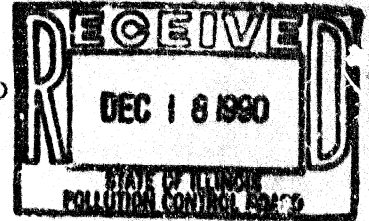


BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS



THE NUTRASWEET COMPANY and)
CONSUMERS ILLINOIS WATER)
COMPANY,)
)
Petitioners,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 88-84

MOTION FOR DECISION AND MODIFICATION

The NutraSweet Company (NSC), through its attorneys, hereby requests that the Board enter a decision in AS 89-3 as soon as possible and requests to the Board to modify Condition 9(c) of NSC's variance granted in this matter to allow NSC to apply for any necessary construction permits within two months of a Board decision in AS 89-3. In support thereof, NSC states as follows:

1. On December 15, 1988, the Board adopted an Opinion and Order in this matter granting a variance to NSC and Consumers Illinois Water Company (CIWC). As a condition of that variance NSC was required to file a site-specific rulemaking petition by July 1, 1989 (Condition 9(a)), to apply for permits for any required construction by December 31, 1990 (Condition 9(c)), and to complete the installation of controls, if required, by December 31, 1991 (Condition 9(b)).
2. NSC and CIWC filed a petition for adjusted standard on June 30, 1989, which was docketed as AS 89-3 and an

amended petition on January 3, 1990. Hearing was held on March 28, 1990, and final comments were submitted to the Board on or about April 30, 1990, indicating the Agency's support of the requested relief. Thus, AS 89-3 has been before the Board for decision since May, 1990.

3. The need for NSC to apply for permits by December 31, 1990, is dependent upon the Board's decision in AS 89-3. If the requested relief is granted, then no construction will be required and no permits will be necessary. If, as NSC anticipates, on the other hand, the relief is denied or less than full relief is granted, some construction may be required.
4. NSC has expeditiously proceeded to obtain an adjusted standard and anticipated a favorable Board decision in that matter before now. Had the Board granted the requested adjusted standard relief, NSC would now be in compliance with that standard. On the other hand, if the relief been denied or partial relief granted, NSC would be in a position to prepare applications for construction permits for controls necessary to meet whatever level of treatment was required pursuant to the Board's decision. However, since the Board has not yet rendered a decision, NSC does not know what controls, if any, will be necessary and, therefore, cannot determine what construction will be necessary.
5. NSC, therefore, requests the Board to modify Condition 9(c) to allow NSC a period of two months after the

Board's decision in AS 89-3 to apply for construction permits should construction be necessary to comply with the Board's order. NSC is not at this time requesting an extension of the final compliance date set forth in Condition 9(b) since it may still be able to comply with that condition. Timely compliance can be achieved if the Board grants the requested adjusted standard relief before the end of 1991 or if the Board renders a decision requiring additional controls soon enough that the construction can be completed next year.

6. NSC understands that the motion to modify is not timely pursuant to 35 Ill. Adm. Code 103.241 in that more than one year has passed since entry of the order. However, NSC believes that the Board generally has the authority to enter such orders as justice may require and that justice requires the requested modification. NSC has acted in a timely and expeditious manner in seeking an adjusted standard. NSC faces the present dilemma because the Board has not yet rendered a decision in AS 89-3 in the nearly eight months since final comments were submitted.
7. NSC understands the time pressures under which the Board must function and that time deadline proceedings must take precedence over proceedings such as adjusted standard proceedings. However, NSC believes that it would be unfair to NSC to impose the burden upon it to

petition for a variance under these circumstances. Further, NSC is not presently requesting any change to the final compliance date, and if, as anticipated, the requested adjusted standard relief is granted, there will be no need to file the permit application which forms the basis for the condition.

8. NSC has discussed this motion with Lisa Moreno of the Agency, and she had authorized NSC to represent to the Board that the Agency supports the requested relief and that the Agency will not be filing any response to this motion.

WHEREFORE, The NutraSweet Company requests the Board to render a decision in AS 89-3 as soon as possible and to modify Condition 9(c) to allow NSC two months beyond the date of a Board decision in AS 89-3 to file the permit application should that be necessary pursuant to the Board's decision in that matter.

Respectfully submitted,

THE NUTRASWEET COMPANY

By: 

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CERTIFICATE OF SERVICE

I, the undersigned, on oath states that I have served the attached Motion for Decision and Modification by hand delivery, upon the Illinois Pollution Control Board and by first class mail to the Illinois Environmental Protection Agency this 18th day of December, 1990.



Subscribed and sworn to before me this 18th day of December, 1990.


Notary Public

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