

ILLINOIS POLLUTION CONTROL BOARD
July 27, 1989

IN THE MATTER OF:)
)
PETITION OF THE NUTRASWEET)
COMPANY AND CONSUMERS) AS 89-3
ILLINOIS WATER COMPANY FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 304.105 OR 302.208)

ORDER OF THE BOARD (by J. Marlin):

On June 30, 1989, the NutraSweet Company (NutraSweet) and Consumers Illinois Water Company (CIWC) filed a Motion to Accept Filing as Either a Petition for Adjusted Standard or for a Site Specific Rule. On July 12, the Illinois Environmental Protection Agency (Agency) filed a Motion for Extension of time in order to file a response to the petitioners' June 30th motion. That motion is granted in as much as the Board has accepted the Agency's Response which was filed on July 26, 1989.

In the petitioners' motion, the petitioners state that they have filed a petition for adjusted standard (docketed as AS 89-3) in order to comply with a condition of a variance which the Board granted to CIWC on December 15, 1988 in PCB 88-84. The NutraSweet Company v. Illinois Environmental Protection Agency, PCB 88-84, slip op. at 13 (condition 9(a)), (December 15, 1988). The condition required NutraSweet and CIWC to file a site-specific petition by July 1, 1989. The petitioners contend that a petition for adjusted standard is not literally the same as a petition for site-specific regulatory amendment. However, the petitioners contend that an adjusted standard is similar enough to a site-specific rule change that the Board should accept the petition for adjusted standard as complying with the variance condition. The petitioners alternatively request that the petition be treated as a request for site-specific rule change if an adjusted standard does not afford compliance with the variance.

The Agency states in its Response that it "declines to take a substantive position on this issue at this time".

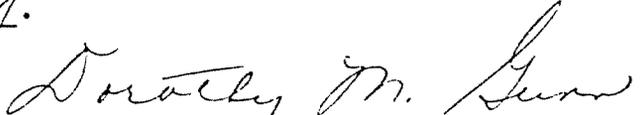
The petitioners do not request a modification of the terms of the December 15th variance as it pertains to Condition 9(a), rather, they request that the Board make a finding that the petitioners have complied with that condition. The Board does not believe that this is the proper procedural context to determine whether the petitioners' action is in compliance with the Board's Order. Such findings are more appropriately made in an enforcement proceeding. To that extent, the petitioners' motion is denied.

Notwithstanding that conclusion, the Board notes that the intent behind requiring the filing of a site-specific petition was to ensure that the petitioners sought to obtain a standard which was specific to the petitioners' operations. At the time of the Board's December 15, 1988 Order the adjusted standard mechanism was not available to the petitioners' discharges in question. Now, due to recent amendments to the Environmental Protection Act (Act), the petitioners may pursue an adjusted standard under Section 28.1 of the Act. A site-specific standard adopted through the adjusted standard procedure has the same force and effect as a standard adopted by way of a site-specific rulemaking.

In summary, the petitioners have filed a petition for an adjusted standard, and this matter will proceed as an adjusted standard proceeding.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 27th day of July, 1989, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board