

ILLINOIS POLLUTION CONTROL BOARD
September 18, 1975

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
vs.)	PCB 72-315
)	
FREEMAN COAL MINING COMPANY,)	
)	
Respondent.)	

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

On September 6, 1973 the Pollution Control Board found that Freeman Coal Mining Company had emitted smoke from its coal fired boilers which appeared to have been No. 2 or darker on the Ringelmann chart in violation of Rule 3-3.122, Rules and Regulations Governing the Control of Air Pollution; had failed to abide by the time conditions of its Air Contaminant Emission Reduction Program in violation of Rule 2-2.41; and had installed air pollution control equipment without a permit in violation of Rule 3-2.110. A \$1,500 penalty was imposed for these three violations.

Upon review, the Appellate Court for the Fifth District of Illinois affirmed the Board's ruling with respect to the Ringelmann violations and the violation of Rule 3-2.110 of the Air Rules. However, the Appellate Court reversed the Board finding that Freeman Coal had violated Rule 2-2.41 in failing to abide by the time limitations of the ACERP. The Court said that since the Pollution Control Board "assessed a penalty of \$1500 for all three violations, only two of which are sustained, we must remand this cause to the Board with directions that it determine the penalty to be assessed for the Ringelmann violations and the violation of Rule 3-2.110".

The elements of the violations have already been established in the written Opinions previously issued by the Board and by the Appellate Court. We will not repeat the evidence at length.

We find from our consideration of the case that a monetary penalty of \$750 should be imposed for the Ringelmann violation. The dense smoke emitted from the Freeman facility is indicative of air pollution which would affect the residents of that community, but there is not a lot of evidence regarding the character and

degree of the injury to or interference with the health, welfare and physical property of the people. The facility did have a social and economic value as a producing company, but the evidence indicates that the facility was old and "marginal". The facility is suitable to the area in which it is located. It is technically practicable to reduce particulate emissions and to bring smoke density within No. 2 Ringelmann. For most companies it is also economically reasonable to do so, and we believe that, in spite of the age and the marginal status of Respondent's facility, it was economically reasonable to do so in this case. The record shows that pollution control equipment was actually installed but it should have been installed at an earlier date.

Freeman Coal failed to secure the required permits for over one year after the pollution control equipment was already installed. There was no explanation given for this delay but it appears the permits were actually acquired prior to the time the Complaint was filed by the Environmental Protection Agency. We conclude that the permit violation was not flagrant and was in fact cured before this matter was presented to us for ruling so that only a nominal penalty in the amount of \$100 is justified.

This Opinion constitutes the findings of fact and conclusions of law of the Illinois Pollution Control Board.

ORDER

It is the Order of the Pollution Control Board that:

Freeman Coal Mining Company shall pay to the State of Illinois by November 1, 1975 the sum of \$850 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted the 18th day of September 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board