

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
 Complainant,)
) PCB 90-84
 v.) (Enforcement)
)
WE-TOAST BREAD)
COMPANY, INC.,)
)
 Respondent.)

DISSENTING OPINION (by J. Anderson and R.C. Flemal):

We dissent from the order of the majority directing that further information be provided a) by the parties explaining why the agreed penalty is so low and, b) from the Attorney General alone, why no costs were assessed.

The matter before us is a settlement agreement. If the Board is again going to attempt to review penalty agreements, the least we can do is wait until we can use the Board initiated "penalties legislation" in SB2253, which specifies the factors to be considered in determining penalties. It has been difficult enough with a record of a full blown enforcement proceeding for the Board itself to select and articulate the factors it considered and weighed in setting the penalty amount, and then only later to find out that the courts disagree with the Board and lower, and sometimes eliminate, the penalty. How does the Board expect the parties, or the Board to do better with a settlement agreement?

Where the limited record of this settlement agreement is involved, even if the parties now, after the agreement is signed, tried to articulate how the penalty was calculated, exactly on what basis does the majority intend to weigh it? The majority used only comparative prorated mathematical calculations as the single factor to support questioning the small amount of the penalty, and then gave no further specific guidance as to what factors to address, except for what appears to be an arbitrary singling out of an ability to pay factor. For these reasons, we do not believe that the majority's action was advisable.

Finally we are at a loss to understand what authority the majority is exercising by directing the Attorney General to explain why he omitted costs. We believe the directive is inappropriate, particularly insofar as it can imply that the Board believes that it has the statutory authority to require costs.

It is for these reasons that we respectfully dissent.

Joan G. Anderson
Joan G. Anderson

Ronald C. Flemal
Ronald C. Flemal

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 15th day of December, 1990.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board