

ILLINOIS POLLUTION CONTROL BOARD  
July 8, 1999

IN THE MATTER OF: )  
)  
PETITION OF ABBOTT LABORATORIES ) AS 99-5  
FOR ADJUSTED STANDARD FROM 35 ) (Adjusted Standard - Water)  
ILL. ADM. CODE 302.208 AND 304.105 )

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

This matter comes before the Board on a June 14, 1999 "Motion for Reconsideration" (Mot.) filed by the Illinois Environmental Protection Agency (Agency). In the motion, the Agency asks that the Board reconsider the relief provided to petitioner Abbott Laboratories (Abbott) in its May 6, 1999 opinion and order. See In re Petition of Abbott Laboratories (May 6, 1999), AS 99-5. On June 24, 1999, Abbott filed a response to the motion for reconsideration (Resp. Mot.). The Board grants the motion for reconsideration and, for the reasons stated below, modifies its opinion and order of May 6.

Abbott initiated this action on November 12, 1998. On December 17, 1998, the Board issued an order requesting that Abbott file an amended petition in order to correct certain informational deficiencies in the original petition. On February 16, 1999, Abbott filed an "Amended Petition for Adjusted Standard" (Am. Pet.) which fully complied with the Board's December 17, 1998 order.

In its amended petition, Abbott requested that the Board grant it an adjusted standard from Sections 302.208 and 304.105 of the Board's rules (35 Ill. Adm. Code 302.208, 304.105) for the discharge of chloride and total dissolved solids (TDS) from its facility at Abbott Park, Lake County, Illinois. Am. Pet. at 9. The adjusted standard requested involved an approximately 2,000 foot stretch of the Middle Fork of the North Branch of the Chicago River (Middle Fork). Abbott claimed that it needed the adjusted standard as a result of the wintertime practice of salting its paved surfaces and Highway 43. This practice causes salt to flow into Abbott's pond system. The salt is then discharged from Abbott's permitted outfall into the Middle Fork, causing Abbott to be seasonally out of compliance with its National Pollutant Discharge Elimination System (NPDES) permit. Am. Pet. at 5, 7, Attachments 8-11.

On March 16, 1999, the Agency filed its response (Res.) to Abbott's amended petition. The Agency recommended that the Board grant Abbott an adjusted standard from Section 302.208 of the Board's rules. Res. at 2. On May 6, 1999, the Board granted Abbott an adjusted standard from Section 304.105 but, for the reasons stated therein, did not grant Abbott an adjusted standard from Section 302.208. In re Petition of Abbott Laboratories (May 6, 1999), AS 99-5, slip op. at 5. In its motion for reconsideration, the Agency requests that the Board grant Abbott relief consistent with the position it espoused in its response - that adjusted standard relief should be granted from Section 302.208. Res. at 2. Abbott, in its

response to the motion for reconsideration, requests that the Board grant the motion for reconsideration and modify the May 6, 1999 Board order. Resp. Mot. at 1.

Abbott requests that it be allowed to discharge 750 milligrams per liter (mg/L) for chloride and 1,500 mg/L for TDS into the 2,000 foot stretch of the Middle Fork. Resp. Mot. at 4. The current water quality standard for those constituents, found at Section 302.208 of the Board's rules, are 500 mg/L for chloride and 1,000 mg/L for TDS. The water quality standard for these constituents has also been incorporated into Abbott's NPDES permit. Res. at 2-3, 5. While the Agency recognizes that the Board's May 6 opinion and order intended to grant Abbott the relief requested, and while the Agency agrees that Abbott has justified the relief requested, the Agency takes issue with the way the Board's opinion and order "structured" that relief. Mot. at 2. The issue presented in this motion for reconsideration is simply whether the relief requested is more appropriately given from Section 302.208 (the water quality standard itself) or Section 304.105.

