

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 1980

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-488  
 )  
 MATERIAL SERVICE CORPORATION, )  
 a Delaware Corporation, FREEMAN )  
 UNITED COAL MINING COMPANY )  
 DIVISION, )  
 )  
 Respondent. )

MR. MARVIN I. MEDINTZ, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. RICHARD R. ELLEDGE APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Pollution Control Board upon a two count complaint filed December 19, 1975 by the Environmental Protection Agency (Agency) alleging that Freeman United Coal Mining Company (Freeman), a Division of the Material Service Corporation, violated Rules 201 and 502 of the Board's Chapter 4: Mine Related Pollution (Rules) relating to the permit requirements of the abandonment of their 3800 acre Banner No. 27 mine located in both Banner Township, Fulton County and Timber Township, Peoria County, Illinois.

Following continuances granted to both the Agency (filed April 16, 1976) and to Freeman (filed May 19, 1976), a hearing was held in Peoria, Illinois on August 27, 1976. A stipulation of facts was presented, an agreement to submit briefs, and a brief summary of the facts by Respondent constituted the hearing. No testimony or citizen comments were forthcoming.

The stipulated facts are enumerated, in pertinent part, as follows. Material Service is successor by merger to the United Electric Coal Companies (United) which operated a coal mine known as Banner 27 mine. United ceased operations February 23, 1974 after producing nine million tons of coal since its opening in 1959. Thereafter United completed all

reclamation procedures required under the Surface-Mined Land Conservation Act, Ill. Rev. Stat. Ch. 93, Sec. 201, et seq. (1975) and sent to the Agency on March 20, 1974 a notification of abandonment. On September 19, 1974, William N. Busch of the Agency sent a letter to United that Rule 502 of the Rules requires an abandonment permit to be obtained within one year after abandonment. United submitted an application to the Agency on February 17, 1975 and extended the 90-day decision time to August 1, 1975 during which period United met with the Agency to discuss appropriate procedures particularly with respect to the gob pile and water quality. On July 30, 1975 the Agency denied the permit for lack of "an acceptable proposal for covering the gob pile . . ." From that date to the date of filing the complaint herein, United neither appealed the permit denial nor submitted a reapplication to the Agency.

Subsequent to filing the aforementioned complaint the parties undertook discovery, engaged in settlement discussions and jointly collected additional water samples.

In light of the above, both parties believe that the public interest will be best served by an expeditious resolution of the instant action under the terms and conditions herein provided without a protracted hearing, and further that the undertakings provided herein satisfy all requirements of the Act.

#### Stipulated Facts Relating to the Litigation

1.\* All parts of the gob pile placed after May 25, 1972 had been graded and vegetated pursuant to Rule 401(e) prior to December 19, 1975.

2. Water samples taken by both parties on February 28, 1975, March 19, 1975 and February 27, 1976 upon analysis showed: (1) a pH  $\geq$  7 everywhere except at the pond at the base of the gob pile, (2) TDS substantially in excess of 1000 mg/l at almost every sampling point. The Board observes Exhibit "B" delineates the sampling points and directions of water flow and shows the general shape and size of the mined area which lies adjacent to and along the northwest bank of the Illinois River for a distance estimated from section lines to be in excess of five miles. It is apparent from this exhibit that waters effluent from the area would discharge to the Illinois River. The general shape of the area is long and fairly narrow being perhaps as wide as 1 1/2 miles at its broadest point. Laboratory analyses are shown in Exhibit "C".

\* Numbers relate to paragraph numbers in the Stipulation as follows: 1 = 11, 2 = 12, etc.

3,4. The new abandonment permit submitted on February 5, 1976 was denied by the Agency on April 16, 1976 for:

- A. Failure to cover and revegetate the acid pond area.
- B. Failure to provide for neutralizing, fertilizing and revegetating the rest of the gob pile.
- C. All sampling points had a TDS concentration in excess of standards set by Rule 203 of Chapter 3: Water Pollution.

5. It was the Agency's position at the time of the denial that stabilizing and revegetating the gob pile was necessary and that the acid pond needed to be filled and covered.

6,7. On June 19, 1976 representatives from both parties, including attorneys, made an on-the-site inspection after which the Agency concluded that conditions of the gob pile and acid pond would have a very minimal impact on overall water quality. A new potential problem was observed by the Agency which was the drying up of areas of the slurry pond which might be subject to wind erosion and cause air pollution; however, the high banks around the pond were deemed sufficient protection.

8. On June 23, 1976 Respondent reapplied for an abandonment permit to the Agency, Exhibit "E".

9,10. While technically feasible to reduce the TDS of the site waters, it is not economically feasible in the absence of over-riding health and/or security reasons.

11. The site in its present condition is well suited for recreational purposes such as boating, fishing, hunting and wildlife management. The Department of Conservation (Department) is currently negotiating with the several owners to acquire the entire site for use as a wildlife refuge and public recreation area. The Department's experts have ascertained the waters are well suited for fish, fowl and other wildlife growth. The Department has petitioned the Illinois Commerce Commission to acquire by condemnation a parcel of land owned by Central Illinois Light Company. Exhibit "F" shows certain testimony presented by the Department in that proceeding (ICC Docket No. 51913) delineating

the scope and status of the program as well as testimony regarding the quality of the waters.

