ILLINOIS POLLUTION CONTROL BOARD
September 30, 1971

LIBBY, McNEILL & LIBBY	)	
	)	
v.	)	PCB 71-153
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

George B. Guthrie, attorney for Libby, McNeill & Libby
John McCreery, attorney for the Environmental Protection Agency

Opinion of the Board (by Samuel R. Aldrich):

This opinion is in support of an order approved by the Board on September 16, 1971, at the regular Board meeting at Downers Grove.

A petition for variance was filed with the Board by Libby, McNeill and Libby ("Libby") on June 21, 1971. Petitioner requests an extension to its abatement plan program developed in cooperation with the Sanitary Water Board, or alternatively, a variation to Rules and Regulations SWB-14. An extension or variance is sought through January 1, 1972. Libby filed an amended petition on August 12, 1971, pursuant to a motion allowed at the hearing on August 9, 1971.

We have ruled in other cases that Air Contaminant Emission Reduction Programs and other agreements between our predecessor, the Sanitary Water Board, and other parties are valid for a maximum of one year following the demise of that Board on July 1, 1970. Thus we here consider Libby's petition as a request for a variance from the provisions of SWB-14.

Petitioner operates a seasonal food processing plant near Morton, Illinois. The plant processes corn and pumpkins from August through early November, employing approximately 350 persons. Process wastes include material with high BOD, suspended solids, and certain chemical constituents.

Pollution problems arising from industrial wastes at the Morton plant date back to at least 1941. Since that time the discharge of wastes to Bull Run Creek has on several occasions caused pollution of this small, intermittent stream (EPA Ex. 2, 3, 4, 5, 6). In 1968 Libby embarked on a pollution abatement program developed in cooperation with the Sanitary Water Board. The system consists basically of spray irrigation in conjunction with the use of three mechanically aerated lagoons. Much of the system is now operational, but a clarifier has yet to be installed.

Libby's treated wastes have thus far exceeded the limits specified in SWB-14 of 4 mg/l BOD and 5 mg/l suspended solids where stream dilution is less than 1:1. The agreement between Libby and the Sanitary Water Board gave the Company until January 1, 1972, to come into compliance with the provisions of SWB-14. This was to be accomplished by the clarifier. During the interim Libby was permitted to discharge wastes from its lagoons into Bull Run Creek on the condition that its effluent not exceed 100 mg/l BOD and that dilution in the stream be at least 20:1 (Libby Ex. 3). We note in passing that according to the recommendation of the Agency the total annual flow of Bull Run Creek is inadequate to provide 20:1 dilution with the 70 million gallon annual discharge from Libby. In May of 1971, in accordance with this agreed-upon condition, Libby sought permission from the Environmental Protection Agency to discharge its wastes from the 1970 season (now in lagoon #2) which had stabilized at 30 ppm BOD (R. 152, 153). Permission was refused. We do not blame the Agency, however, because it did not have authority to approve a discharge that would constitute a violation of the Environmental Protection Act. Subsequent to this the BOD level increased because of algal growth (R. 151). Total capacity of the lagoon system is insufficient to contain wastes from both 1970 and 1971 until adequate treatment is achieved. Libby thus requests permission to discharge 40.3 million gallons of waste held over from the 1970 season in order to have storage capacity for wastes from 1971 (R. 61).

There can be no doubt that the discharge of 40 million gallons of partially digested vegetable waste into a stream as small as Bull Run Creek will cause substantial pollution. The discharge of such wastes in the past has created a nuisance for persons residing along the stream (R. 176, 177, 202). Some of the complaints resulted from unintentional discharges not in conformity with the 100 mg/l BOD and 20:1 dilution. The Agency submitted a petition with 89 signatures requesting that Libby's petition be denied (EPA Ex. 11). The granting of a variance thus requires a showing of totally unreasonable hardship should the petition be denied. Counsel for Libby indicated that if a variance were denied, the plant would probably have to close down (R. 327). In addition to hardship on the Company, closing of the plant would terminate seasonal employment for 350 persons. A letter from the President of the Illinois Agricultural Association expressed the concern of farmers who have contracted with Libby to buy their produce. Closing of the plant would cause substantial financial loss for approximately 60 farmers who now have pumpkins ready for processing and for whom no alternative market exists at this time. The record indicates that the contract could be cancelled by Libby without compensation to the farmers (R. 31). We find that denial of a variance to Libby would cause an unreasonable hardship which is not offset by the damage to the environment. As counsel for Libby pointed out, the waste to be discharged is not raw waste (R. 329). It has been treated for almost ten months and exerts a BOD of approximately 30 mg/l. The present dilemma is due at least in part to Libby's inability to discharge this waste in May of this year. While we regret the discharge, we do not feel the

