

“Public Eye Awards 2006”

Nomination form A

(for companies that have excelled in socially and environmentally irresponsible behaviour)

Nominated company or corporate group

Name: Nestlé S.A.

Headquarters: Vevey, Switzerland

Turnover/net profit: 2004 annual revenue – EUR 86,769,000,000
2004 net profit – EUR 6,717,000,000

Branch of trade: food, beverage, pet food

Number of employees: 247,000 (2005)

CEO: Peter Brabeck-Lemathe

Further information/data on the company/corporate group: see below and attached corporate profile

Nominated in the category:

Social rights (human and labour rights)

Reasons for the nomination:

General information on the case and characteristics of irresponsible corporate behaviour:

The Nestlé name became synonymous with corporate malfeasance in the 1970s when the company's practice of marketing infant formula in the South was linked with infant mortality. A major boycott ensued and Nestlé's questionable practices were broadcast worldwide. The boycott ended in 1984 after Nestlé ostensibly committed to the World Health Organization's (WHO) Code on the Marketing of Breast Milk Substitutes. However, four years later citizen groups found that the company was again violating the WHO code. The boycott continues today due to Nestlé's ongoing violations. Along with the unethical marketing of infant formula, the company has a bad reputation for using its power to strong arm labour unions around the world, disturb ecologically fragile water sources in the United States and Brazil for its bottled water operations and bullying of impoverished Ethiopia over debt.

In addition, in a true display of Nestlé's economic power, the company has had a negative impact on the commodity prices of coffee, cocoa and milk, thus affecting the socioeconomic situation for small farmers in supplier countries. Nestlé's refusal to buy its raw materials from fair trade collectives in the South is not helping the situation and sets a precedent for other multinationals to continue looking for the lowest price available to them. The company response to critics is often arrogant, hostile and stubborn. This is not a company that will shy away from controversy and will employ public relations firms to cleanse its tarnished reputation.

The following excerpts from the Polaris Institute's corporate profile of Nestlé show how this corporation consistently behaves irresponsibly. Despite its rhetoric Nestlé shows no signs of changing its ways. Please refer to the attached copy of the entire corporate profile for more detailed information on Nestlé's operations and political connections. All of the cases listed below

make Nestlé a perfect nominee for a 2006 Public Eye Award (information for the organizers can be found at the end of this document):

Nestlé's Public relations machine

Nestlé knows that its questionable actions, past and present, have put the corporation at a great reputational risk. To combat their reputation problems, they have developed a large public relations machine. If one was to visit Nestlé's website in search of information on the company's marketing of infant formula, or role in the coffee crisis, they would find a large amount of space dedicated to their 'good' deeds in the South and their adherence to the World Health Organization's Code.

Nestlé has a website dedicated specifically to the infant formula question.¹ The site counters every criticism leveled against the company, leaving the public to question the validity of the wealth of information condemning Nestlé track record. They go as far as providing a link to organizations such as Baby Milk Action and the International Baby Food Action Network (IBFAN). Nestlé has also been known to ask for meetings with groups like IBFAN to discuss infant formula issues and then claim that the two are working together as partners.²

Another document posted on Nestlé's website entitled "Nestlé in the Community", describes how the company is committed to the well being of the countries in which they operate. In the document, Nestlé attempts to project a clean image by highlighting their aid projects and financial donations around the world.³

In addition the company spends millions of dollars every year on public relations and advertising firms in order to strategically construct their image as an altruistic, caring and health promoting corporation.

Social Track Record

"In the interest of continued flow of foreign direct investment, which is critical for developing countries, it's desirable that conflicts are resolved according to international law and in a spirit of fairness" Nestlé spokesperson on the Ethiopia affair PR Week, January 13, 2003

Nestlé sees itself as a caring, philanthropic and altruistic multinational. They construct this image by publicizing their initiatives in the South, participating in the United Nations' unaccountable Global Compact programme and investing millions in public relations and advertising campaigns. However, it is also well known for its questionable social track record. The Economist stated in August 2004 that "few companies are more exposed than Nestlé to reputational risks".⁴ Due to the size and diversity of the corporation, Nestlé's socioeconomic impact is truly global and spans a large number of industries. They have the power to deeply impact global commodity prices (as is the case in the coffee, cocoa, and milk industries) and in turn the livelihood of millions of farmers and labourers in South. Along with their socioeconomic impact, Nestlé's confectionary products and aggressive marketing approach has had an impact on the health of millions of people around the world. This section will profile six different cases studies of the socio economic impact of Nestlé.