## DISCUSSION

### Granting Relief from Section 302.208

While the Board has previously granted relief from Section 302.208 (See In re Borden Chemicals & Plastics Operating Partnership (November 18, 1993), AS 93-2; In re Illinois Department of Transportation, District 8 (October 3, 1996), AS 96-12), it has generally been reluctant to do so. In large part, this reluctance was based upon a belief that granting relief from Section 302.208 for a particular water of the state potentially grants that same exception to the general water quality standard to any other discharger to that same stretch of water.

The Agency states that Abbott is currently the only NPDES-permitted discharger along the 2,000 foot stretch of the Middle Fork. Res. at 13; Mot. at 4. The Board wants to ensure that no other potential discharger to that stretch of water will be automatically entitled to benefit from the adjusted standard granted to Abbott as a result of this order. This adjustment from the water quality standard belongs to Abbott alone. Any future NPDES permits for other dischargers to this segment of Illinois water will require a separate and independently justified adjusted standard before there will be any deviation from the water quality requirements found at Section 302.208.

While the Board continues to believe that there is little practical significance in providing an adjusted standard pursuant to Section 302.208 as opposed to Section 304.105, in this instance the Board accepts the Agency's position in this proceeding under this set of facts and accordingly grants relief from Section 302.208 to Abbott.

### Sampling Requirements

The May 6, 1999 Board opinion and order directed Abbott to conduct various sampling activities from the early spring of 1999 through April 2000. The Agency's motion for reconsideration stays the May 6, 1999 Board opinion and order until the disposition of the motion for reconsideration. 35 Ill. Adm. Code 101.246(c). To ensure that the sampling

requirements from the May 6, 1999 Board opinion and order are conducted during the proper time of the year, the Board revises some of the sampling requirements consistent with the order below.

### CONCLUSION

The Board grants the Agency's motion for reconsideration and modifies its May 6, 1999 opinion and order. The Board will grant Abbott an adjusted standard from the general use water quality standards at 35 Ill. Adm. Code 302.208. The Board will not grant Abbott an adjusted standard from 35 Ill. Adm. Code 304.105, because such relief is unnecessary given the grant of relief from Section 302.208. Also, on its own motion, the Board modifies some of the sampling requirements from the May 6, 1999 opinion and order.

### MODIFIED ORDER

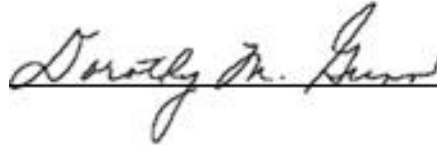
The Board hereby adopts the following adjusted standard, pursuant to the authority of Section 28.1 of the Environmental Protection Act:

1. As set forth below, the Board grants Abbott Laboratories (Abbott) an adjusted standard from 35 Ill. Adm. Code 302.208. The adjusted standard applies only to Abbott's facility located in Abbott Park, Lake County, Illinois, which has 11 interconnected ponds that discharge from Outfall 001 and Outfall 002 to the Middle Fork of the North Branch of the Chicago River (Middle Fork).
2. The general use water quality standards for chloride and total dissolved solids (TDS) at 35 Ill. Adm. Code 302.208 do not apply to the portion of the Middle Fork that extends from Abbott's Outfall 002 to the intersection of the Middle Fork and the northern boundary of Route 176. Instead the following water quality standards apply:
  - a. 750 milligrams per liter (mg/L) for chloride, and
  - b. 1,500 mg/L for TDS.
3. The Board grants the adjusted standard subject to the following conditions:
  - a. Abbott must monitor the concentrations of chloride and TDS in the Middle Fork on a monthly basis for a period of one year after the date of this order consistent with the specifications in its amended petition. Sampling must continue through July 2000. Abbott must retain records of the monitoring results and make them available for public inspection.
  - b. Abbott must sample fish and benthos in the Middle Fork upstream of Outfall 001, below Outfall 002, and at the northern boundary of the Route 176 Intersection. Sampling at the three sites must occur once in the early spring of 2000 and once in the late spring of 2000 consistent

with the amended petition. Abbott must retain records of the sampling results and make them available for public inspection.

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 8th day of July 1999 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board