

ILLINOIS POLLUTION CONTROL BOARD
June 7, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-284
)
 THE SOUTHERN ILLINOIS MINERALS)
 CORPORATION, an Illinois)
 corporation,)
)
 Respondent.)

MR. BRIAN E. REYNOLDS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

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

This matter comes before the Board upon a complaint filed November 13, 1978 by the Environmental Protection Agency (Agency) against Respondent, Southern Illinois Minerals Corporation (Simco), an Illinois corporation. The complaint alleges violations of the Environmental Protection Act (Act) and Board Rules in connection with the abandonment of a surface coal mine, Vergennes Mine #4, about five miles southeast of Vergennes in Jackson County (R. 9). The complaint charges violations of Section 12(a) of the Act and Board Rules 201 and 502 of Chapter 4: Mine Related Pollution. Section 12(a) prohibits causing or threatening or allowing the discharge of any contaminants into the environment so as to violate regulations and standards adopted by the Board. Mine rules 201 and 502 require within one year a permit to abandon a mine after the operator ceases operation without intending to reopen.

On November 9, 1978 Mr. James Burks, Respondent's registered agent, was served with notice and complaint by certified mail, pursuant to Procedural Rule 305(a). A hearing was held on May 7, 1979 in Carbondale. No one appeared on behalf of the Respondent (R. 5). A letter from Mr. Burks was placed into evidence indicating that he could not appear because he was in Belize in Central America. The Board finds Respondent in default and will enter this Order pursuant to Procedural Rule 327.

At the hearing the Agency presented evidence to substantiate the allegations of the complaint. Mr. Robert Gates, Mine Drainage Manager for the Agency, testified that 3 States Trucking, Inc. at one time owned the mine and operated it under Agency permit (R. 7). At some time prior to March 26, 1977 the mine was transferred to Respondent. Simco and 3 States are related corporations, both

involving Mr. Burks (R. 10). Simco never acquired a permit to operate the mine (R. 11). However, operation without a permit is not charged in the complaint.

Mr. Gates testified that on April 14, 1977 there hadn't been any mining activity for some time and that the last cut was beginning to fill with water (R. 13). On May 31, 1977 there was no equipment or personnel at the mine. The Agency sent a letter to 3 States on June 2, 1977 advising them that notice was to be given the Agency within thirty days of cessation of operations (R. 16, Comp. Ex. 3). After a telephone conversation with Mr. Burks on September 8, 1977 a letter was sent to Simco advising it that there were violations and requesting a conference to develop a program (R. 18, Comp. Ex. 4). Mr. Burks responded to this letter and indicated that a dozer had been moved to the site to begin reclamation work (Comp. Ex. 5). A compliance conference was held in Marion in September, 1977 (R. 21). In a letter dated September 28, 1977, J. W. Brown and H. Roffmann, professional engineers, advised the Agency that the mine had ceased operations on March 26, 1977 (R. 22, Comp. Ex. 6). Mr. Gates testified that on October 26, 1977 there was no operation at the site and no sign of reclamation activity (R. 26).

Mr. William Ryan, an Agency employee, also testified (R. 28). On June 29, 1978 there were no persons, activity or sign of reclamation (R. 31). No abandonment permit was ever issued by the Agency (R. 31). Mr. Gates visited the site again on February 29, 1979 (R. 26). There was no sign of recent reclamation activity and more water was accumulating in the pit. From past experience, the witness expected that it would overflow, releasing polluted water.

The Board finds that the mine was abandoned on March 26, 1977 and that the required permit to abandon was never obtained as alleged in the complaint. The Board has considered Section 33(c) in mitigation in assessing its penalty. There is testimony that the site poses a potential for public harm from discharge of polluted water. The social or economic value of the mine and its suitability to the area are not questioned. There is no evidence that it is technically impracticable or economically unreasonable to reclaim the mine area.

The Board finds that a penalty of \$2500 is necessary to aid enforcement of the Act. Although a much larger fine could be levied in a default, there is no direct evidence of the extent of environmental damage and the Board requires that Respondent use available resources to bring the site into compliance. Respondent will be ordered to apply for an abandonment permit and to undertake reclamation work.

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, Southern Illinois Minerals Corporation, is in violation of Section 12(a) and Board Rules 201 and 502 of Chapter 4: Mine Related Pollution, as alleged in the complaint.
2. Respondent shall cease and desist from further violations of the Act and Board Rules.
3. Respondent shall apply for an abandonment permit from the Agency.
4. Respondent shall perform any and all acts necessary to reclaim the mine area in compliance with Rule 502 of Chapter 4: Mine Related Pollution.
5. Respondent shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$2500 which is to be sent to:

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

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 7th day of June, 1979 by a vote of 5-0.

Christan L Moffett ^{gcb}
Christan L. Moffett, Clerk
Illinois Pollution Control Board