¹ <http://www.babymilk.nestle.com>

² Baby Milk Action Press Release, "Nestlé claim to be working with the IBFAN Africa coordinating office is untrue", October 24, 2001, <http://www.babymilkaction.org/press/press24oct01.html>

³ Nestlé publication, "Nestlé in the Community", http://www.nestle.com/NR/donlyres/632AD11A-7DA2-490F-8434-F15A5D39ADCA/0/Community_English.pdf

⁴ The Economist, "Daring Defying, to grow – Nestlé", August 7, 2004

Socioeconomic impact

Coffee – Coffee producers worldwide are experiencing a sustained period of crisis with low prices and an ever growing oversupply of beans. After years of decline, prices fell below the average cost of production in 2002 and production has finally surpassed consumption. In 2002 production reached a high of close to 121 million bags while prices hit an all-time low of below 46.2 cents a pound down from around \$1 dollar a pound in 2000.⁵ Prices made a small recovery in 2004 rising to a high of 86 cents a pound and settling at 68 cents.⁶ In 2002, the money that farmers could make from coffee would only buy one-quarter of what it could in 1960.⁷ It has been estimated, with inflation taken into account, that this is probably the lowest price farmers have been paid for coffee in 100 years.

This is a disastrous situation for coffee farmers worldwide with many experiencing increased hunger and worsening health care. Seasonal workers who depend on the coffee industry for jobs are also suffering due to the crisis. Low coffee prices have also severely impacted the economies of countries that depend on coffee exports.

A combination of the end of the International Coffee Agreement in 1989, which managed export quotas, the emergence of Brazil and Vietnam as giant coffee exporters and lagging demand in the U.S., Germany, France and Japan, have contributed to the low price situation.⁸ In addition, big coffee corporations like Nestlé have a hand in keeping coffee prices low by seeking out the lowest price for the raw materials. For example, with the development of new technologies able to raise the quality of bitter low priced beans, corporations will continue to look for cheap and poor quality beans ensuring that the commodity price will not recover.

While farmers are not making enough to cover their costs, the four major corporations, including Nestlé⁹, who purchase over half of the world's raw coffee and account for about 60 percent of US retail coffee sales, are making billions in profit. A 2002 report by Oxfam International shows the average retail price for soluble coffee in the United Kingdom is over 188 times higher than the price per kilo a coffee farmer in Uganda received for his crop.¹⁰ Coffee multinationals enjoy excellent profit margins while the producers are struggling to survive. Oxfam has called on Nestlé to offer farmers a better price for their coffee.

Nestlé has yet to commit to purchasing its coffee beans from fair trade cooperatives that pay the farmer a fair price. For more information please visit the following fair trade organizations' websites: <http://www.transfair.ca/> <http://www.maketradefair.com/en/index.htm> <http://www.fairtrade.net/> <http://www.fairtradefederation.org/> <http://www.fairtraderesource.org/>

Milk - Nestlé, pays just 15 cents on the dollar for every litre of milk produced in the developing South, compared to the 48 cents per litre paid to European farmers, but their prices are nearly the same in supermarkets everywhere, pointed out Joao Pedro Stédile, an Landless Movement (MST) leader. <http://www.commondreams.org/headlines01/0418-02.htm>

Ethiopia – In an amazing demonstration of insensitivity, Nestlé went after the government of Ethiopia¹¹ in 2002 demanding a \$6 million – about what the company makes in an hour – payment to compensate for an Ethiopian business which had been nationalized in 1986. An offer

⁵ International Coffee Organization, <http://www.ico.org/frameset/traset.htm>

⁶ Wall Street Journal Markets data

⁷ Gresser, C., Tickell, S., "Mugged: Poverty in Your Coffee Cup", Oxfam, p. 9

⁸ Gresser, C., Tickell, S., "Mugged: Poverty in Your Coffee Cup", Oxfam, p 18

⁹ The remaining three coffee multinationals are: Proctor and Gamble; Philip Morris; and Sara Lee

