

ILLINOIS POLLUTION CONTROL BOARD
November 15, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-232
)
 VILLAGE OF WYANET,)
)
 Respondent.)

INTERIM ORDER OF THE BOARD (by Mr. Goodman):

On September 29, 1979 the parties requested that a Stipulation and Proposal for Settlement (Stipulation) be adopted by the Board. The Stipulation requires that only \$337.50 (10%) of the \$3375.00 penalty be payable, in that 90% would be suspended provided that Respondent complied with the terms of the Stipulation.

The Board has frequently and fully voiced its disapproval of contingent or suspended penalties. EPA v. Sundale Sewer Corp., PCB 78-88 (July 12, 1979); EPA v. Granite City Steel, PCB 78-233 (August 23, 1979); EPA & MSD v. International Harvester, PCB 75-12 (August 23, 1979). Such penalties interfere with the Board's duty to determine the amount and conditions of a penalty as well as prevent the Board from either considering mitigating or aggravating factors upon an occurrence of non-compliance. Such "penalties" often encourage respondents, which often are small municipalities with limited funds, to enter into penalty agreements that would eventuate excessive payments in any and all events in which compliance was not achieved.

The Board does not favor these penalties regardless of whether they include provisions for either judicial or Board review. The practical effect of these penalties is in essence a cosmetic one; they do not effectively aid in the present or future enforcement of the Environmental Protection Act or the Board's rules and regulations.

The Board hereby rejects the Stipulation. The case is remanded for further proceedings consistent with this Order.

IT IS SO ORDERED.

Dr. Satchell dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Order was adopted on the 15th day of November, 1979 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board