

ILLINOIS POLLUTION CONTROL BOARD  
November 10, 1976

ENVIRONMENTAL PROTECTION AGENCY,            )  
  )  
  Complainant,            )  
  )  
  v.                            )       PCB 75-384  
  )  
SOUTHWESTERN ILLINOIS COAL                    )  
CORPORATION,                                    )  
  )  
  Respondent.                )

Mr. George W. Tinkham, Assistant Attorney General, appeared for the Complainant.  
Mr. Robert S. Cohen appeared for the Respondent.

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

This matter comes before the Pollution Control Board (Board) upon a complaint filed on October 8, 1975 by the Environmental Protection Agency (Agency). The complaint was amended at the hearing to correct the references to the "main pit" to the "6360 pit." The amended complaint alleges that Respondent operates in Perry County, Illinois an open pit mining operation, designated as the Captain Mine, and a coal processing facility and that this mine consists of two active operating areas: the 6360 pit located in Sections 7 and 9 of Township 6 South, Range 4 West of the Third Principal Meridian, and the Denmark pit located in Sections 18 and 19 of Township 6 South, Range 3 West of the Third Principal Meridian. The complaint further alleges that the 6360 pit flows into Pipestone Creek and the Denmark pit flows into unnamed tributaries of Galum Creek; that pumpage from both these pits has caused such amounts of settleable solids consisting of coal and clay fines to flow to Pipestone Creek and an unnamed tributary of Galum Creek so as to cause the receiving waters to become turbid and discolored and to cause unnatural bottom deposits in violation of Section 12(a) of the Environmental Protection Act (Act) and Rule 203(a) of the Chapter 3: Water Pollution Regulations (Chapter 3) and Rules 605(a) and 605(b) of the Chapter 4: Mine Related Pollution Regulations (Chapter 4); that these aforementioned violations are violations of Condition 10 of Southwestern's permit for Captain Mine in violation of Section 12(b) of the

Act; that amounts of iron in excess of the standard of Rule 203(f) of Chapter 3 has leached from settled-out coal fines deposited by Southwestern in the Denmark pit drainage ditch and unnamed tributary of Galum Creek, to the waters flowing over those fines and thence to Galum Creek in violation of Rule 605(a) of Chapter 4 and Section 12(a) of the Act; that amounts of sulfate and total dissolved solids in excess of the standard of Rule 203(f) Chapter 3 have leached from the settled-out coal fines by Southwestern in the 6360 pit drainage ditch and Pipestone Creek, to the waters flowing over them in violation of Rule 605(a) of Chapter 4 and Section 12(a) of the Act; and that the continuing nature of the violations indicate Respondent knowingly and willingly caused the violations or in the alternative that if such violations are due to fortuity and represent emergency situations, Southwestern has not reported such emergencies which have caused or threatened to cause the sudden discharge of contaminants into waters of the State in violation of Rule 205(a) of Chapter 4 and of Standard Condition 7 of Southwestern's Permit which constitutes an additional violation of Section 12(b) of the Act. The answer filed December 5, 1975 corrected the location of the 6360 pit to Sections 8 and 9 of Township 6 South, Range 4 West, rather than in Sections 7 and 9 as stated.

A hearing was held in this matter on August 20, 1976 at which time a stipulated settlement was presented for Board approval. No testimony was given at the hearing.

The stipulated facts are as follows. Respondent has operated an open pit mine known as the Captain Mine and a coal processing facility since before February 1973. Pumpages from the active mining area known as the Denmark pit flow through drainage ditches heretofore constructed by farmers to connect to Galum Creek. Pumpages from the 6360 pit flow through drainage ditches to Pipestone Creek. The parties stipulated that Galum Creek, the unnamed tributaries to Galum Creek and Pipestone Creek are "waters of the State." Respondent stipulates that on June 13, 1975 Respondent caused 6360 pit pumpages to flow into a drainage ditch and thence to Pipestone Creek with such amounts of settleable solids, consisting of coal and clay fines, as to cause those receiving waters to become turbid and discolored and to cause unnatural bottom deposits in the drainage ditch and Pipestone Creek. Respondent further stipulates that on June 11, 1975 the Denmark pit pumpages flowed into a drainage course tributary to Galum Creek causing turbidity and unnatural bottom deposits. Southwestern states that on June 13, 1975 amounts of iron leached from settled-out coal fines deposited by Respondent

