

The fifty-five sedimentation ponds needed to control TSS runoff are located in ravines between steep slopes (Pet. 12; Ag. Rec. 2, 3). The shallow bedrock in the area has contributed to difficulties in deepening the ponds. The ponds will be built as needed and then reclaimed. Associated diversion ditches will channel runoff to the ponds. Detention time in fifty-three of the ponds ranges from 1.9 to 12.5 hours for runoff from a ten year twenty-four hour storm event. Two other ponds have sixteen and twenty-two hour detention times. Twenty foot high dams could be constructed but are not cost effective or feasible considering the short life of each mining subarea (Pet. 10). BBCC will have to obtain pond design approval in the form of an NPDES permit from the Agency. In addition, BBCC proposes to monitor the discharge from the ponds and submit the data to the Agency.

BBCC claims that the environmental impact of granting the variance will be minimal and that the ponds will reduce the sediment loading to the area streams (Pet. 6). However, the Agency contends that the claimed sediment reduction is unfounded because BBCC used the less restrictive federal settleable solids standard rather than Illinois' TSS standard when initially designing the sediment ponds and determining the stream sediment loading (Ag. Rec. 2; Pet., Attachs. 4, 2). There is little valid data at this time to support BBCC's claim of reduced stream sediment loading.

Surface mining for coal in Illinois has traditionally been carried out on the flatlands. The BBCC proposal to mine on ridges is not often done in Illinois. This mining project will give BBCC and the Agency the opportunity to gather data on what is essentially a new type of mining in Illinois. The proposed sediment control measures can be considered experimental and should provide field data which will assist the state in deciding whether such projects should be encouraged in the future.

During mining BBCC proposes, where possible, to contemporaneously restore the approximate original contour of the land by soil replacement and revegetation (Pet. 3). This contemporaneous restoration, combined with the short active life of the sedimentation ponds, estimated to be under three years (Pet. 8), should minimize adverse environmental impact.

BBCC must show that compliance with the TSS standard would impose an arbitrary or unreasonable hardship. BBCC asserts an arbitrary or unreasonable hardship would exist if the variance were denied because the variance is necessary for Agency issuance of the needed NPDES permit (Pet. 14). BBCC asserts this would force it to construct larger ponds which would be either unreasonably expensive and/or impossible (*id.*) due to the unique topography of the land (Pet. 15). The only other option

would be not starting mining operations (Id.). The Agency asserts that BBCC knew of the strict Illinois TSS standard early in the permit application process (Ag. Rec. 2). BBCC, however, contends in its motion for expedited decision that it only recently became aware that a variance would be required.

Although BBCC has not included the planning and design costs of the project, to the Board it is evident that substantial amounts of time and money have been expended given the advanced state of the project and fact that BBCC has a contract to deliver coal from the mine.

The Board finds that even though the hardship is to a certain extent self-imposed, to deny BBCC a variance would impose an arbitrary or unreasonable hardship. At this time, there remains a question whether an economically feasible means of complying exists given the topography of the area. If the variance were not granted, hardship would include loss of the substantial amount of money already expended, the termination of the mining project, and the loss of the value of contracts to furnish coal. The Board notes that this project will have minimal adverse environmental impact and will provide data on the impact of a mining method new to Illinois. By limiting the period of variance to eighteen months and requiring BBCC, inter alia, to monitor its mine discharges, the Board allows collection of necessary data on sediment loading and pond efficiency while maintaining controls to minimize adverse environmental effect.

The Agency has some concerns which it believes can be addressed by granting the variance for eighteen months and requiring additional collection of data. Soil boring and bedrock elevation data would be used to determine whether ponds could be enlarged by excavating behind the dams. Data on the use of flocculating agents to aid in sediment control would also be required. The Board will impose these requirements as conditions to the grant of this variance.

Black Beauty Coal Company is granted a variance from the total suspended solids effluent standard of 35 Ill. Adm. Code 406.106 for a period of eighteen months for its Cedar Creek Mine subject to the conditions below. Although the Agency claims that BBCC may exceed the total iron mining effluent standard (Ag. Rec. 2). BBCC has not requested variance from this standard.

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

ORDER

Black Beauty Coal Company is hereby granted a variance from the total suspended solids effluent standard of 35 Ill. Adm. Code 406.106 for its Cedar Creek Mine in Brown and Schuyler Counties, Illinois, subject to the following conditions:

1. This variance expires on March 20, 1986.
2. This variance is only to apply to the first set of sediment ponds necessary to start this mining operation (an estimated 6 to 10 ponds) and only for the life of those ponds. No additional ponds are to be installed under this variance beyond March 20, 1986 and no pond enlargement to accommodate expanded mining operations is to occur after initial pond installation.
3. Petitioner is to implement an intensive sampling program, after consultation with the Agency, sufficient to determine the efficiency of the first set of ponds. This program is to be carried out by Petitioner during the variance period, with the results submitted to the Agency as they are obtained.
4. Petitioner is to implement a program, after consultation with the Agency, for adding flocculating agents to the ponds sufficient to aid in sediment control.
5. Any further request for variance submitted by Petitioner is to include results of the sampling program described above, as well as evidence, including soil borings and bedrock elevations, to show if the balance of the ponds can be enlarged by such means as excavating deeper behind the dams.
6. Within forty-five days of the adoption of the Board Order in this proceeding, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Mine Pollution Control Program, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound by all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the certificate shall be as follows:

CERTIFICATE

I, (We), _____, hereby accept(s) and agree(s) to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 84-109, dated September __, 1984.

Petitioner

By: Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 20th day of September, 1984 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board