

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1983

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

ORDER OF THE BOARD (by J. Anderson):

On September 30, 1983 the Illinois Environmental Protection Agency (Agency) filed a Motion to Allow Interlocutory Appeal from the Hearing Officer's September 13, 1983 order denying its Second Motion in Limine, the appeal having been filed on September 29, 1983. Petitioner's Response along with a Memorandum of Law was filed October 11, 1983. The Agency's October 17, 1983 Motion for Leave to Reply Instantly and October 18 Motion for Leave to Supplement Authority are hereby granted.

The requirement to file motions fourteen days prior to hearing contained in Section 103.140(a) of the Board's Procedural Rules (35 Ill. Adm. Code 100 et seq.) is waived and the Agency's Motion for Interlocutory Appeal is granted pursuant to Section 103.140(f).

This appeal is being considered to avoid any misapprehensions which may have arisen due to the brevity of the Hearing Officer's Order. This Order provides in pertinent part that:

"The Second Motion in Limine of Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY is denied for the same reasons as set forth in the order in the First Motion. To repeat, the nature of this Motion is to prevent the Petitioner from offering into evidence any facts which were discovered after September 24, 1981. The Pollution Control Board itself must decide whether or not it will consider such evidence, it is only proper to have said evidence available in the record. Once the record is complete the Pollution Control Board can reject that portion which may not be pertinent. Furthermore, granting the Motion of Limine would be a useless act in that the Petitioner would be permitted to make an offer of proof which would get the same documents before the Pollution Control Board in any event."

The Board assumes that in so ruling, the Hearing Officer did not mean to imply that he had no authority to rule on the admissibility of evidence sought to be introduced by the parties. As the parties agree, the evidence received in this matter must relate to "whether the Agency erred in denying or placing conditions upon the permit [in light of] information which was before the Agency when it made the decision" (see Agency Reply, p. 1). Concerning offers of proof, the Board noted in County of LaSalle v. IEPA, PCB 81-10 (March 5, 1981):

"The Board does not require mere repetition of evidence or testimony which is already in the Agency record. If evidence outside the Agency record is offered, the Board requests that the Hearing Officer rule on its admissibility...If the Hearing Officer admits evidence, the adverse parties may note their objections to the Board. If the Hearing Officer rules the evidence inadmissible because it was not in the Agency record, he should allow the party to proceed with an offer of proof where the proffer is otherwise relevant." (PCB 81-10 at p. 2).

The Hearing Officer's Order is affirmed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 14th day of October, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board