pollution created merits closing of the plant. Libby has been operating under the terms of an agreement accepted by our predecessor and has made an effort in good faith to achieve compliance with the law. The Company expects to be in full compliance with the provisions of SWB-14 by January 1, 1972. We will grant a variance until that time. Because of Libby's good faith effort in proceeding with its pollution abatement program and because it was conforming to an agreement with the Sanitary Water Board, we will impose no monetary penalty.

In granting a variance to Libby we impose a number of conditions. We will permit the waste now in lagoon #2 to be discharged only provided that adequate dilution is achieved. As we noted previously, because of the flow characteristics of Bull Run Creek, the dilution ratio of 20:1 agreed to by the Sanitary Water Board is impossible to attain. However, the record indicates that the BOD of the waste is considerably less than the 100 mg/l specified in that agreement (R. 152). We will therefore permit a modification in the dilution ratio in proportion to the decrease in BOD level below 100 mg/l.

Although allowing the discharge of waste to begin, we order petitioner to make additional efforts to find methods of reducing the amount of waste that will have to be discharged. At the hearing testimony was received concerning a number of alternatives to discharging the waste to the stream. These included keeping rainfall out of the lagoons by means of dikes, constructing a fourth lagoon for storage, or treating the waste in the sewage treatment plant of the City of Morton (R. 132, 137, 160). Witnesses for Libby claimed all such alternatives were unfeasible (R. 133, 138, 144, 163). Kenneth Merideth, an Agency engineer, contested these claims (R. 299, 302). He was of the opinion that a lagoon of about 25 million gallons capacity could be constructed to store new waste if the irrigation fields were closed off (R. 303, 304). The record is simply inadequate for us to judge the merits of these issues. Furthermore, no mention was made of a further possibility, low-flow augmentation. Although we hold that dilution is generally an inadequate substitute for treatment of wastes, given the seriousness and immediacy of the present problem low-flow augmentation is worthy of consideration. Here we are only modifying a condition of an agreement by Libby and the Sanitary Water Board in order to accelerate the unloading of lagoon #2 and thus reduce the likelihood of more serious pollution from fresh wastes. We will thus require Libby to investigate the feasibility of furnishing water for low-flow augmentation as well as of constructing additional storage capacity.

We note that lagoon #3 is now empty (R. 58). In order to reduce the amount of new waste reaching lagoon #2, we will require that, insofar as possible, material transferred from lagoon #1 via the spray irrigation system be restricted to the watershed above lagoon #3.

Granting of a variance is also based on the condition that installation of the clarifier be completed by January 1, 1972. In order to reduce the quantity of waste discharged in the interim we will require Libby to complete this operation in the minimum amount of time possible. This includes the use of overtime work if such an effort would reduce pollution by accelerating installation.

We will order that Libby be in full compliance with the provisions of SWB-14 by January 1, 1972. To ensure that this and our other conditions are met, we will require petitioner to post a performance bond in the amount of $220,000.

Under the conditions of the order granting the variance and in consideration of the present status of the lagoon waste to be discharged, we believe that the nuisance during the next few months will be substantially less than in most previous years. We note further that at long last the end of the pollution of Bull Run Creek is clearly in sight.

This opinion constitutes the Board's findings of fact and conclusions of law.

I concur	I dissent
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I, Regina Ryan, Clerk of the Illinois Pollution Control Board certify that the Board adopted the above Opinion this 30 day of September, 1971.

Regina E. Ryan

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