

ILLINOIS POLLUTION CONTROL BOARD

April 8, 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. )

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

This matter comes before the Board on a Complaint filed by the Environmental Protection Agency (Agency) on September 11, 1975 against Respondents Harold K. Fassett, Henry W. Fassett, and J.P. Wetherby Construction Corporation. An Amended Complaint was filed on September 24, 1975. The Amended Complaint sets forth two counts. Count I alleges that Respondents Harold K. Fassett and Henry W. Fassett (The Fassetts) violated Sections 21(b) and 21(e) of the Environmental Protection Act (Act) and Rule 202(b) of the Board's Solid Waste Regulations. Count II alleges that Respondent J.P. Wetherby Construction Corporation (Wetherby) violated Section 21(f) of the Act. A hearing was held on November 13, 1975 at which a Stipulation and Proposal for Settlement was presented by the parties accompanied by four Joint Exhibits. No other evidence or testimony was submitted.

COUNT I

Paragraph 5 of Count I alleges that the Fassetts owned and operated a refuse disposal site in LaSalle County, Illinois beginning on or about July 27, 1974. Paragraph 1 of the Stipulation states that the Fassetts purchased the land in question in November of 1974. Paragraph 7 of the Stipulation establishes that the Fassetts allowed Respondent Wetherby to deposit demolition wastes on the site prior to May 2, 1975 and during the period between May 2, 1975 and May 25, 1975. This fact is also demonstrated by Joint Exhibits A, B, and C. There is no doubt that these facts

constitute the ownership and operation of a solid waste management site. Rule 202(b) of the Board's Solid Waste Regulations, and thus Section 21(e) of the Act require existing solid waste management sites to have operating permits issued by the Agency. Paragraph 13 of the Stipulation states that at no time has any of the Respondents sought or held any permits for this site. The violation is clear. However, the Fassetts' conduct was not shown to have constituted the allowance of open dumping of refuse in violation of Section 21(b) of the Act. That portion of the Complaint will be dismissed. Paragraph A of the Terms of Settlement states that the Respondents feel that they have not been in violation because they lacked the intent to operate a solid waste management site. It is clear that the Fassetts did perform each and every act which led to the Board's conclusion that they owned and operated a solid waste management site. The fact or allegation of the lack of intent has no relevance here to the issue of whether a violation did occur.

#### COUNT II

Count II alleges that Respondent Wetherby has disposed of demolition debris at the Fassetts site. Paragraph 7 of the Stipulation expressly admits this allegation. As discussed above, it is established that no permits were issued for this solid waste site. Section 21(f) of the Act provides that:

No person shall:

\* \* \* \* \*

(f) Dispose of any refuse, or transport any refuse into this State for disposal, except at a site or facility which meets the requirements of this Act and of regulations thereunder.

Wetherby therefore disposed of refuse at a site which was in violation of the Act and regulations thereunder. The Board finds that for the purpose of finding a violation of Section 21(f) of the Act, the absence of an operating permit will suffice.

#### THE PROPOSED SETTLEMENT

Respondents have presented this Proposal for Settlement for the Board's consideration pursuant to Rule 333 of the Board's Procedural Rules. The Respondents refer the issue of penalty to the Board, while agreeing to cease and desist the questioned activities and remove any refuse deposited on the premises in the future. The Stipulation and Proposal for Settlement shall be adopted in all respects by this Board.

### PENALTY

The Fassetts have been found to have operated a landfill without the required permit. Wetherby has been found to have disposed of refuse at a site which was being operated in violation of Board Regulations. The remaining issue is the penalty.

In assessing a penalty the Board considers many factors, including those enumerated in Section 33(c) of the Act. Following is a discussion of each of these 33(c) factors concerning each of the violations found in this case.

Neither of these violations are merely "technical". As stated in Section 2(b) of the Act, "It is the purpose of this Act... to assure that adverse effects upon the environment are fully considered and borne by those who cause them (emphasis added). The permit program is the mechanism by which the legislature has chosen to insure such full consideration of adverse effects upon the environment. The process of obtaining a permit entails a thorough assessment of the potential adverse environmental effects. The permit requirements are truly the key for the entire effort to enforce the Act and Board Regulations. A failure to complete the permit process thereby undermines the enforcement program and the Act's mechanism for the protection of the health, general welfare and physical property of the people of Illinois.

The violation of Section 21(f) of the Act, disposal of refuse at a violating site, is just as serious. There are some potentially very serious environmental effects which may become apparent soon or at some future time. Problems of leachate and contamination of land and of water supplies are long-term threats which cannot be ignored. The depositing of refuse at a violating site, as well as operation of a site without a permit, are activities which impair the enforcement program and which are difficult to assess and almost impossible to remedy.

It is also apparent that this landfill has no significant social or economic value. The dumping of demolition debris was merely a matter of the convenience of both parties. There is no indication that this activity was not suitable to the particular location. However, an improper landfill is necessarily unsuitable to any area. Likewise, there is no issue here of technical practicability or economic reasonableness.

The Board feels that a penalty is warranted for each of these Respondents. Penalties in this case will serve to protect the integrity of the permit system, which is the heart of the environmental program.

In the present case a penalty is warranted as an aid to the enforcement of the Act and the Board's Regulations. The Board finds that penalties of \$1,500 for the Fassetts and \$1,500 for Wetherby are adequate and appropriate.

This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. Respondents Harold K. Fassett and Henry W. Fassett are hereby found to have violated Section 21(e) of the Environmental Protection Act and Rule 202(b) of the Board's Solid Waste Regulations.

2. Respondents Harold K. Fassett and Henry W. Fassett, shall pay as a penalty for the above violations the sum of \$1,500; liability for said penalty to be joint and several. Payment shall be made by certified check or money order within 35 days of the date of this Order to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

3. That portion of the Complaint which alleges that Respondents Harold K. Fassett and Henry W. Fassett violated Section 21(b) of the Environmental Protection Act is hereby dismissed.


4. Respondent J.P. Wetherby Construction Corporation is hereby found to have violated Section 21(f) of the Environmental Protection Act.

5. Respondent J. P. Wetherby Construction Corporation shall pay as a penalty for the above violation the sum of \$1,500 payment to be made by certified check or money order within 35 days of the date of this Order to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Opinion and Order were adopted on the 8<sup>th</sup> day of April, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board