12. The position of the Agency is that no useful purpose would be served by reducing TDS in site waters for the use proposed by the Department.

13. The parties call to the Board's attention a proposed regulatory change (PCB R76-7) to permit increased TDS concentrations in mine waters.

14. The Agency contends it has no authority to issue a permit without a proposal to reduce TDS to the levels mandated by Rule 203 of Ch. 3: Water Pollution.

15,16. Material Service Corporation contends that a proposal to reduce TDS would be "useless and perhaps evasive" considering the uses contemplated for this site and without such a proposal a variance could not be granted. Likewise an appeal for a permit denial based on the above stipulated facts would only delay resolution and incur additional expense.

17. The Agency concurs that either a variance or permit appeal would only delay a decision.

18,19. The Agency contends and Respondent denies that a penalty should be imposed.

The Closing Argument of Complainant reveals that the June 23, 1976 application for permit was denied. The Brief for Respondent states there is a very substantial volume of water flowing on and across the mine site which is protected from the waters of the Illinois River by a series of levees maintained by a drainage district. Site waters are drained to a pumping station maintained by the Banner Drainage District and pumped into the Illinois River. (Resp. Brief at 2).

Further information is given about the conditions of the site waters by testimony of E. E. Filer, Supervisor of the Division of Land Reclamation, Illinois Department of Mines and Minerals:

". . . The mined lands are extensive enough to provide a practical sized work and development area. It is more or less enclosed by U.S. 24, the Illinois River, and Copperas Creek. A levee keeps water from the river and Copperas Creek from moving in and out of the area, a most important feature to prevent sedimentation, pollution, and to make possible a

stable water level." (Stip. Ex. F). In the same proceedings, Kenneth C. Russell, Department of Fisheries Biologist, states: "Waters on the site have an average total alkalinity of 176 which represents high fish productivity. This proposed project, having a projected 1300 acres of manageable fishing waters could support at least 18 species of sport fishes. . . . nearly 50 separate lakes and ponds on the area." The testimony of Phillip E. DeTurk (Id), Department's Supervisor of the Site Planning Division, reveals the total area the Department seeks and also the source of waters: "The 5141 acres represent a project total. The marsh area contains approximately 4007 acres. . . . The water supply will consist of three primary sources: There will be a ground water supply fed into the marsh through the deep cuts of the mining operation; there will be surface water runoff from the adjacent wooded bluffs; and finally there will be Illinois River water filtered and cleaned of silt and pollutants as it seeps into the marsh area through the ground under the levee."

In mitigation the Board has considered Section 33(c) of the Act. The depressed nature of the site minimizes the possibility of waters seeping from the site to cause environmental harm. The social and economic value of the site is well documented by the Department of Conservation's efforts to obtain it. Its location is particularly fortuitous for the intended recreational and wildlife use, being near to population centers and adjacent to a major waterway so that any effluent effects should be negligible. The tremendous volume of water and the lack of showing of any environmental harm because of the dissolved solids seems to indicate an unreasonable burden on the Respondent to attempt to reduce the concentrations of salts in this case. While part of the gob pile mined prior to 1972 "pre-law land" has not been covered, the Agency believes the acid drainage would have no effect because of the tremendous dilution afforded by the alkaline waters into which the acid pond drains. In addition, this small acid area would provide an interesting ecological area if the site is developed as intended.

The Board notes that since the filing of this case there has been considerable change in the law applicable to abandonment of mine areas. In 1979 the legislature adopted the Surface Coal Mining Land Conservation and Reclamation Act. The proceedings proposal to exempt coal mining from the TDS water quality limitation, R76-7, have been completed and entry of a Final Order stayed pending the outcome of the general Chapter 4 revisions, R77-10. The Board has recently entered an Order in that proceeding which proposes to replace the abandonment permit of Rule 502 with an abandonment plan under new Rule 509. The Board has also proposed Rule 605.1 which would authorize a temporary exemption from the TDS water quality standards applicable to Respondent. The Board will therefore order Respondent to apply for new permit containing a Rule 509 abandonment plan pursuant to the transitional provisions of new Rules 702 and 704. Respondent will have 180 days after the effective date of Chapter 4 to make such application. This Order will be subject to modification in the event the Final Order of R77-10 differs materially from the Proposed Order.


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

ORDER

It is the Order of the Pollution Control Board that:

1. Respondent Material Service Corporation and its Freeman United Coal Mining Company Division violated Rules 201 and 502 of Chapter 4: Mine Related Pollution by abandoning the Banner No. 27 coal mine without securing the required permits from the Agency.
2. Within 180 days of the effective date of the proposed Chapter 4, Respondent shall complete and submit the necessary application forms to obtain a permit containing an approved abandonment plan pursuant to Rules 401, 509 and 704 of the new Chapter 4.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 7<sup>th</sup> day of February, 1980 by a vote of 4-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board