

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1976

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

ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Board upon the August 9, 1976 Motion by the Illinois Environmental Protection Agency (Agency) for Modification or Alternatively Clarification of the June 18, 1976 Opinion and Order of the Board herein.

In Section II of its Motion, the Agency complains that the Board in one paragraph of the Opinion uses the word penalty instead of the more proper word assessment. The Board will, therefore, amend the first sentence of the second full paragraph of page 3 of the Order of June 18, 1976 to read as follows:

Complainant asks that an assessment be levied on the basis of the reasonable value of the fish killed.

Section I of the Agency's Motion is the more significant section. The Agency contends that the sole evidence available in the record as to the value of the fish destroyed by the actions of Mr. Weide was the testimony and evaluation of Michael Conlin, who was at the time of the fish kill employed as a District Fishery Biologist with the Department of Conservation. Although the Agency contends that Mr. Conlin's evaluation procedure was in accordance with "Standard Methods" described by the Department of Conservation,

no presentation of this "Standard Method" was made at the hearing. The only evidence of it was the apparent application of the "Standard Method" to the facts in this case. Not having this "Standard Method" before us, the Board is unable to evaluate the reasonableness of the method.

The Agency further claims that "Compliance with the Standard Method of determining the number and value of fish killed establishes a prima facie case for assessment of a penalty in the amount determined by use of the Standard Method" (Agency Memo, page 4). The Board agrees that it should utilize the expertise of the Department of Conservation concerning the number of fish counted in each test area, the identification of the fish, their weights, their individual value, etc. However, Section 42(b) of the Environmental Protection Act places upon the Board the duty to assess the reasonable value of the fish or aquatic life destroyed as a result of any violation of the Act. Along with that duty goes the right to determine the reasonable value of the fish or aquatic life destroyed. The unique expertise of the Department of Conservation ends with the completion of its investigation. Statistical evaluation of the Department of Conservation's investigative results is not beyond the expertise of the Board.

The Board accepted the data presented by the Department of Conservation concerning the fish kill and, upon application of fundamental statistical analysis, found the level of confidence to be unreasonably low for the final dollar evaluation proposed by the Department of Conservation. The Board determined what it considered to be a reasonable level of confidence and adjusted the values indicated by the Department of Conservation to reflect this level of confidence. The figure of \$2600.00 was the result of this determination (rounded to the nearest hundred dollars), and that is the Board's estimation of the reasonable value of the fish killed based upon the investigative data supplied by the Department of Conservation.

Part I of the Agency's Motion of August 9, 1976 is, therefore, denied.

IT IS SO ORDERED.

Mr. Zeitlin dissented.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 15th day of September, 1976 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board