

ILLINOIS POLLUTION CONTROL BOARD  
March 27, 1986

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

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

This matter comes before the Board upon a November 27, 1985 petition for variance filed by the White County Board ("County"). The County requests variance for a period of five years from 35 Ill. Adm. Code 406.106 (Effluent Standards) and 406.108 (Non-point Source Mine Discharges). On December 5, 1985 the Board found the variance petition deficient in several areas and ordered the County to submit additional information. The County filed its response on January 21, 1986. The Illinois Environmental Protection Agency ("Agency") filed its recommendation in this matter on February 25, 1986, recommending that variance be granted to the County subject to conditions. Petitioner waived its right to a hearing on the petition.

For the reasons discussed below, the Board finds that Petitioner is not in need of variance relief from §406.108, but that the County will suffer arbitrary or unreasonable hardship if denied variance relief from §406.106. Therefore, variance from §406.106 will be granted to the County for a period of five years, subject to conditions.

BACKGROUND

Petitioner is a governmental entity which provides public services, including the maintenance of a county-wide transportation network for a population of more than 17,000 county residents and more than 1,000 industrial, commercial and business customers serviced by Petitioner. White County employs approximately 90 persons and expends approximately \$3.5 million as a consequence of its operations.

The County is seeking variance relief in this case in order to construct a roadway embankment utilizing mine refuse as core material. The proposed project is located on County Highway 12 in White County, Illinois. The project begins 336 feet north of the intersection of County Highway 12 and State Highway 14, and continues north along County Highway 12 a distance of 2290

feet. Petitioner proposes to use approximately 18,900 cubic yards of mine refuse from White County Coal Company as the core material for the embankment, which is being built in order to raise County Highway 12 above the high water elevation. The coal company currently disposes of this refuse by burying it. Approximately 5,400 cubic yards of soil will be utilized as a two foot "cover" over the mine refuse and as a vegetative growth medium.

The County originally submitted an application for a mining permit to the Illinois Department of Mines and Minerals. Permits of this nature are subject to the approval of the Agency, and it was the Agency that first notified the County (by letter dated August 20, 1935) that the nature of the County's proposed actions would require variance from certain of the Board's mine related water pollution regulations.

The County is seeking variance for a five year period from 35 Ill. Adm. Code 406.106 and 406.108. Section 406.106 provides that:

**Section 406.106 Effluent Standards**

- a) The effluent limitations contained in 35 Ill. Adm. Code 304 shall not apply to mine discharges or non-point source mine discharges.
- b) No person shall cause or allow a mine discharge effluent to exceed the following levels of contaminants:

Constituent	Storet Number	Concentration
Acidity	00435	(total acidity shall not exceed total alkalinity)
Iron (total)	01045	3.5 mg/l
Lead (total)	01051	1 mg/l
Ammonia Nitrogen (as N)	00610	5 mg/l
pH	00400	(range 6 to 9)
Zinc (total)	01092	5 mg/l
Fluoride	00951	15 mg/l
Total suspended solids	00530	35 mg/l
Manganese	01055	2.0 mg/l

- 
- 1) pH is not subject to averaging.
  - 2) The ammonia nitrogen standard is applicable only to an operator utilizing ammonia in wastewater treatment.

- 3) Any overflow, increase in volume of a discharge or discharge from a by-pass system caused by precipitation or snowmelt shall not be subject to the limitations of this Section. This exemption shall be available only if the sedimentation basin or treatment works is designed, constructed and maintained to contain or treat the volume of water which would fall on the areas tributary to the discharge, overflow or bypass during a 10-year, 24-hour or larger precipitation event (or snowmelt of equivalent volume). The operator shall have the burden of demonstrating that the prerequisites to an exemption set forth in this subsection have been met.
  
- 4) The manganese effluent limitation is applicable only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH shall be 10 for any such facility that is unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges which are associated with areas where no active mining, processing or refuse disposal has taken place since May 13, 1976.

Section 406.108, which relates to non-point source mine discharges, states that:

Surface drainage from the affected land of a coal mine, including disturbed areas which have been graded, seeded or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the facility.

The Board finds as a threshold matter that, absent variance relief, Petitioner would indeed need to comply with §406.106 because that section is applicable to the activity being undertaken by the County in this instance. Section 406.106 sets out effluent standards for "mine discharges". "Mine discharges" are defined by §402.101 as:

Any point source discharge, whether natural or man-made, from a mine related facility. Such discharges include... seepage from mine or mine refuse areas...

Section 402.101 defines "Mine Refuse Area" as:

Any land used for dumping, storage or disposal of mine refuse.

Thus, §406.106 must be applied to the use of mine refuse as a construction material. The Board's regulations, as described above, clearly define seepage from mine refuse areas as a point source discharge subject to the effluent limitations of §406.106.

