

ILLINOIS POLLUTION CONTROL BOARD  
June 5, 1986

WHITE COUNTY BOARD )  
 )  
Petitioner, )  
 )  
v. ) PCB 85-174  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon an April 30, 1986 Motion for Reconsideration filed by the Illinois Environmental Protection Agency ("Agency"). The Agency requests that the Board reconsider its March 27, 1986 Opinion and Order in this matter. On that date the Board granted the White County Board ("County") variance relief from 35 Ill. Adm. Code 406.106, but denied the County variance from 35 Ill. Adm. Code 406.108 on the ground that relief from the latter section was unnecessary. The Agency argues that due to the construction activities planned by the County, Petitioner is in need of variance relief from 406.108. The Board agrees, and will consequently grant the Agency's Motion for Reconsideration, as well as vacate a portion of the March 27, 1986 Order so as to provide the County with variance relief from 406.108.

The Board initially held that the County could not be defined as a "mine operator", and that the construction site at issue in this case was not one falling within the definition of "affected land", as those terms are defined by 35 Ill. Adm. Code 402.101. Section 402.101 defines "Operator" as "a person who carries out mining activities". That section defines "affected land" as "any land owned or controlled or otherwise used by the operator in connection with mining activities..." Section 402.101 defines "mining activities" as

all activities on a facility which are directly in furtherance of mining, including activities before, during and after mining... The term includes, but is not limited to... Construction of mine related facilities which could generate refuse, result in a discharge or have the potential to cause water pollution... Ownership or control of a mine related facility... Generation or disposal of mine refuse... (emphasis added).

Section 402.101 in turn defines "mine related facility" as  
portion of a facility which is related to  
mining activities. The term includes, but is  
not limited to... Mine refuse area(s)...  
(emphasis added).

"Mine Refuse Area" is defined by 402.101 as  
"any land used for dumping, storage or  
disposal of mine refuse" (emphasis added).

As detailed in the Board's March 27, 1986 Opinion and Order,  
the County proposes to use mine refuse as core material for the  
construction of a roadway embankment.

As a consequence of the construction activity proposed by  
Petitioner, the County will, for the purposes of Board  
regulations, clearly become an operator engaged in mining  
activities. The construction site at issue here is thus most  
properly viewed as "affected land", meaning that the County must  
receive variance relief from 406.108 in order to proceed with  
the project. The Board reaffirms its belief that denial of the  
variance relief requested by the County would constitute an  
arbitrary or unreasonable hardship to Petitioner, and that such  
hardship would not be justified by the Probable environmental  
impact resulting from construction of the embankment. The Board  
will therefore grant Petitioner the variance relief it requires.

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

#### ORDER

The April 30, 1986 Motion for Reconsideration filed by the  
Illinois Environmental Protection Agency is granted.

The Board's Order of March 27, 1986 in this matter is  
vacated.

That portion of the Board's March 27, 1986 Opinion which  
discussed the inapplicability of variance relief from 35 Ill.  
Adm. Code 406.108 to the construction proposed by the White  
County Board is hereby vacated.

The White County Board is hereby granted variance from 35  
Ill. Adm. Code 406.106 and 406.108 until March 27, 1991 or until  
completion of the roadway embankment which is the subject matter  
of this variance proceeding, whichever occurs first, subject to  
the following conditions:

- a. The operation plan submitted with the project permit  
application shall be implemented as submitted.

- b. After completion of phase 1, all disturbed areas shall be mulched or erosion control blankets applied. All disturbed areas that will not be redisturbed during phase 2 shall be mulched and seeded.
- c. Quarterly project reports shall be submitted to the Illinois EPA until project completion. Reports shall include general progress and sediment control structure maintenance work completed during the quarter.
- d. Petitioner shall submit the quarterly project reports and execute a certificate of acceptance in the following form:

Within forty-five (45) days after the date of the Board Order the Petitioner shall execute and send to:

Ron Barganz  
Mine Waste Program  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

a certification of acceptance of this variance by which it agrees to be bound by its terms and conditions. This forty-five (45) day period shall be held in abeyance for any period during which this matter is being appealed. The form of the certification shall be as follows:

#### CERTIFICATION

The White County Board has received and understands the May 22, 1986 Supplemental Opinion and Order of the Illinois Pollution Control Board in PCB 85-174 and hereby accepts said Supplemental Opinion and Order and agrees to be bound to all of the terms and conditions thereof.

White County Board

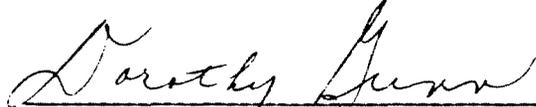
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By: James P. Taylor  
Chairman, White County Board

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Board Members, Jacob D. Dumelle and Ted Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion and Order was adopted on the 5<sup>th</sup> day of June, 1986, by a vote of 5-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board