

ILLINOIS POLLUTION CONTROL BOARD  
June 3, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
)  
Complainant, )  
)  
v. ) PCB 75-356  
)  
HAROLD K. FASSETT, HENRY W. FASSETT, )  
and J. P. WETHERBY CONSTRUCTION CORP., )  
a Delaware Corporation, )  
)  
Respondent. )

DISSENTING OPINION (by Mr. Zeitlin):

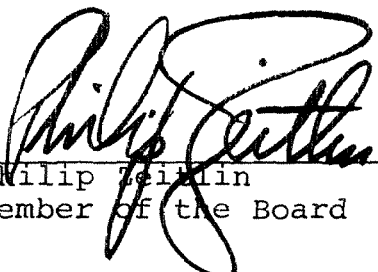
I disagree with the conclusions reached by the Board in Mr. Dumelle's Order entered today. I find that it is unduly harsh, prejudicial, beyond the Record, and overly formalistic.

Mr. Dumelle's Order is correct in stating that the fact of present compliance does little to mitigate this type of violation. However, the other matters alleged by the Respondents in their respective motions do raise serious issues which could well supply considerable mitigation for what I now feel may be a high penalty. The proper course here would be to reopen the Record and receive appropriate evidence on the issues raised therein.


The Board's Principal Opinion and Order in this matter dismissed summarily the issue of economic and social importance. Now that these issues have been properly raised, they should be settled. This would seem particularly appropriate where the Record also fails to show any significant environmental damage resulting from the violations which have been found. In this case, to avoid the additional evidence which might be generated by reopening the Record is to avoid the balancing which the General Assembly mandates under § 33(c) of the Environmental Protection Act.

The Board's statement concerning the Wetherby penalty seems plainly prejudicial.

Finally, to state that the matter is not properly reopened under the instant Motions places form before reality. This is a situation where form and legal niceties should not prevent an expeditious and just result.

  
Philip Zeitlin  
Member of the Board

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the foregoing Dissenting Opinion was submitted on the 7<sup>th</sup> day of June, 1976.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board