in the Denmark pit drainage course and unnamed tributary to Galum Creek sufficient to cause those waters to have a concentration of iron in excess of 1.0 mg/l. On June 13, 1975 Respondent further stipulates that amounts of sulfate and total dissolved solids leached from settled-out coal fines deposited by Respondents in the 6360 pit drainage ditch and Pipestone Creek sufficient to cause a concentration of sulfate in excess of 500 mg/l and total dissolved solids in excess of 1000 mg/l. The parties agreed that these incidents were foreseeably incident to Respondent's operations. During the relevant time period, February 27, 1973 through October 8, 1975, Southwestern had been conducting testing and experimentation by which it might attain compliance with the Environmental Protection Act and various other environmental and mining laws. During and after April, 1974 Respondent requested from the Agency recommendations and guidelines for the size of such pumps to prevent overflows. The Agency stipulates that it refused or omitted to make such requested recommendations and guidelines. The conditions complained of were caused by the use of equipment of inadequate size to carry off overflow from the Denmark pit and the 6360 pit.

Respondent was issued a permit for the operation of the Captain Mine on February 2, 1973. On February 24, 1976 the Agency received a Chapter 4 permit application from Respondent which embodied the procedures which Respondent felt would insure compliance at the Captain Mine. On April 16, 1976 the Agency requested more information. A Chapter 4 permit was issued to Respondent on May 21, 1976. A supplemental Chapter 4 permit was issued to Respondent on June 30, 1976.

According to the stipulation settling basins have been built at the 6360 and Denmark pits and are functioning satisfactorily. The sumps in the operating pits have been modified so as to increase their capacity in accordance with standards promulgated by the Agency as a requirement of the issuance of the permits and to reduce the chance of coal fines being picked up by the pumps. Southwestern's employees have been instructed to follow certain procedures which will help prevent coal fines from being dumped in the pit. The bottom deposits in the drainage course between the Denmark pit and Galum Creek have been removed through natural scouring and covered by subsequent siltation to the extent that a significant amount of contaminants are no longer being leached from those deposits to the water in that drainage course.

The parties stipulated that the efforts made by Respondent to date to bring the mine into compliance have been technically practicable and economically reasonable. The suitability of the site is not in issue as the mine is where the sought after minerals are located and can be operated without polluting the waters of the State. The parties further stipulated that the mine has great social and economic value to the community and that failure to be in compliance with the Act and applicable regulations is a potential injury to the general health and welfare of the people. Respondent agreed to pay a penalty of \$6,500. The Agency found this acceptable considering the nature of the conditions and Respondent's efforts to come into compliance.

The Board finds this stipulated agreement to be acceptable under Procedural Rule 333. The Board does find Respondent in violation of Rules 203(a) and 203(f) of Chapter 3, Rules 605(a) and 605(b) of Chapter 4 and Section 12(a) and 12(b) of the Act. The allegation of violation of Rule 205(a) of Chapter 4 is dismissed. A penalty of \$6500 will be sufficient to aid in the enforcement of the Act.

This concludes the Board's findings of fact and conclusions of law.

ORDER

It is the order of the Pollution Control Board that:

1. Respondent is found to have violated Rule 203(a) and 203(f) of Chapter 3: Water Pollution Regulations and Rules 605(a) and 605(b) of Chapter 4: Mine Related Pollution Regulations and Sections 12(a) and 12(b) of the Act. The allegation of violation of Rule 205(a) of the Chapter 4: Mine Related Pollution Regulations is dismissed.
2. Respondent shall cease and desist further violations of the Act and the Regulations.
3. Respondent shall pay a penalty of \$6,500 within thirty-five (35) days of this order. Payment shall be by certified check or money order payable to:

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

Mr. James Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10<sup>th</sup> day of November, 1976 by a vote of 4-0.

  
\_\_\_\_\_  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board