

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1988

THE NUTRASWEET COMPANY AND)	
CONSUMERS ILLINOIS WATER)	
COMPANY,)	
)	
Petitioners,)	
)	
v)	PCB 88-84
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Marlin):

By its Order of November 3, 1988, the Board requested that parties in this matter brief the issue of whether the Board may grant a variance as requested by the NutraSweet Company (NutraSweet) and Consumers Illinois Water Company (CIWC) given the language of 35 Ill. Adm. Code 307.1101 and the fact that CIWC is a privately-owned wastewater treatment works. On November 23, 1988, NutraSweet and CIWC jointly filed a Motion to Correct Response to [Agency's] Recommendation; Motion to Supplement Record, and a Brief in Response to Board Order [of November 3, 1988].

First, the Petitioners seek to add language to their November 3, 1988 Response to the Agency's Recommendation. The Petitioners assert that they inadvertantly omitted several words from a paragraph of that Response. The Petitioner's, Motion to Correct Response is granted.

By its Motion to Supplement Record, the Petitioners request that the Board accept Attachment A of Petitioner's Brief as well as "new factual information contained in [its] Brief." The Petitioners state that the attachment and other information "has not previously been brought before the Board, but which is relevant to issues raised by the Board in its [November 3, 1988] Order." The Petitioners also assert that the Illinois Environmental Protection Agency has no objection to the Motion to Supplement Record. The new factual information set forth by the Brief and Attachment A are verified by affidavits which are also attached to the filing.

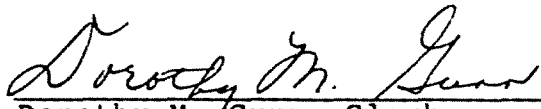
The Board grants the Motion to Supplement Record. However, the Petitioner's Brief and attachment present new information to

the Board, and the Petitioners even acknowledge in their brief that NutraSweet is not subject the regulation from which it originally sought variance. Also, the Petitioners conclude that NutraSweet may need relief from Section 304.105. Consequently, the Board will construe the Brief and attachment as an amendment to the Petition. This in turn "re-starts" the 120-day statutory time period in which the Board must decide this matter. The Board recognizes, though, that the present variance, of which an extension is sought by the Petitioner in this proceeding, expires on December 29, 1988. As a result, the Board will proceed to a decision in this matter as expeditiously as possible.

The Board also grants leave to the Agency to file a response to the new factual material submitted by the Petitioner's Brief and Attachment. Such a response shall be due by December 20, 1988.

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 29th day of November, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board