

ILLINOIS POLLUTION CONTROL BOARD

April 20, 2000

IN THE MATTER OF:)
)
PETITION OF TAKASAGO CORPORATION) AS 00-4
(U.S.A.) FOR AN ADJUSTED STANDARD) (Adjusted Standard - Water)
FROM 35 ILL. ADM. CODE 302.208 AND)
304.105)

OPINION AND ORDER OF THE BOARD (by M. McFawn):

Before the Board is a petition for an adjusted standard filed by Takasago Corporation (USA) (Takasago). Takasago seeks an adjusted standard from 35 Ill. Adm. Code 302.208 and 304.105 so that it may discharge wastewater containing levels of total dissolved solids (TDS) in excess of the concentrations allowed under the water quality standard set forth in the Board's regulations, *i.e.*, 1000 mg/L. See 35 Ill. Adm. Code 302.208(g). This standard, however, was adjusted for the relevant portion of Deer Creek to 2,100 mg/L (the limit sought by Takasago) in a prior adjusted standard proceeding. See *In re Petition of NutraSweet Co.* (February 28, 1991), AS 89-3. Because of the relationship between Takasago and Consumers Illinois Water Company (CIWC), the treatment works in and a party to the earlier proceeding, this adjustment in effect applies to Takasago. The Board therefore concludes that Takasago does not need the requested adjusted standard, and denies Takasago's petition, as is explained in further detail below.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Takasago has a plant in University Park in Will County, Illinois, where it produces aroma chemicals. Pet. at 1. Wastewater from the plant contains heightened levels of TDS. Pet. at 2. The plant has a single wastewater sewer discharge, to the CIWC treatment works collection system. Pet. at 1, 2. CIWC discharges its effluent to Deer Creek pursuant to a National Pollutant Discharge Elimination System (NPDES) permit. Pet. at 2.

The plant in University Park was previously operated by NutraSweet Co., which produced its namesake artificial sweetener there. Pet. at 2. NutraSweet's wastewater also contained heightened levels of TDS. Pet. Exh. A. CIWC and NutraSweet received initially a variance (PCB 88-84) and ultimately an adjusted standard (AS 89-3) permitting discharge from CIWC's outfall resulting in a heightened level (2,100 mg/L) of TDS in Deer Creek. NutraSweet Co. v. Illinois Environmental Protection Agency (July 27, 1989), PCB 88-84; *In re Petition of NutraSweet Co.* (February 28, 1991), AS 89-3. By its petition, Takasago seeks essentially the same adjusted standard that the Board granted to CIWC and NutraSweet.

Takasago filed its petition on September 10, 1999. Takasago's petition incorporated and updated the information which NutraSweet and CIWC had submitted in support of the relief granted in AS 89-3. The petition addressed all the criteria under 415 ILCS 5/28.1(c) for granting an adjusted

standard. See *infra*. In its petition, Takasago explained its operations compared to NutraSweet, and the continuing need for the adjusted TDS water quality standard.

On November 8, 1999, after notice of the petition was published in accordance with 35 Ill. Adm. Code 106.711, the Board received a request from Michael W. Bernard, a member of the public, that a hearing be held on the petition.¹ On December 3, 1999, the Illinois Environmental Protection Agency (Agency) filed its response to the petition, recommending that the petition be granted. A hearing was held in University Park, Illinois, on December 22, 1999. At that hearing, witnesses from Takasago, the Agency and the community explained the current conditions at the treatment works and the water pollution control and NPDES permits issued by the Agency to Takasago and CIWC respectively. Takasago filed additional material to supplement the record on January 13, 2000. On February 3, 2000, the Agency moved to file additional material, which motion was granted by the hearing officer on February 14, 2000. The additional materials filed included the water pollution control permits for Takasago and NutraSweet and the NPDES permit for CIWC.

