

ILLINOIS POLLUTION CONTROL BOARD
October 25, 1984

DEAN FOODS,)
)
 Petitioner,)
)
 v.) PCB 81-151
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On September 26, 1984, Dean Foods ("Dean") filed a Motion for Reconsideration, with supporting memorandum, seeking, in essence, a complete reversal of the Board's August 22, 1984, Opinion and Order concerning the sampling location in Dean's NPDES permit. The Illinois Environmental Protection Agency ("Agency") moved for leave to respond to this motion instanter on October 23, 1984, which motion is granted.

Dean urges reversal of the decision on four points: 1) Section 304.102(a) does allow admixture of process and non-process wastewater, 2) de novo review of NPDES permits is required, 3) Dean is providing the best degree of treatment, and 4) the Agency is estopped from changing the sampling point.

Dean's argument that the Board has, by a new interpretation, substantially and incorrectly limited the admixture rule in the August 22, 1984, Opinion is simply incorrect. The Board refused to expand that rule beyond its plain language. Section 304.102(a)(2) states that best degree of treatment decisions shall consider "whether individual process wastewater streams shall be segregated or combined." Dean can prevail only if the Board determines that language to mean "whether individual process and non-process wastewater streams should be segregated or combined." The Board was unwilling to add that underlined language, by interpretation, to an already codified rule when the language and intent are clearly otherwise. While referring to "long standing flexible application given the Dilution Rule by the Board," and, "a 180 degree change of position in the interpretation of the Dilution Rule," Dean has cited no case upholding admixture of process and non-process waste streams. Illinois Nitrogen and Revere specifically denied monitoring downstream of admixture.

There has been no change of position or interpretation by the Board. Dean cites the comments of a single Board Member at a hearing prior to adoption of the dilution rule as evidence of the

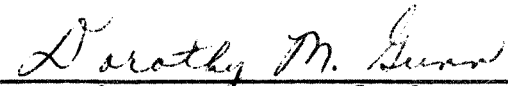
Board's past interpretation (Memorandum, p. 4). First, the statement quoted by Dean is at odds with subsequent statements by that Board Member. Second, the offhand comments of an individual Board Member are personal in nature and not actions of the Board. Illinois Power v. IPCB, 426 N.E. 2d 1258, 100 Ill. App. 3d 528 (Third District, 1981). The Board's interpretation of a regulation is established by the language of the regulation, the Opinion supporting it, and subsequent cases interpreting it. Here that precedent is unanimously against Dean.

Dean's arguments regarding de novo hearing and best degree of treatment do not become an issue unless the Board adopts Dean's expansive interpretation of the Dilution Rule. Since that expansion has been rejected, these arguments are rejected for the reasons stated in the original Opinion. The arguments that the Agency is estopped from correcting an improper interpretation of Board rules is also rejected for reasons stated in the original Opinion.

Dean's Motion for reconsideration is granted but modification is denied.

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 25th day of October, 1984 by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board