

ILLINOIS POLLUTION CONTROL BOARD
February 21, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.)
)
 PETER ECKRICH & SONS, INC., an) PCB 73-55
 Indiana corporation qualified to) CONSOLIDATED
 do business in Illinois; and)
 E.W. KNEIP, an Illinois corporation,) PCB 73-174
)
 Respondents.)
)
 E.W. KNEIP, INC., an Illinois)
 corporation,)
)
 Petitioner,)
)
 vs.)
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by Dr. Odell):

On January 3, 1974, the Pollution Control Board approved and adopted the Settlement Proposal entered into between the parties. In the Conditions and Provisions of Settlement, Petitioner stated (page 15):

"6. Kneip will pay a fine of \$9,000 as the full and only penalty for any and all the admitted violations."

On February 1, 1974, Petitioner filed a motion with the Board to extend time for payment of this penalty until after the Illinois Supreme Court resolves the issue of the Board's power to impose variable penalties. On February 4, 1974, the Environmental Protection Agency (EPA) responded to Petitioner's motion and agreed (page 2):

"5. Kneip, by agreeing to pay the \$9,000 fine, has surrendered all the claims and defenses available to it on that issue...."

A Stipulation is in the nature of a contract which has the effect of a binding agreement upon the parties. It is

enforced like a consent decree and constitutes a waiver of the right to appeal. Such agreements can only be set aside where the petitioning party can prove that the contract is invalid due to fraud, duress, or faulty execution. This agreement could be modified if the petitioning party could show that the payment of the \$9,000 penalty was conditioned on the decision to be subsequently handed down in City of Waukegan et al v. Environmental Protection Agency, et al. (Docket No. 45984). The plain language of the Stipulation, read as a whole, reveals no intention that payment be postponed. Petitioner presents no evidence to show fraud or duress when he entered into the Stipulation. Petitioner's motion is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on this 21st day of February, 1974 by a vote of 5-0.

Christan L. Moffett