The Board finds that §406.108 is not applicable, however, to the County's embankment construction. Section 406.108 requires

that surface drainage from the "affected land" of a coal mine be passed through a sedimentation pond. Section 402.101 defines "affected land" as"

Any land owned or controlled or otherwise used by the operator in connection with mining activities except the surface area above underground mine workings that is not otherwise used for mining activities. The term does not include off-site office buildings and farming operations or recreational activities on undisturbed land. Land described in a certificate of abandonment issued by the Agency under Section 405.110(e) is no longer part of the affected land.

Neither the site of the road embankment construction, nor the mine refuse itself, can be reasonably construed to be "affected land" under the definition above. The construction site is not owned, controlled, or being used by a mine operator in conjunction with mining activities. Rather it is the County which is controlling the site; the County is the party directing and overseeing placement of the mine refuse, and the County is not a mine operator. Similarly, the mine refuse itself is not "affected". The word "land" connotes surface area, and not earth material underlying the surface. The mine refuse then, the nature of which is earth material, cannot be characterized as "affected land". Section 406.108 therefore does not apply to the County's construction work, and Petitioner is not in need of variance relief from the sedimentation pond requirements of that section.

#### ENVIRONMENTAL IMPACT

The environmental impact resulting from Petitioner's activity will occur only during the period of construction of the embankment, which the County proposes to undertake during the normally drier summer months. The County estimates needing less than six months to complete construction, and has proposed several measures to reduce any adverse environmental impact stemming from the project.

First, during construction the County intends to move the mine refuse directly from the mine to placement in the embankment. No mine refuse storage or disposal will occur at the construction site. Second, Petitioner proposes to utilize a series of hay or straw ditch checks to control runoff from the affected area. Drainage from the area is by ditches tributary to Seven Mile Creek, the Skillet Fork, the Little Wabash and the Wabash River, sequentially. Finally, after the embankment is raised, two feet of soil will be placed over the mine refuse and the area will be fertilized, seeded and mulched to promote vegetative growth. The top of the embankment will be roadway, an impervious material.

Petitioner believes that variance relief in this instance would impose no adverse environmental impact on human life, plant or animal life. In addition the Agency has concluded that "Little if any of the contaminants in the mine refuse will affect ground or surface water" (Agency Rec., par. 16). The Agency cites the findings of the leachate test conducted on samples of the mine refuse material (see Petitioner's Exhibit F) as support for its belief that the leachate will not likely exceed effluent standards.

It should be noted that although the County states that environmental impact will result only during the construction period of six months or less, Petitioner does request variance relief for a five-year period. The County claims this added time is necessary due to two "timing" problems involved in the project. First, that the project is to be financed with County funds and therefore must be coordinated with the budgetary constraints of the County. Second, that the mine refuse currently produced by White County Coal Company is too wet for proper placement and handling, so the project will have to be held until drier mine refuse is available (it is anticipated that the company will be producing drier refuse that will be usable).

#### HARDSHIP

Without variance relief from §406.106, the County would be required to comply with the effluent limitations of that section. Such compliance might of practical necessity require Petitioner to install a sedimentation pond (although the County is not legally required to do so by §406.108, as discussed above) as the only means of complying with 406.106. Petitioner alleges that the use of a sedimentation pond for this project is impractical due to the cost involved. The County submitted cost estimates for two alternative sedimentation pond designs. Routing the entire drainage area through a single sedimentation pond is envisioned to cost \$140,000, while routing only the project drainage through the sedimentation pond and rerouting the rest of the drainage areas around the project would cost \$45,000. The County alleges that if variance relief is not provided, the additional cost of compliance will make the project too expensive to undertake. The Agency concedes that construction of a sedimentation pond would be ineffective anyway, since the project area is low lying and subject to flooding; thus, any pond constructed at the site would be subject to inundation.

The Board finds 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 variance relief from 406.106, subject to conditions. The Board uses the word "probable" in describing the

environmental impact of this project because it is a pilot project, the type of which has apparently never been attempted before in Illinois. However, the Board is confident in its reliance on assertions made by the Agency and Petitioner that only minimal adverse environmental impact will occur. Moreover, the project will put to productive use a material that had only been refuse previously.

The Board further finds that, given the circumstances of this case, five years is an appropriate variance period. The construction phase of this project is scheduled to last only six months. However, given the uncertainties the County faces regarding the date construction will begin, it is reasonable for the Board to allow the County some leeway in the duration of the variance period. From the environmental perspective, the impact of the project will be the same regardless of whether construction takes place in the summer of 1986 or the summer of 1990.

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

ORDER

The White County Board is hereby denied variance from 35 Ill. Adm. Code 406.108.

The White County Board is hereby granted variance from 35 Ill. Adm. Code 406.106 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:

