

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,)
 a Delaware Corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Dumelle):

On June 14, 1976 Respondents filed the present Motion for Reopening and/or Reconsideration of the Board's April 8, 1976 Opinion and Order. On June 3, 1976 the Board denied previous motions to reconsider because of a lack of any verification or support for the allegations therein. The present Motion is verified by affidavit and does present some supporting documentation. Based upon the evidence now before it the Board hereby grants the Motion to Reconsider the penalty assessed against Respondents Harold K. Fassett and Henry W. Fassett (Fassetts). In doing so, however, the Board reaffirms that the initial penalties were fair, appropriate and fully warranted by the facts which had been stipulated to by the parties. Section 31 (c) of the Act allocates the burden of proving mitigation to the Respondent. Such evidence was not brought before the Board in the parties' Stipulation. Had the Stipulation been complete and properly drafted to begin with, it would not have been necessary to waste so much of the Board's time and resources (as well as the parties') on these motions subsequent to the entry of the final Order.

Paragraph 7 of the Motion refers to facts "known to the Assistant Attorney Generals who were handling this matter on behalf of the Pollution Control Board." (emphasis added) The

Attorney General handled this matter on behalf of the Agency. The Board, being the adjudicative agency was not, and could not be, a party in a proceeding before the Board. The Board is confined to this record in any given case. If a party wishes to carry its burden under Section 31(c) of the Act it must submit evidence.

Having considered the record as it now exists the Board finds mitigation sufficient to hereby reduce the penalty assessed against the Fassetts to \$500.00. The Board finds no adequate reason to reconsider the penalty to the Wetherby Construction Corporation, and therefore denies that part of the instant Motion.

IT IS SO ORDERED.

Messrs. Zeitlin and Young dissent.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 22nd day July, 1976 by a vote of 3-2.


Christan L. Moffett, Clerk
Illinois Pollution Control Board