¹⁰ Gresser, C., Tickell, S., "Mugged: Poverty in Your Coffee Cup", Oxfam, p. 24

¹¹ Ethiopia's Gross Domestic Product in 2002 was \$6.1 billion (World Bank) compared to Nestlé's near \$70 in annual revenue in 2003

by the Ethiopian government to pay Nestlé \$1.5 million to settle the claim was rejected by the company who stood by its demand saying that it was a matter of principle.¹²

After a swift and overwhelming public outcry, Nestlé still did not fully retract its claim. Instead, the company announced that it was standing by its claim on principle, and that it would invest any money it received from Ethiopia back into the country.¹³

One month after Nestlé's demand, the corporation was forced to drop its original claim after mounting public outrage. The company accepted Ethiopia's offer of \$1.5 million, which was handed straight over to the country's famine relief effort. Nestlé was forced to rethink its claim came after 40,000 people wrote the company in outrage.¹⁴ The Economist called Nestlé's claim "a spectacular own goal", and a "clumsily handled effort to extract payments from impoverished Ethiopia".¹⁵

The episode demonstrates Nestlé's capacity power to bully states like Ethiopia who are dealing with massive famine and economic on a point 'of principle'. Fortunately the story also demonstrates the corporation's vulnerability to public pressure.

Impact on the world's health

Infant Formula¹⁶ *"Those who make claims about infant formula that intentionally undermine women's confidence in breastfeeding are not to be regarded as clever entrepreneurs just doing their job but as human rights violators of the worst kind"* From a speech given by Stephen Lewis titled "Malnutrition as a human rights violation: Implications for United Nations-supported programmes"¹⁷

Along with chocolate, coffee and water, the Nestlé name is probably best known for its unethical marketing of infant formula. According to UNICEF, "If every baby were exclusively breastfed from birth for six months, an estimated 1.3 million additional lives would be saved and millions more enhanced every year".¹⁸ As one of the world's largest producers of artificial baby milk, Nestlé has a hand in this ongoing tragedy. Nestlé knows that once a mother changes from breastfeeding to bottle feeding, she will stop producing milk and not go back. The negative impact of marketing of infant food – which does not contain the natural antibodies found in breastmilk, is expensive, and in some cases is mixed with unsafe drinking water – has been described as commerciogenic malnutrition.¹⁹ In other words, the act marketing of infant formula for the purpose of making money causes malnutrition.

Since 1977, Nestlé's unethical marketing of infant formula has been the target of an international boycott initiated by Infant Formula Action Coalition (INFAC) which was later joined by other organizations to become the Infant Baby Formula Action Network (IBFAN). The successful boycott continued until 1984 when Nestlé finally agreed to implement the World Health

¹² Denny, C., "Nestlé claims pounds 3.7m from famined-hit Ethiopia", The Guardian, December 2002

¹³ Denny, C., "Retreat by Nestlé on Ethiopia's Dollars 6m debt", The Guardian, December 20, 2002

¹⁴ Denny, C., "Nestlé u-turn on Ethiopia debt : Public outrage forces firm to drop Dollars 6m claim against country hit by famine", The Guardian, January 24, 2003

¹⁵ The Economist, "Daring Defying, to grow – Nestlé", August 7, 2004

¹⁶ For more information on Nestlé's continued violations of the WHO code and a complete history of the company's track record concerning infant formula please visit the following websites: Baby Milk Action <http://www.babymilkaction.org/> International Baby Food Action Network, <http://www.ibfan.org/> Infant Feeding Action Coalition, <http://www.infactcanada.ca/InfactHomePage.htm>

¹⁷ Lewis, S., "Malnutrition as a human rights violation: Implications for United Nations-supported programmes", Keynote Speech at the Administrative Committee on Coordination/Subcommittee on Nutrition (ACC/SCN) Symposium on the Substance and politics of human rights: Approach to food and nutrition policies and programmes. Geneva, 12-13, April 1999

¹⁸ United Nations Children Fund, http://www.unicef.org/nutrition/index_breastfeeding.html

¹⁹ Baby Milk Action, <http://www.babymilkaction.org/pages/history.html>

Organization's 1981 International Code of Marketing of Breastmilk Substitutes. The boycott resumed, however, in 1988 after numerous code violations by the company were uncovered.²⁰ The International Code bans all promotion of bottle feeding and sets out requirements for labeling and information on infant feeding.²¹

