

ILLINOIS POLLUTION CONTROL BOARD  
July 22, 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):

Although I concur with the Board's action today in this matter insofar as the penalties levied against Harold K. Fassett and Henry W. Fassett are reduced, I must respectfully dissent from the Board's Order in that the same consideration was not given to the penalty against Respondent J. P. Wetherby Construction Corp. (Wetherby).

I see no reason to heavily penalize Wetherby, particularly in light of the penalty reduction with respect to the Fassetts. The Board has, in effect, said that those using an unpermitted dump are more liable for that violation than are those who operated such an unpermitted dump and allowed (or possibly even actively sought) dumping at the site. This seems less than just under the circumstances.

I feel that any mitigation applicable to the Fassetts is, in this case, also applicable to Wetherby. Failure to so apply the mitigating circumstances here to Wetherby again allows legal nicety to 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 above Dissenting Opinion was submitted on the 27<sup>th</sup> day of July, 1976.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board