

Agency has taken a rather technical view of the status of the ditch, relying upon the following facts: it traverses more than one piece of private property; it has a meandering type configuration; and it was originally a stream connecting the Illinois River with what was known as Dead Lake. According to the Stipulation Of Facts filed in this case Dead Lake is now developed and used as a parking facility and manufacturing site.

The Stipulation of Facts also reveals that a prior permit issued by the Illinois Sanitary Water Board considered the discharge from Quaker's Pekin facility to be directly to the Illinois River. Approximately 1.25 million gallons per day of treated waste water is discharged from the existing aerated lagoon to the ditch which runs one-half mile before it joins the Illinois River, traversing private land owned by the American Distillery Company, the Standard Brands Company and Quaker. Except during periods when the Illinois River is high and backs up the length of the ditch, there is no aquatic life supported by the ditch. The ditch is not used for recreation, domestic animal watering, or irrigation, and exists solely to carry industrial discharges. During periods of dry weather 95% of the flow in the ditch results from Quaker's effluent. The remainder of the flow results solely from limited discharges by nearby industrial facilities discharging approximately 50 and 100 yards from Quaker. During wet weather some incremental water in the ditch represents storm runoff, this runoff being an insignificant portion of the total flow. The ditch is not fed by a natural source of water except when the Illinois River is high and water backs into the ditch.

Upon review of the Stipulation Of Facts and the record in this case, the Board finds that whatever designation is placed upon the ditch, it is most certainly not an intermittent stream. When the Illinois River is in flood, the area becomes a back water of the River and Quaker's discharge pipe is actually under the surface of the River. At this time Quaker is discharging directly to the Illinois River. At other than flood levels, the discharge is into a conduit which has no other use but to deliver the industrial effluent from Quaker and its neighbors to the Illinois River.

The Water Pollution Regulations of Illinois (Regulations), Chapter 3, Rule 104 defines sewer as "a pipe or conduit for carrying either wastewater or land runoff or both". Rule 104 also expressly excepts sewers from the definition of "waters", while adding the proviso that natural or otherwise protected waters shall not be considered sewers.

The Regulations thus make specific allowance for a conduit

that transports wastewater so long as that conduit is not also a "natural water". Conduit is defined in Webster's Third New International Dictionary (unabridged) (1966), as "a natural or artificial channel through which water or other fluid passes or is conveyed". The subject ditch is a natural channel through which wastewater is conveyed directly to the Illinois River and which is not a natural accumulation of water. The Board therefore finds the designation "sewer" is appropriate for the ditch which is the subject of this case.

The Board has previously determined that cases such as the one presently before us must be decided upon the facts of each particular case. Allied Chemical Corporation v. EPA, PCB 73-382, Alton Box Board Company v. EPA, PCB 73-140, EPA v. Allied Chemical Company, PCB 72-109, and EPA v. Koppers Company, PCB 70-49. It is the opinion of the Board that in Quaker's particular case the effluent flow shall be considered as being discharged directly to the Illinois River. However, this determination is based upon the facts and conditions existing at the time of this Order. The ditch and effluent water in question shall not be used for any recreational, domestic animal watering, or irrigation purposes and the land surrounding the ditch shall remain closed to the general public. Any change in the character or substance of the ditch or its effluent flow shall be cause for review of the Board's determination as to the status of the ditch.

This Opinion constitutes the finding of fact and conclusions of law of the Board.

ORDER

It is the Order of the Pollution Control Board that:

The effluent discharge of Quaker Oats Company's Pekin, Illinois, facility shall be subject to the limitations of Rule 404(b) of Chapter 3 of the Illinois Pollution Control Board Rules and Regulations and Quaker's operating permit issued by the Environmental Protection Agency for this facility shall be modified in a manner not inconsistent with the foregoing Opinion and Order.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 25th day of March, 1976 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board