IBFAN has been documenting Nestlé's numerous violations Code since 1984. In 2004, IBFAN along with a number of other groups, say that Nestlé is continuously violating the International Code. The corporation's interpretation of the Code includes only infant formula and follow on formula, but excludes baby foods, gruels, teas, juices and bottles. Even under this limited interpretation, the company is violating the Code. IBFAN's recent report "Breaking the Rules, Stretching the Rules 2004" reports that Nestlé continues to break the code in a number of countries by: promoting formula to the public; promoting its products at the point of sale; promoting its products in health facilities by giving out free samples and supplies; giving gifts to health care workers; comparing their products to breastmilk; and using misleading text and pictures.²²

In countries where the International Code has not been adopted and where national codes are inadequate or have expired, Nestlé engages in aggressive and competitive marketing practices. IBFAN says that they "only abide by the code grudgingly when forced".²³ While the profile of the boycott is not as high as it was during the late 1970s and early 1980s, the message about Nestlé's practices is still being heard. In 2004 a UK breast cancer charity refused a 1 million pound promotional deal with Nestlé because of concerns over the corporation's continuing promotion of infant formula in the South.²⁴

Labour track record

Child labour, Chocolate – In 2000 reports surfaced of the use of forced child labour on cocoa plantations in the Ivory Coast, the world's largest producer of cocoa. Further research found that child slavery is limited but that other forms of child labour are widespread. Nestlé, along with other chocolate manufacturers use cocoa from the Ivory Coast. While it is difficult to know if Nestlé's chocolate products contain cocoa produced through child slavery or child labour, the impact large cocoa multinationals have on economic conditions in the Ivory Coast help produce an environment where child labour can flourish. Multinationals using commodity market pricing do not guarantee the minimum price cocoa growers need to cover costs.²⁵ Cash strapped farmers are then forced to use family members as labourers, including children. Nestlé and other large multinationals refuse to shift to fair trade cocoa, a move that would ensure farmers earn enough to hire workers instead of using their children to work on the plantations.

France – In November 2003, Nestlé Waters division announced a major shakeup of employment practices at Perrier, expected to impact a quarter of the workforce, after the parent company decided its subsidiary was not making enough money. The French CGT union, which represents over 80 percent of the workers at the Perrier factory in Southern France, opposes Nestlé's move and forced the corporation to withdraw its restructuring plans.²⁶ Nestlé has threatened to sell the

²⁰ *ibid*

²¹ Baby Milk Action, <http://www.babymilkaction.org/regs/thecode.html>

²² International Baby Food Action Network, "Breaking the Rules, Stretching the Rules 2004", <http://www.ibfan.org/english/pdfs/btr04.pdf>

²³ *ibid*

²⁴ Frith, M., "Breast Cancer Charity Rejects Pounds 1m", *The Independent*, May 6, 2004

²⁵ "The Cocoa Industry in West Africa: A history of explanation", *Anti Slavery International* 2004, <http://www.antislavery.org/homepage/resources/cocoa%20report%202004.pdf>

²⁶ Townsend, A., "Nestlé Threatens to Sell Perrier as Dispute with Workers Grows", *The Independent* on Sunday, March 21, 2004

company if the dispute cannot be resolved. Nestlé has also threatened to close and relocate the plant.²⁷

United Kingdom – In 2004, Nestlé decided to close its chilled desserts factory in Staverton in Wiltshire. The factory employs 150 people and uses millions of litres of locally produced fresh cream every year.²⁸ The Transport and General Workers' Union has vowed to fight the closure.

South Korea – Demanding an 11.7% pay increase and union participation in management decisions, workers at Nestlé's South Korean operation went on strike.²⁹ The strike action also came after the company unilaterally transferred 44 employees to a new distribution division, a move that was widely seen as a prelude to subcontracting and layoffs.³⁰ In August 2003 the company shut its office in Seoul and locked out union workers at its production facility and at warehouse and distribution centres across the country. Nestlé threatened to pull out of the country, violating OECD Guidelines on Multinational Enterprises which prohibit the threat of production transfers as a tool for pressure in the context of union negotiations. A Provincial Labour Relations Committee determined that Nestlé's tactics of refusing to negotiate and threats of moving production out of the country were unfair and illegal, and that the company carried out intimidation and intervention during the negotiations. The Committee instructed Nestlé to enter into negotiations with the union. The negotiated collective agreement established a joint union-management committee and provided for a 5.5 wage increase.³¹

