

ILLINOIS POLLUTION CONTROL BOARD
February 15, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-223
)
 ENRECO, INCORPORATED, a Delaware)
 Corporation,)
)
 Respondent.)

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

MR. DONALD R. LUCAS, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed by the Environmental Protection Agency (Agency) on August 17, 1978. The complaint alleges that Respondent commenced construction of a coal recovery facility near Orient, Franklin County, Illinois, in Sections 10 and 15 of Township 7 South, Range 2 East, 3rd Principal Meridian in violation of Rule 951(a) of the Board's Chapter 3: Water Pollution Regulations, Rule 201 of the Board's Chapter 4: Mine Related Pollution and Section 12(b) of the Environmental Protection Act (Act). A hearing was held in this matter in Chicago, Illinois on December 26, 1978. At that time a stipulation and proposal for settlement was presented for the Board's approval. No testimony was given.

The stipulated facts provide the following information. On February 1, 1978 Enreco applied to the Agency for a permit to open and operate a mine or mine refuse area or coal recovery operation using coal refuse from the inactive Orient #1 mine site in Franklin County. On March 22, 1978, the application was denied. Enreco reapplied for the permit on April 14, 1978. After several telephone communications the permit was issued on June 14, 1978.

On June 1, 1978 two Agency field investigators visited the facility to clear up some questions on the permit application. At this time the inspectors observed construction in its early stages. At that time Respondent's employees were warned of

potential violations. On June 12, 1978 ongoing construction was observed at the site and a warning of potential violation was given. No processing of coal occurred at the Enreco facility prior to August 9, 1978. To the best knowledge of the parties no other violations than those alleged in the complaint have occurred since August 9, 1978.

Complainant would, if necessary, present evidence that no employee of the Agency ever indicated to Respondent that it would receive its permit on any particular day. On June 6, 1978, an Agency employee stated in a phone conversation with Respondent's consulting engineer that construction without the appropriate permits would be in violation of the Regulations. Respondent would, if necessary, present evidence that in the course of an April 14, 1978 phone conversation an employee of the Agency's water permit section stated that it would take approximately two weeks to process the reapplication and issue the permit. No employee of the Agency ever asked Respondent to stop work at the site.

The parties agree on the above facts; however, they do not agree on a penalty. The Agency recommends a penalty of \$1500 in light of the repeated notice given Respondent. Respondent believes that amount to be excessive considering the mitigating factors. Enreco admits violations of Rule 951(a) of Chapter 3; Rule 201 of Chapter 4; and Section 12(b) of the Act. Respondent agreed to cease and desist from further violations. The parties agreed to submit the penalty issue to the Board.

The Board will accept the stipulated agreement under Procedural Rule 331 and considering Section 33(c) of the Act. The Board finds Respondent in violation of Rule 951(a) of Chapter 3, Rule 201 of Chapter 4, and Section 12(b) of the Act. The Board finds that a penalty is necessary to aid enforcement of the Act considering the Agency's repeated notices. However, because of the short duration of the violation, Respondent's ongoing efforts to comply and no apparent environmental damage, a penalty of \$750 is sufficient.

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. Enreco, Inc. is found to have violated Rule 951(a) of the Chapter 3: Water Pollution Regulations;

Rule 201 of Chapter 4: Mine Related Pollution and Section 12(b) of the Environmental Protection Act.

2. Respondent shall cease and desist further violations of the Act.
3. Respondent shall pay a penalty of \$750 within thirty-five days of this Order. Payment shall be by certified check or money order payable 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 15th day of February, 1979 by a vote of 3-0.

Christan L. Moffett/ss
Christan L. Moffett, Clerk
Illinois Pollution Control Board