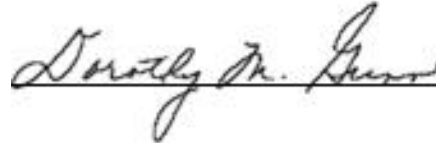
2001. Such payment must be made by certified check or money order payable to the Treasurer of the State of Illinois, for deposit in the State of Illinois Wildlife and Fish Fund. The check or money order must be sent to the Illinois Environmental Protection Agency at the address listed in Part 3 of this order. A copy of the check or money order must be sent to the Office of the Attorney General at the address listed in Part 3 of this order.

7. Nestle must cease and desist future alleged violations of any federal, State, or local statutes and regulations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) 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 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, 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 17th day of May 2001 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