El Salvador – In April 2003, Nestlé employees at the company's instant coffee plant in Ilopango were informed that the plant would be closed due to a production transfer. Employees were offered two months' salary by management who refused to negotiate when the union requested that the terms of the collective agreement be respected until its expiration date at the end of the year. Nestlé promptly closed the factory gates, which housed the union's headquarters, and stated that if employees did not sign the severance agreement it would be forfeited. The union occupied the plant in order to gain access to their office and continue a campaign for a negotiated conclusion. The union campaign and International pressure pushed the local management to the negotiating table at the end of June where the essential demands of the union were met.³²

China – Baby Milk Action reported in 2002 that a Chinese refugee in Australia asserted that she and 130 other prisoners in a Beijing labour camp were forced to manufacture toy rabbits bearing the Nestlé brand name.³³ While Nestlé denied that their products came from forced labour camps, Swiss newspaper *Le Temps*, found troubling coincidences between the location of a MiQi Toys factory, the company contracted by Nestlé to produce the toy rabbits, and the prison labour camp.³⁴

Colombia – Eight members of the Food and Drink Union, SINALTRAINAL, working at Nestlé have been assassinated since the union was formed in 1982. There is no evidence connecting Nestlé to the murders, which were most likely carried out by Colombia's paramilitary forces.³⁵ Nestlé in Colombia has repeatedly been implicated in union busting. A number of cases in recent years indicate a sustained effort by Nestlé to remove SINALTRAINAL's presence from its Colombian operations.

²⁷ Betts, P., "Nestlé Loses its thirst as Perrier goes flat", *Financial Times*, August 3, 2004

²⁸ "T&G warns Nestle it will fight for jobs at Staverton", *Morning Star*, May 8, 2004

²⁹ Chi-Yon, S., "Nestle Korea Shuts Down Main Office Due to Strike", *World News Connection*, August 26, 2003

³⁰ International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Union (IUF), Press Release, "Negotiated Agreement Ends Lengthy Conflict at Nestlé Korea", November 28, 2003

³¹ *ibid*

³² International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Union (IUF), Press Release, "Positive Result at Nestlé El Salvador – Conflict Ends in Negotiated Solution", July 8, 2003

³³ Babymilk Action, *Boycott News*, Issue No. 31, 2002, <http://www.babymilkaction.org/pdfs/bn31.pdf>

³⁴ Koller, F., "Mise en cause par une ancienne prisonnière chinoise, Nestlé introduit une clause contre le travail forcé", *Le Temps*, April 13, 2002

³⁵ Higginbottom, A., "Nestlé in Colombia", *Morning Star*, December 28, 2002

- In 2001 workers at Nestlé's subsidiary Comestible La Rosa, were threatened that they must renounce their union membership or lose their jobs.
- In 2002, management at Nestlé's milk processing subsidiary, Cicolac, attempted to break the collective bargaining agreement covering 400 workers, fire another 96 and break the contracts of 58 in order to contract their jobs through labour agencies.³⁶ Following the refusal of company officials to talk to union leaders in the capital of Bogotá, representatives traveled to Switzerland in order to engage Nestlé management in a discussion on the renewal of the collective bargaining agreement. Nestlé refused to meet with the representatives saying that it had requested mediation from the Colombian Ministry of Labour. In May 2003 an arbitration panel, without representation by the union, decided to deny a set of demands presented to the company by SINALTRAINAL.³⁷

Philippines – Workers at two Nestlé facilities in the Philippines have taken strike action against the company since 1997. In both cases there have been violent clashes between the strikers and police along with company security guards.

- Quezon City, Magnolia factory – In early 1997, Philippine trade union IBM took strike action after new Nestlé management refused to negotiate with trade unions, dismissed eight union officers along with two union members and then suspended 200 other workers. Employees and supporters organized a permanent protest outside the factory. Incidents of violence took place including the intervention of 300 security guards and 50 police officers.³⁸
- Cabuyao – In 2002, workers at Nestlé Philippines Cubayo plant went on strike citing unfair labour practice and bargaining. The union was fighting to include retirement benefits as a collective bargaining issue. In March 2003, the union received a decision from the Philippines Court of Appeals affirming the union's stand that benefits are a mandatory bargaining issue. The Court also ordered Nestlé to return to the negotiating table. In June 2003, plant management had yet to implement the Court's decision. In response 700 workers and supporters attempted to take over the factory, but were violently turned back by 300 security guards and police. Fifty workers and security guards were injured in the clash.³⁹

