

ILLINOIS POLLUTION CONTROL BOARD
July 11, 1985

IN THE MATTER OF:)
)
AMENDMENTS TO TITLE 35:) R82-25
ENVIRONMENTAL PROTECTION)
SUBTITLE: WATER POLLUTION;)
CHAPTER I: POLLUTION CONTROL)
BOARD; PART 304; SUBPART B)
(CHEMUNG SITE-SPECIFIC RULES))

ORDER OF THE BOARD (by B. Forcade):

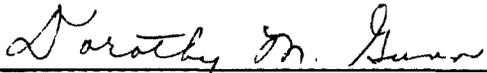
On July 8, 1985, the Department of Energy and Natural Resources ("DENR") filed a negative declaration in this matter. However, in part that letter states, "... the information presented, though incomplete in its coverage of innovative treatment alternatives available to Dean Foods, does establish that the cost to the company greatly outweighs the impact on the receiving stream." Later, the letter states that DENR will not prepare an economic impact statement because, "the cost of making a formal study is economically unreasonable in relation to the value of the study to the Board in determining the adverse economic impact of the regulation." The Board notes that the former statement appears to be a conclusion of some form of cost-benefit analysis yet the supporting factual data and methodology are not included. Moreover, the letter states that no formal economic study was done.

Section 27(a) of the Environmental Protection Act ("Act") provides that the Board shall consider the "technical feasibility and economic reasonableness" of its substantive regulations. Section 27(b) provides that the Board shall review any economic impact studies prepared by the Department of Energy and Natural Resources ("DENR") and shall make a determination as to whether the proposed regulation has any adverse economic impact on the people of the State of Illinois. In a recent opinion, the Third District stated, "the Illinois Pollution Control Board has the legal responsibility for making a determination of the costs and benefits, while the Department of Energy and Natural Resources has the legal responsibility for performing the study." Citizens Utilities Company v. Illinois Pollution Control Board, et al., Slip Opinion p. 8, June 17, 1985. The Court held that the Board cannot avoid this responsibility in site-specific proceedings where the economic information is insufficient to make a determination.

The Board is unclear as to whether DENR intended to comment on economic cost benefit issues which would need testimony at a hearing, or whether this information was included in error. DENR is requested to clarify its intention. Based on DENR's submittal, the Board authorizes the hearing officer to schedule another hearing in this matter, or take any other appropriate action.

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 11th day of July, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board