

ILLINOIS POLLUTION CONTROL BOARD
December 2, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-168
)
 HAROLD D. WOODS, General Partner,)
 d/b/a ST. ELLEN LAND COMPANY,)
)
 Respondent.)

Ms. Marilyn B. Resch and Mr. John vanVranken, Assistant Attorneys
General, appeared for the Complainant;
Mr. G. Bradley Hantla, Attorney, appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on a Complaint filed on April 23, 1975, by the Environmental Protection Agency (Agency), alleging that Respondent Harold D. Woods, individually, owned and operated a coal mine in St. Clair County, Illinois, without the requisite permits from the Agency, in violation of Section 12(b) of the Environmental Protection Act (Act) and Rule 201 of the Board's Mine-Related Pollution Regulations (Chapter 4). Ill. Rev. Stat., Ch. 111-1/2, §1012(b) (1975); Ill. PCB Regs., Ch. 4, Rule 201. On June 11, 1975, the Agency filed an Amended Complaint, changing the denomination of Respondent (as shown above), and adding an additional count alleging that Respondent had operated certain equipment capable of emitting contaminants to the atmosphere without the requisite permits from the Agency, in violation of Section 9(b) of the Act and Rule 103(b)(2) of the Board's Air Pollution Control Regulations (Chapter 2). Ill. Rev. Stat., Ch. 111-1/2, §1009(b) (1975); Ill. PCB Regs., Ch. 2, Rule 103(b)(2). A final Amended Complaint was filed by the Agency on October 2, 1975, adding a third count alleging that Respondent's operations had caused the emission of contaminants, constituting air pollution, in violation of Section 9(a) of the Act and Rule 102 of Chapter 2. Ill. Rev. Stat., Ch. 111-1/2, §1009(a) (1975); Ill. PCB Regs., Rule 102.

Three public hearings have been held in this matter. The first was held on June 16, 1975, at the City Hall in Belleville, Illinois. Although public comment was received at that hearing, no substantive evidence was entered by either Complainants or Respondent. At a further hearing held on September 8, 1975, also in Belleville, the parties entered a Stipulation of Fact with regard to Count I of the Complaint, as amended. No evidence or testimony was submitted with regard to Count II because the parties were unable to arrive at a settlement with regard to that Count. (The final Amended Complaint containing Count III had not yet been filed by the date of this hearing.)

A third and final hearing, again in Belleville, was held on September 8, 1976. Despite notice by the Hearing Officer (Sept. 8, 1976, R. 2), neither Respondent nor counsel for Respondent appeared at that hearing. In addition to that notice by the Hearing Officer, Respondent (through counsel) had also been served by the Agency with a Notice to Appear at the September 8, 1976 hearing (id., R. 5). That Notice to Appear was filed with the Board on September 2, 1976. Based on Respondent's failure to appear, the Hearing Officer defaulted the Respondent (id., R. 4, 6).

As a result of Respondent's default, the Board bases this Opinion and Order on the Stipulation filed by the parties on September 15, 1975, with regard to Count I, various citizens' testimony, and evidence and exhibits (including responses to Interrogatories and Requests for Admissions) presented by the Attorney General for the Agency, and the pleadings.

As a final procedural matter, we note that the Board has previously dealt with this case in several decisions on discovery and related matters. Interim Orders of the Board were entered on June 26, November 26 and December 11, 1975; January 14 and April 8, 1976.

The subject of this case is a mine site owned and operated by Respondent Woods in St. Clair County, Illinois, commonly known as the St. Ellen Mine (Stipulation of Fact [hereinafter, Stip.] ¶1). Although the mine itself has not been operated for "quite a few years," (Sept. 8, 1976, R. 32), Respondent is conducting a carbon recovery operation on the mine site, (Stip. ¶3), using coal tailings or coal fines as a raw material, (Sept. 8, 1976, hearing, R. 9). That operation involves considerable movement of various raw and finished materials around the site, use of a rotary dryer, a settling chamber, two cyclones in series, and a Venturi scrubber, (id., R. 9-10). Water discharges from the operation, after treatment in a settling pond, travel through an unnamed tributary into Richland Creek, and then into the Kaskaskia River, (Respondent's Ex. 1 to Stip.; see also, Complainant's Ex. 1 & 2, Sept. 8, 1976).

The status of Respondent's involvement in continuing or future operations on the site is not clear. It is apparent from the Stipulation and testimony by various citizens that operations on the site continued until mid or late 1975, past the filing of the original Complaint, and probably until the final Amended Complaint was filed. It seems, although the record is not clear on this point, that Respondent will continue as owner of the St. Ellen Mine site, with operations to be continued by other unnamed parties, (e.g., Ex. 1, 2 of Sept. 8, 1976, and R. 33, Sept. 8, 1976).

