

ILLINOIS POLLUTION CONTROL BOARD  
August 6, 1987

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Petitioner, )  
 )  
v. ) PCB 86-134  
 )  
NABISCO BRANDS, INC., )  
A DELAWARE CORPORATION, )  
 )  
Respondent. )

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

This matter comes before the Board on a Complaint filed on September 5, 1986 by the Illinois Environmental Protection Agency (Agency) against Nabisco Brands, Inc. (Nabisco). The Complaint centers around the operation of two incinerator/waste heat boilers at Nabisco's plant located at 7300 South Kedzie Avenue in Chicago.

A hearing was held in this matter on May 19, 1987 in Chicago; no members of the public were present. At hearing, the parties submitted a Stipulation and Proposal for Settlement (hereinafter cited as Stip.). The copy of the Stipulation and Proposed Settlement presented at hearing was signed only by Nabisco. A substantively identical copy, signed by both parties, was filed with the Board on July 21, 1987.

For the purpose of the settlement, the parties stipulate to a Statement of Facts which recites the following. Nabisco engages in the manufacture of cookies, biscuits, and crackers. Nabisco's facilities include two incinerator/waste heat boilers. Between June 30, 1983 and the filing of the Complaint, Nabisco has allowed, on a limited basis, the operation of its incinerator/waste heat boilers without a valid Agency operating permit, in violation of Section 9(b) of the Act and Section 201.143 of the Air Pollution Regulations of the Pollution Control Board. (Stip., p. 2).

Also, according to the stipulated Statement of Facts, between March 30, 1983 and the filing of the Complaint, Nabisco has on a number of occasions, including days on which three tests were conducted, caused or allowed particulate emissions from its incinerator/waste heat boiler system to exceed the allowable limit of 0.1 gr/scf., in violation of Section 9(a) of the Act and Section 212.181(d) of the Air Pollution Regulations of the Pollution Control Board. (Stip., p. 3).

The parties also stipulate that Nabisco has, since the filing of the Complaint, cured the excess particulate and any CO emission violations that may have existed and on January 6, 1987 and submitted the appropriate permit applications to the Agency. On April 6, 1987, Nabisco was granted a permit to operate its incinerator/waste heat boiler system.

The terms of the Proposed Settlement include that Nabisco will abide by the conditions of all operating permits issued by the Agency and that Nabisco will cease and desist from any and all violations of the Act and regulations promulgated thereunder. In addition, Nabisco agrees to pay a penalty of \$7,500 into the Environmental Protection Trust Fund.

The Board notes that the terms of the Proposed Settlement state that "[t]he Agency contends and the Respondent neither admits nor denies the facts as set out in the Complaint constituting the...violations of the Act and Board regulations." Such a statement appears to contradict the Statement of Facts portion of the agreement in which Nabisco stipulates to the violations. It thus seems that the parties are leaving the question of whether or not a violation occurred to the Board's discretion. Since Nabisco stipulates to the violations, the Board finds Nabisco in violation of the Act and regulations.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the Stipulation and Proposed Settlement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board orders Nabisco to comply with the Order set forth herein.

This Opinion and Order constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Board hereby accepts the Stipulation and Proposed Settlement executed by Nabisco Brands, Inc. (Nabisco) and the Illinois Environmental Protection Agency and filed with the Board on July 21, 1987. The terms and conditions of the attached Stipulation and Proposed Settlement are incorporated into and made a part of this Order to the extent that they are consistent with the provisions of this Order.
2. Nabisco has violated the following sections of the Illinois Environmental Protection Act (Act) and regulations promulgated thereunder:

Count I: Section 9(b) of the Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 1009(b)) and 35 Ill. Adm. Code 201.143;

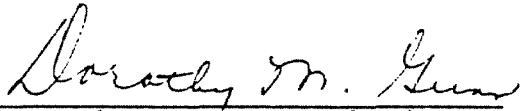
Count II: Section 9(a) of the Act (Ill. Rev. Stat. 1985, ch. 111 1/2, par. 1009(a)), and 35 Ill. Adm. Code 212.181(d).

