

ILLINOIS POLLUTION CONTROL BOARD
April 17, 1980

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 79-58
)
 MINERALS MANAGEMENT CORPORATION, a)
 District of Columbia Corporation;)
 IRWIN NESTLER; BROMLEY K. SMITH,)
 JR.; JAMES M. DAY; and DENNIS P.)
 BIXLER,)
)
 Respondents.)

ORDER OF THE BOARD (by Dr. Satchell):

On March 27, 1980 the Environmental Protection Agency (Agency) filed a motion for modification of the Board's Opinion and Order of March 20, 1980. Pursuant to the allegations of Count IV of the second amended complaint the Board found Minerals Management Corporation, Irwin Nestler and Bromley K. Smith (Respondents) in violation of Section 12(a) of the Environmental Protection Act (Act) and Rule 502 of Chapter 4: Mine Related Pollution which requires a permit to abandon within one year of abandonment of a mine. In its motion the Agency states that in the complaint it did not intend to allege a violation of Rule 502 itself but intended to allege a violation of Section 12(a) by threatening the discharge of contaminants through violation of Board regulations, namely Rule 502. Without addressing the sufficiency of the allegation, the Board notes that Respondents did not at the hearing understand Count IV to mean what the Agency now says it meant (R. 311). The Board also failed to understand its intent. Since it did not reasonably inform Respondents of the nature of the charges against them, Count IV will be stricken from the complaint and the penalty lowered to \$4000.

The Agency also requests modification of an ambiguous sentence in the fourth paragraph of page eleven of the Opinion. This will be modified to read: "The Board will therefore assess only a monetary penalty against the individual respondents Irwin Nestler and Bromley K. Smith, Jr."

ORDER

Paragraphs two and five of the Board's Order of March 20, 1980 are modified to read as follows:

2. Respondents Irwin Nestler, Bromley K. Smith, Jr. and Minerals Management Corporation are in violation of §§9(c), 12(a) and 12(b) of the Environmental Protection Act, Rule 502 of Chapter 2: Air Pollution Control Regulations and Rules 201 and 501(a)(1) of Chapter 4: Mine Related Pollution.
5. Within thirty-five days of the date of this Order, Respondents Irwin Nestler, Bromley K. Smith, Jr. and Minerals Management Corporation shall, by certified check or money order payable to the State of Illinois, pay a joint and several civil penalty of \$4000 which is to be sent to:

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

IT IS SO ORDERED.

Mr. Werner dissented.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 17th day of April, 1980 by a vote of 4-1.



Christian L. Moffett, Clerk
Illinois Pollution Control Board