

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-353
)
 EDWARD H. WEIDE,)
)
 Respondent.)

DISSENTING OPINION (by Mr. Zeitlin):

In its Order today, denying the Environmental Protection Agency's Motion to Reconsider certain portions of the principal Opinion and Order in this case entered June 18, 1976, I feel that the Board erred in the following respects:

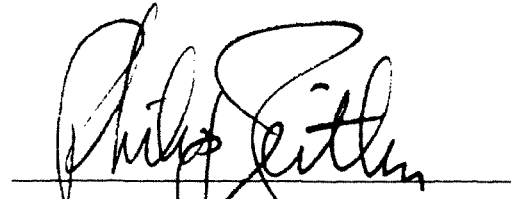
1. The Board apparently compounds what it feels may be a problem of accuracy with regard to the Department of Conservation's valuation of fish kills. The Board states that the Department of Conservation's "Standard Method" was, (a) not before us and therefore we were unable to evaluate the reasonableness of the method, and (b) is not sufficiently reliable in this case. Nonetheless, the Board seems to arrive at its own method of valuation for fish kills by statistical manipulation of just that "unreliable" method.

2. The Board fails to acknowledge the value of and need for the Department of Conservation in the protection of the environment when it says that, "[t]he unique expertise of the Department of Conservation ends...." The Board's substitution of its own expertise for that of the Department of Conservation is not warranted by the facts in this case.

While it may indeed be that the Record in this case fails to set forth clearly the basis for the Department of Conservation's expertise, the answer is not to deny its existence. On the contrary, the answer is to admit to the Department of Conservation's expertise by remanding this matter for clarification of the manner in which that expertise has been applied to the problems of this case. Substitution of our own "guesstimate" as to the reasonable number and value of dead fish cannot substitute for further hearing(s) to specifically consider the basis and validity of the Department of Conservation's "Standard Method."

In summary, I feel that the Board's imposition of an apparently arbitrary valuation to the fish killed here is - at best - no more accurate than the valuation assigned by the Department of Conservation. The proper procedure here would be to use the Hearing mechanism to allow the Board to determine the proper methodology to be used in arriving at the final remedy in this case.

I respectfully dissent.



Philip Zeitlin
Member of the Board

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted on the 21st day of September 1976.



Christan L. Moffett
Clerk
Illinois Pollution Control Board