3. Nabisco shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay a penalty of Seven Thousand Five Hundred Dollars (\$7,500). Nabisco shall pay this penalty within thirty (30) days of the date of this Order to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, IL 62706

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6<sup>th</sup> day of August, 1987, by a vote of 6-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK     )

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION     )  
AGENCY,                                    )  
  )  
          Complainant,                    )  
  )  
v.    )  
  )  
NABISCO BRANDS, INC., a Delaware        )  
Corporation,                                )  
  )  
          Respondent.                     )

PCB 86-134

NOTICE OF FILING

TO: John Cloney  
Hearing Officer  
212 Elmore  
Park Ridge, Illinois 60068

Eugene E. Gozdecki  
Gozdecki, Zido & Behnke  
221 North LaSalle Street  
Suite 2200  
Chicago, Illinois 60601

Burton H. Brody  
Chief Litigation Counsel  
Nabisco Brands, Inc.  
625 Madison Avenue  
New York, New York 10022

PLEASE TAKE NOTICE that I have today filed with the Clerk of the Pollution Control a Stipulation and Proposal For Settlement, in the above-captioned matter a copy of which is hereby served upon you.

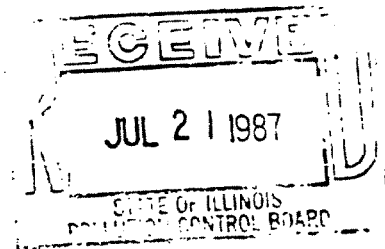
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

NEIL F. HARTIGAN  
Attorney General  
State of Illinois

By: Gerald T. Karr  
GERALD T. KARR  
Assistant Attorney General  
Environmental Control Division  
100 West Randolph Street, 13th Flr.  
Chicago, Illinois 60601  
(312) 917-5020

Dated: July 21, 1987

STATE OF ILLINOIS )  
COUNTY OF COOK )



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY, )

Complainant, )

v. )

PCB 86-134

NABISCO BRANDS, INC., a  
Delaware Corporation, )

Respondent. )

STIPULATION AND PROPOSAL FOR SETTLEMENT

Now Comes Complainant, Illinois Environmental Protection Agency, by its Attorney, Neil F. Hartigan, Attorney General of the State of Illinois, and Respondent, Nabisco Brands, Inc., a Delaware corporation by its attorney, Eugene E. Gozdecki, and do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by by the parties to this agreement. The agreement shall be null and void unless the Illinois Pollution Control Board (hereinafter "Board") approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

## STATEMENT OF FACTS

1. Complainant, Illinois Environmental Protection Agency (hereinafter "Agency"), is an administrative agency established in the executive branch of the State government by Section 4 of the Illinois Environmental Protection Act (hereinafter "the Act"), Ill.Rev.Stat., 1985, ch. 111-1/2, par. 1001 et seq., and charged, inter alia, with the duty of enforcing the Act, pursuant to Title VIII thereof and recovering civil penalties pursuant to Title XII thereof.

2. Respondent Nabisco Brands, Inc., (hereinafter "Nabisco"), is a Delaware corporation with its main corporate offices located in New Jersey.

3. Nabisco has at all times pertinent hereto transacted business in the State of Illinois at a facility located at 7300 South Kedzie Avenue, Chicago, Cook County, Illinois.

4. Nabisco engages in the manufacture of cookies, biscuits and crackers at its facility. Located at Nabisco's facility are two incinerator/waste heat boilers.

5. Between June 30, 1983 and the filing of the complaint in this action, Nabisco has allowed, on a limited basis, the operation of its incinerator/waste heat boiler without a valid Agency operating permit, in violation of Section 9(b) of the Act and Section 201.143 of the Air Pollution Regulations of the Pollution Control Board.