With regard to Count I, Respondent admitted in the Stipulation filed at the second public hearing that it did not have the necessary mine-related pollution permit under Chapter 4 for operations on the site, (Stip. ¶3, 7). By way of mitigation, Respondent showed that by the time of the second hearing in this matter, that permit had in fact been applied for and received, (Resp. Ex. 1 to Stip.). In addition, the Stipulation indicates that Respondent had relied with regard to that permit on an employee charged with the responsibility of obtaining all such permits. That individual was terminated upon the filing of this matter before the Board, (Stip. ¶9A).

Although the violation was stipulated to, neither party addressed the issue of an appropriate penalty for such violation. We feel, in light of the fact that Respondent has presented no testimony under Section 33(c) of the Act, that a \$100 penalty is appropriate to further the purposes of the Act and to safeguard the integrity of the permit system. Ill. Rev. Stat., Ch. 111-1/2, §33(c) (1975). Processing and Books, Inc., v. PCB, 64 Ill.2d 68, 351N.E.2d 865 (1976).

With regard to the remaining Counts II and III of the Complaint, as amended, they are admitted by default. In addition to that default, the record contains considerable evidence presented by the Agency and various citizens substantively proving those violations. Testimony at the September 8, 1976 hearing (R. 7 et seq., 33 et seq.), and Respondent's response to Complainant's Request for Admission, (Sept. 8, 1976, Ex. 1, 2), showed that, (1) the alleged operations by Respondent did in fact occur; (2) they were subject to the permit requirement; and (3) that no permit was received. A prima facie case on Count II, unanswered by Respondent, is thus made.

With regard to the allegation of substantive air pollution in Count III of the Complaint, as amended, testimony by witnesses for the Agency (R. 70, et seq.), and Exhibits (Sept. 8, 1976, Ex. 3A-3G), showed that there were indeed considerable visible emissions from Respondent's facility. Testimony by private citizens at the public hearings in this matter buttressed the Agency's case, and showed without refutation that those emissions caused considerable hardship to the public. The emissions resulting from Respondent's operations caused individuals to remain indoors, badly soiled their homes and personal belongings and generally interfered with the enjoyment of life and property, (e.g., June 16, 1975 hearing, R. 7; Sept. 8, 1976 hearing, R. 15, 21, 26). A prima facie case on Count III, unanswered by Respondent, is thus made.

Inasmuch as Counts II and III have been proved both by default and by substantive testimony and evidence, we feel that a penalty is warranted for the violations shown. With regard to the air-related violations, we have before us no matters in mitigation. Although the exact nature of the operations on the site may have changed or may be changed, such operations will nonetheless continue, (Sept. 8, 1976, R. 33). A penalty should be set which will insure that such operations are carried on in compliance with the Act and this Board's Regulations. For the air permit violations in Count II, we shall impose a penalty of \$1,000.00 to further the purposes of the Act and to safeguard the integrity of the permit system. For the substantive air pollution violations in Count III, we find that a penalty of \$4,000.00 is appropriate, by virtue of the environmental damage caused by past operations, and to prevent future violations and encourage compliance with the Act.

We shall, in addition, Order that Respondent cease and desist all operations on the site unless all appropriate permits have been received from the Agency within 90 days of the date of this Order.

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

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondent Harold D. Woods, General Partner, d/b/a St. Ellen Land Company, is found to have operated a mine site without a permit from the Environmental Protection Agency, in violation of Section 12(b) of the Environmental Protection Act and Rule 201 of Chapter 4: Mine Wastes, of the Pollution Control Board Rules and Regulations, from April 8, 1974 up to and including April 23, 1975.

2. Said Respondent is found to have operated at said site certain equipment constituting an emission source without the required permit from the Environmental Protection Agency, in violation of Rule 9(b) of the Environmental Protection Act, and Rule 103(b)(2) of Chapter 2: Air Pollution, of this Board's Rules and Regulations.

3. Said Respondent's operations on said site are found to have caused air pollution, in violation of Section 9(a) of the Environmental Protection Act and Rule 102 of Chapter 2: Air Pollution, of this Board's Rules and Regulations.

4. Respondent shall pay as a penalty for the above violations the sum of Five Thousand One Hundred Dollars (\$5,100.00), (constituting a penalty of \$100 for the violations in paragraph 1, above, a penalty of \$1,000 for the violations in paragraph 2, above, and a penalty of \$4,000 for the violations in paragraph 3, above), payment to be made within thirty-five (35) days of the date of this Order by certified check or money order to:

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

5. Respondent shall cease and desist all operations on said site unless and until all appropriate permits for such operations have been received from the Environmental Protection Agency within ninety (90) days of the date of this Order.

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 2ND day of December, 1976, by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board