

ILLINOIS POLLUTION CONTROL BOARD
August 22, 1984

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

RICHARD J. KISSEL AND THERESA YASDICK (MARTIN, CRAIG, CHESTER & SONNENSCHNEIN), ATTORNEYS-AT-LAW, APPEARED ON BEHALF OF PETITIONER; AND

WAYNE L. WIEMERSLAGE, ATTORNEY-AT-LAW, APPEARED ON BEHALF OF RESPONDENT.

CONCURRING OPINION (by J. D. Dumelle):

While I agree with the majority order I find the exclusion of the evidence on the "best degree of treatment" to be inconsistent and incorrect (Opinion, pp. 4-6).


The majority opinion correctly states that a de novo hearing should be allowed on the factual issue of whether or not Dean Foods is providing the "best degree of treatment" (Opinion, p. 5). Having ruled that the de novo hearing was proper, the majority then excluded that evidence developed at the hearing it had just stated was proper (Opinion, p. 6). Further the majority admits to a complete review of the evidence it has excluded and makes the judgment that it is irrelevant.

The Board Rule and the Olin decision cited can be in conflict with the Alburn decision. But here the majority agrees that the issue was a factual one and properly the subject of a de novo hearing. The evidence then developed should have been accepted, not excluded, and then the judgment as to relevancy made.



Jacob D. Dumelle, Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 10th day of September, 1984.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board