United States – In June 2003 a California state appellate court upheld a \$5.1 million age discrimination verdict against Nestlé USA for refusing to promote a manager in his forties. The court said the company resisted promoting people over 40 and that "evidence showed it was company policy to eliminate so-called 'deadwood' and 'to promote young, energetic people in management positions'". The court quoted directly from 1990 statements by a Nestlé vice president. There was an abundance of evidence that Richard Herr was denied a promotion due to his age. The court also requires Nestlé to inform its 20,000 employees of the ruling.⁴⁰

Lawsuits involving Nestlé

Anti Trust

Bulgaria – Nestlé has repeatedly breached Bulgarian anti-trust legislation with the promotion of games. The most recent breach in 2004 came when the company organized two promotion games where customers had to collect logos of Nestlé products to participate in a draw for two

³⁶ *ibid*

³⁷ International Labor Rights Fund Urgent Action Release, Arbitration Decision Violates Rights of Nestlé Workers in Colombia", May 20, 2003, <http://www.laborrights.org/urgent/nestle051903.htm>

³⁸ <http://www.hartford-hwp.com/archives/54a/038.html>

³⁹ Philippine Daily Inquirer, "50 Workers, Guards Injured in Plant Clash", June 25, 2003

⁴⁰ Egelko, B., "Nestlé age-bias verdict upheld", The San Francisco Chronicle, June 13, 2003

luxury cars. Bulgaria's Protection of Competition Act bans the promotion of sales by offering prizes that exceed the value of the product. The company's previous breach occurred in 2001.⁴¹

Italy – In March 2000, Nestlé was among a group of baby milk suppliers fined for violating their agreement to sell only in pharmacies and not in super markets. In July 2004, Italy's anti-trust body launched an investigation into 15 baby milk producers, including Nestlé, to see if they were coordinating efforts in order to restrict competition and keep prices elevated. Baby milk prices in Italy are higher than in other European countries and in some cases are more than double.⁴² The probe is ongoing.

Bottled Water Lawsuits

Bottled Water Scam, false advertising – In 2003, a total of 12 class-action lawsuits were filed in the United States claiming that Poland Springs, a Maine based Nestlé brand of bottled water, is not naturally pure spring water. The suits allege that Nestlé uses heavily treated water from common ground sources but then labels the bottles as spring water. In November 2003, a judge in Illinois approved of a \$12 million settlement in one of the class-action suits. The settlement will provide customers with \$8 million in discounts and coupons and requires the corporation to make \$2.75 million in charitable donations. It may, however, block the remaining 11 lawsuits from proceeding.⁴³ In a suit brought against Poland Spring in Illinois in 2003 by the Sheriff of Kane County Ken Ramsay, it was alleged that "Poland Spring Water, a Nestlé subsidiary and the nation's third-largest bottled water company, advertised their water in a false, fraudulent, deceptive, and misleading manner."⁴⁴ The suit covered thousands of Poland Spring customers across the country. The suit claims that contrary to what it advertises, Poland Spring does not come from "deep in the woods of Maine; is not naturally purified, is not, "spring water"; and even, that the water is not safe to drink."⁴⁵

Michigan, illegal water sourcing – In 2001, Michigan Citizens for Water Conservation, a group whose goal is to conserve, preserve and protect Michigan's water, natural resources and the public trust in those resources for the benefit of the public, filed a lawsuit against Nestlé Waters North America (NWNA) asking the company to halt production at the Ice Mountain Spring Water Co. in Mecosta Township. The lawsuit claimed the plant's pumping of water would lower lake and stream levels near the wells from which the company draws water. In November 2003, the judge in the case ordered NWNA to stop drawing water saying that the operation diminishes the flow and level of streams and lakes.⁴⁶ Unfortunately, the order only lasted a couple of weeks when in December the Michigan Court of Appeals, pressured by Governor Granholm and the Michigan Department of Environmental Quality, granted emergency relief to Ice Mountain allowing the company to continue pumping water until the appeals process is over.⁴⁷ The case did, however, make it clear that Ice Mountain and Nestlé were illegally diverting and selling water out of a watershed, and highlighted moves by corporations and governments towards the privatization of publicly owned natural resources in North America. Michigan Citizens for Water Conservation have shown that a small citizen action group can go up against one of the largest corporations in the world and find success. The case also demonstrates that Nestlé is vulnerable to popular based action.