RELEVANT STATUTES AND REGULATIONS

By its petition, Takasago seeks an adjusted standard from 35 Ill. Adm. Code 302.208 and 304.105. Section 302.208(g) (the relevant provision) establishes a water quality standard for TDS in waters of the State of 1000 mg/L. Section 304.105 provides, in relevant part, that “no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard.”

The Board’s authority to grant adjusted standards derives from Section 28.1 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/28.1 (1998). Section 28.1(a) provides that a petitioner may request, and the Board may impose, a standard different from that which would otherwise apply to the petitioner as the consequence of the operation of a rule of general applicability. The criteria for granting an adjusted standard are set forth in Section 28.1(c), which provides:

- c. If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by the petitioner, that:

¹ Section 106.711 requires that notice of an adjusted standard petition be published within 14 days of filing a petition in a newspaper of general circulation in the area likely to be affected by the petitioner’s activity. The notice informs readers that any person may request a hearing within 21 days after the date of publication. In this case, Takasago published a timely notice, but the notice contained typographical errors which, while not fatal, could have impaired the effectiveness of the notice. The Board directed Takasago to publish a corrected notice. *In re Petition of Takasago Corp. (USA)* (October 21, 1999), AS 00-4. Takasago published the new notice on November 4, 1999. Thus, Bernard’s request for hearing was timely.

1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the petitioner;
2. the existence of those factors justifies an adjusted standard;
3. the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
4. the adjusted standard is consistent with any applicable federal law. 415 ILCS 5/28.1(c) (1998).

Because the regulations at issue do not specify levels of justification to qualify for adjusted standards, the criteria in Section 28.1(c) apply to Takasago's request. If any of these criteria is not met, the Board may not grant an adjusted standard.

DISCUSSION

This petition can be resolved by application of the second Section 28.1(c) criterion, *i.e.*, that the existence of special factors relating to the petitioner justifies an adjusted standard. This criterion is not met if the requested adjusted standard would have no impact. First, Takasago requests that the 1,000 mg/L water quality standard for TDS set forth in Section 302.208(g) be adjusted to 2,100 mg/L. Second, Takasago requests relief from the requirements of Section 304.105 as that section relates to the water quality standard for TDS in Section 302.208 (*i.e.*, the rule of general applicability, 1,000 mg/L). The Board concludes, in light of the existing adjusted standard granted to CIWC in proceeding AS 89-3, that the adjusted standard requested by Takasago is not necessary.

The water quality standard in 302.208(g) has already been adjusted to 2,100 mg/L by the Board's order in AS 89-3, and consequently the "applicable water quality standard" referenced in Section 304.105 for CIWC, the direct discharger to Deer Creek, is 2,100 mg/L, not 1,000 mg/L. Takasago does not discharge directly to waters of the State (as that term is defined in 35 Ill. Adm. Code 301.440). Rather, Takasago discharges to CIWC's treatment works, which in turn discharges to Deer Creek. Takasago's discharge reaches the stream, thus, as a component of CIWC's discharge. Unless CIWC's discharge causes a violation of a water quality standard, Takasago's discharge cannot cause a violation of a water quality standard. And, consequently, if CIWC is subject to a different water quality standard by operation of its adjusted standard, then the adjusted water quality standard is, in effect, applicable to Takasago as well.

Bearing this relationship in mind, we turn to the relief requested by Takasago, compared to that already granted to CIWC. The Board's order in AS 89-3 provides:

Pursuant to the authority of Section 28.1 of the Environmental Protection Act, the Board hereby adopts the following adjusted standard. This standard becomes effective on the date of this order.

- 1) The water quality standard for total dissolved solids shall be 2,100 mg/1 for that portion of Deer Creek between the point of discharge from the facility of Consumers Illinois Water Company in University Park, Illinois and the confluence of Deer Creek with Thorne Creek, and for that portion of Thorne Creek between the confluence of Thorne Creek with Deer Creek and the USGS gaging station located on Thorne Creek approximately fifteen miles downstream of the point of discharge from the above-mentioned facility. The water quality standard for total dissolved solids found at 35 Ill. Adm. Code 302.208 shall not apply. In re: Petition of NutraSweet Co. (February 28, 1991), AS 89-3, slip op. at 11.

