

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,)
)
 Respondents.)

MS. DOROTHY J. HOWELL, ASSISTANT ATTORNEY GENERAL, appeared on behalf of the Complainant.
MR. DAVID RIES and MR. TOM SHIELDS, PETER F. FERRACUTI & ASSOCIATES, LTD., appeared on behalf of the Respondents Harold K. Fassett and Henry W. Fassett.
MR. JOSEPH E. LANUTI, ZWANZIG, LANUTI & MARTIN, appeared on behalf of Respondent, J.P. Wetherby Construction Corporation.

ORDER OF THE BOARD (by Mr. Dumelle):

The Respondents Fassetts and Wetherby Construction Corporation filed separate Motions for Reconsideration or Rehearing on April 30, 1976, and May 4, 1976 respectively. The Agency, on May 19, 1976, filed a request that the motions be denied.

Respondents allege the following mitigations: 1. The site is presently in compliance; and 2. The fill operation had a substantial economic and social value. The Fassetts further allege that the penalty assessed may deprive them of their livelihood. The fact of present compliance has little bearing on the failure to obtain an operating permit when the purpose of operating has already been completed. However, the Fassett's good faith efforts have already been considered in the original Board Order. The fact that the Fassetts were to derive their livelihood from a business to be constructed on the filled site does not appear in the Stipulation presented to this Board. Only a vague reference to the intention of building a garage was stated. Such reference alone is hardly

an indication of a significant commercial venture. Likewise, no indication of financial difficulties appeared in the Stipulation. Respondents now seek to introduce evidence which should have been brought before the Board in the first place.

No reason for a rehearing of this cause has been presented. The Stipulation still stands and the proper remedy is a Motion for Reconsideration. However, if the Board were to reconsider the penalty imposed to the Fassetts it would not be on the basis of the unsupported allegations of the Fassetts Motion for Rehearing. Verified financial documents and affidavits would be necessary. However, as to the Wetherby's penalty, the Board finds that these allegations, even if supported, would not warrant reconsideration.

The Fassetts Motion for Rehearing and the Wetherby Construction Corporation Motion for Rehearing or Reconsideration are hereby denied.

IT IS SO ORDERED.

Mr. Zeitlin dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 3RD day of June, 1976 by a vote of 4-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board