Texas – In 1996, Nestlé owned bottled water company Ozarka Spring Water, drilled wells and began pumping 340,687 litres a day in Henderson County Texas.⁴⁸ Four days after Ozarka

⁴¹ Global News Wire – Europe Intelligence Wire, "Anti-Trust Body Fines Nestlé BGN 300,000", May 14, 2004

⁴² AFX.COM, "Italy anti-trust body launches probe into 15 baby milk producers", July 15, 2004

⁴³ Biz Briefs, "Poland Spring settlements OK'd", Chicago Sun-Times, November 6, 2003

⁴⁴ Clarke, T., "Inside the Bottle: An Exposé of the Bottled Water Industry", Ottawa: The Polaris Institute, 2005, P. 33

⁴⁵ ibid

⁴⁶ Prichard, J., "Water-bottling plant ordered to stop pumping from site", Associated Press, November 25, 2003

⁴⁷ Freeman, L., "Appeals court says Ice Mountain plant can continue water withdrawals", Associated Press, December 16, 2003

⁴⁸ Haurwitz, R., "Underground water law upheld", Austin American-Statesman, May 7, 1999

started pumping, Bart Sipriano's well went dry. Sipriano, who lives close to the plant, along with another family from the area took Ozarka to court for drying up their water supplies. Unfortunately in Texas a 100 year old law known as the 'rule of capture', exists saying that a landowner may pump as much groundwater as they desire regardless of the consequences even if the pumping impacts other wells. Because of the law, the families' case was dismissed from a lower court. The case then went to the supreme court amid calls to reform the law, but in 1999 the rule of capture was unanimously upheld and the case was thrown out. Justice Craig Enoch did, however, say that the case presents "compelling reasons for groundwater use to be regulated."⁴⁹

Wisconsin – Another attempt by Nestlé to source water for private sale, this time in Wisconsin, was blocked by successful citizen legal actions between 2000 and 2002. Perrier, a Nestlé subsidiary, had been wooed by State officials to build a large bottled water factory where millions of litres of water would be extracted every week from springs in rural Wisconsin to produce Perrier. The corporation was able to gain the required permits from Wisconsin's Department of Natural Resources (DNR) in the fall of 2000 to dig two high-capacity wells (95 million litres/week) for their proposed bottling plant.⁵⁰ At the time, the DNR decided that a full environmental impact study of the proposed wells and the 1 million-square-foot production facility was not necessary. After the decision came down, two citizen groups sued the DNR. The Ho-Chunk tribe sued over the DNR's failure to take into consideration the cultural ties of a Native American tribe to the springs, while Concerned Citizens of Newport argued that the DNR violated the Wisconsin Environmental Protection Act, by not conducting environmental impact studies before issuing a permit.⁵¹

In January 2002, a Judge in Marquette County ruled in favour of the Concerned Citizens of Newport, ordering the DNR to conduct a more thorough environmental impact study of Perrier's proposal. The ruling did not cancel Perrier's existing permit to build the wells, but forced the DNR to follow the Wisconsin Environmental Protection Act (WEPA) and state clean water laws before deciding how much water Perrier would be allowed to pump. By following WEPA, a full environmental impact study must be undertaken along with public hearings.

By September 2002, Perrier had let its permits lapse effectively canceling the corporation's project.⁵² The court cases along with the intensive efforts by citizen groups against the DNR and Nestlé's planned wells, show that people will not sit by and watch a precious natural resource be extracted and sold at inflated prices in order to pad the bottom line of a large corporation. The Wisconsin case also sends a message to State and local governments that the people will decide what will be done with their water.

Information for the Organizers

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⁴⁹ *ibid*

⁵⁰ Price, J., "DNR approves Perrier wells that have drawn local opposition", Associated Press, September 21, 2000

⁵¹ Seely, R., "Perrier foes target DNR", Wisconsin State Journal, December 2, 2001

⁵² Murphy, K., "Nestlé Waters won't develop Big Spring site", Milwaukee Journal Sentinel, September 18, 2002

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