For comparison, Takasago has requested the following adjusted standard:

- (1) The water quality standard for TDS shall be 2,100 mg/L for that portion of Deer Creek between the point of discharge from the facility of CIWC in University Park, Illinois and the confluence of Deer Creek with Thorn Creek, and for that portion of Thorn Creek between the confluence of Thorn Creek with Deer Creek and the USGS gauging station located on Thorn Creek approximately fifteen miles downstream of the point of discharge from the CIWC facility (USGS Gauging Station 05536275). The water quality standard for TDS found at 35 Ill. Adm. Code 302.208 shall not apply to these portions of Thorn Creek.
- (2) The requirements of 35 Ill. Adm. Code 304.105, as that section relates to the water quality standard for total dissolved solids of 35 Ill. Adm. Code 302.208, shall not apply to the effluent discharges from the Takasago facility in University Park, Illinois, so long as the TDS concentration in the effluent discharges from CIWC does not exceed a maximum daily composite concentration of 2,100 mg/L and a monthly average composite concentration of 1,675 mg/L and the discharge from Takasago to CIWC does not exceed 11,100 kg/day as a maximum daily composite and 6000 kg/day as a monthly average.
- (3) The adjusted standard granted to Takasago shall be conditioned upon the revision of Takasago's Water Pollution Control permit consistent with these adjusted standards. Takasago shall perform all monitoring requirements for the discharge of TDS as may be required in its permit. Pet. at 14-15.

The quoted paragraph from CIWC's adjusted standard changed the TDS water quality standard from 1,000 mg/L to 2,100 mg/L for the referenced portions of Deer Creek and Thorn Creek, to which CIWC discharges. The first paragraph of the adjusted standard Takasago seeks is thus

redundant; it is essentially identical to the existing adjusted standard granted in the first paragraph of the Board's order in AS 89-3.

The second paragraph of Takasago's requested adjusted standard seeks relief from a regulation that is not applicable to Takasago: Section 304.105 as it relates to the TDS limit in Section 302.208. Under the CIWC adjusted standard, that limit has been superseded by the 2,100 mg/L limit imposed in AS 89-3. Thus, no effluent discharged from Takasago's facility to CIWC could cause a violation of the Section 302.208 standard (*i.e.*, 1000 mg/L) in the receiving stream. "The requirements of 35 Ill. Adm. Code 304.105, as that section relates to the water quality standard for total dissolved solids of 35 Ill. Adm. Code 302.208" already do not apply to Takasago, even without the conditions it proposes.

Because the water quality standard for TDS contained in Section 302.208 has already been adjusted, and because the prior adjustment in effect applies to Takasago due to its relationship to CIWC, Takasago already has the relief from Section 302.208 that it seeks by this adjusted standard petition. Thus, Takasago does not need specific relief from Section 304.105. See *In re* Petition of Abbott Laboratories (July 8, 1999), AS 99-5, slip op. at 3. Since the adjusted standard would have no effect if granted, the Board concludes that it is not justified, and consequently the second criterion set forth in Section 28.1(c) is not met.

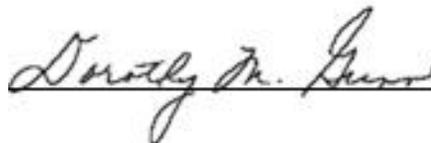
CONCLUSION

Based on the foregoing analysis, the Board finds that Takasago does not need the adjusted standard it seeks. For that reason, Takasago cannot make the demonstration required by Section 28.1(c)(2) of the Act. Therefore, the petition for an adjusted standard is denied. The Board notes that the Agency is authorized to reopen and modify Takasago's current water pollution control permit in accordance with this opinion. This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

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 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 101.246, 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 20th day of April 2000 by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board