6. Between March 30, 1983 and the filing of the complaint in this action, Nabisco has on a number of occasions, including days on which three tests were conducted, caused or allowed particulate ~~SO~~ emissions from its incinerator/waste heat boiler system to exceed the allowable limit of 0.1 gr/scf., in violation of Section 9(a) of the Act and Section 212.181(d) of the Air Pollution Regulations of the Pollution Control Board.



7. On September 5, 1986 a complaint was filed alleging the above violations.

8. Respondent has, since the filing of the complaint in this action, cured the excess particulate and any CO emission violations that may have existed and on January 6, 1987 submitted the appropriate permit applications to the Agency.

9. On April 6, 1987 Nabisco was granted a permit to operate its incinerator/waste heat boiler system.

#### PROPOSAL FOR SETTLEMENT

As a result of the settlement discussions between the parties and of actions taken or to be taken by Respondent, the parties believe that the public interest will be best served by resolution of this enforcement action under the terms and conditions provided herein. This proposal for settlement is expressly conditioned upon and effective only with the

approval thereof in all respects by the Board. All statements contained herein are agreed to for purposes of settling this action only and shall be null and void and of no effect in any further proceeding or cause of action if the Board does not approve this proposal for settlement in its entirety.

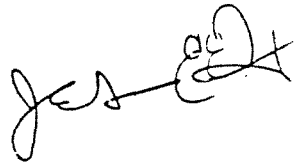
TERMS OF SETTLEMENT

Nabisco and the Agency have agreed to the following Terms of Settlement. These terms shall be in full settlement of the action filed herein by the Agency and Respondent's liability for all violations alleged in the Complaint.

1. The Agency contends and Respondent neither admits nor denies the facts as set out in the Complaint constituting the following violations of the Act and the Board Regulations:

Count I: Section 9(b) of the Act  
and 35 Ill. Adm. Code ~~212.181(d)~~. 201.143

Count II: Section 9(a) of the Act  
and 35 Ill. Adm. Code 212.181(d).

A handwritten signature in black ink, appearing to read "JES" followed by a stylized flourish.

2. Respondent agrees to abide by all terms and conditions of all operating permits issued by the Agency.

3. Respondent agrees to cease and desist from any and all violations of the Illinois Environmental Protection Act and Rules and Regulations of the Illinois Pollution Control Board.



4. The parties enter into this Stipulation and Proposal for Settlement and Respondent agrees to pay a penalty specified in this paragraph in order to avoid the substantial costs, inconveniences and uncertainties of further litigation. In order to resolve this dispute and as a condition of settlement, Respondent agrees to pay a penalty of seven thousand five hundred dollars (\$7,500.00) into the Environmental Protection Trust Fund within 30 days from the date on which the Board adopts a final order approving, accepting and incorporating this Stipulation and Proposal for Settlement. The Agency deems the payment to be appropriate to aid in the enforcement of the Act under the circumstances of this case. Factors bearing on this penalty amount include the prolonged period prior to achieving compliance by Nabisco and the limited amount of time that the incinerator/waste heat boilers were operated for non-testing purposes.

WHEREFORE, Complainant and Respondent jointly request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

NABISCO BRANDS, INC.

By: *Joseph E. Iovoda*  
DATED: *May 26, 1987*

By: *Burton H. Brody*  
Burton H. Brody  
Chief Litigation Counsel

I, GERALD T. KARR, an attorney hereby certify that I have caused true and accurate copies of the attached Stipulation and Proposal For Settlement to be served upon,

John Cloney  
Hearing Officer  
212 Elmore  
Park Ridge, Illinois 60068

Eugene E. Gozdecki  
Gozdecki, Zido & Behnke  
221 North LaSalle Street  
Suite 2200  
Chicago, Illinois 60601

Burton H. Brody  
Chief Litigation Counsel  
Nabisco Brands, Inc.  
625 Madison Avenue  
New York, New York 10022

by causing said copies to be mailed first class mail postage pre-paid to the addresses indicated above, from 100 West Randolph Street, Chicago, Illinois 60601, on July 21, 1987.

Gerald T. Karr

GERALD T. KARR