

ILLINOIS POLLUTION CONTROL BOARD
June 18, 1975

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 75-191
)	76-15
WESTERN MINING CORPORATION,)	
)	
Respondent.)	

Mr. George Warren Tinkham, Assistant Attorney General,
appeared for the Complainant.

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

This consolidated case came before the Board as two separate cases PCB 75-191, filed May 5, 1975 and PCB 76-15, filed January 12, 1976. The complaint filed by the Environmental Protection Agency (Agency) in PCB 75-191 alleges that Western Mining Corporation (Western), in violation of Rule 201 of the Chapter 4: Mine Related Pollution Rules and Regulations (Rules) and Section 12(b) of the Environmental Protection Act (Act), on or about March 26, 1975, without receiving a permit from the Agency opened a coal mine in the Southwest Quarter of Section 34, Township 10 South, Range 4 East of the Third Principal Meridian in Williamson County, Illinois; that from March 28, 1975 to April 8, 1975 the mine was closed due to a preliminary injunction issued by the Circuit Court of the First Judicial Circuit, Williamson County, Illinois based on a motion alleging Western was operating without a permit from the Department of Mines and Minerals; and that from April 8, 1975 up to and including April 29, 1975 Western operated the mine without a permit from the Agency in violation of Rule 201 of the Rules and Section 12(b) of the Act until enjoined on April 30, 1975 by the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, whereby Respondent was ordered to desist and refrain from opening its mine without all necessary permits from Complainant. In PCB 76-15 filed by the Agency, the Complaint as amended at the hearing alleges two separate counts of violations of Rule 606(a) of the Mine Rules and Section 12(a) of the Act. It was further alleged that Respondent failed to comply with special permit conditions in violation of Section 12(b) of the Act and that Respondent in violation of Mine Rule 501(a)(1) failed to notify the Agency within thirty (30) days of cessation of all mining or all mine refuse disposal operations that such

operations have ceased. These two cases were consolidated by Board Order on February 11, 1976.

The Agency filed on May 29, 1975 a Request for Admission of Facts and a First Set of Interrogatories. On March 4, 1976 the Agency filed a second Request for Admission of Facts. Western has not responded to any of these documents. Under Procedural Rule 314 unless a response is filed within twenty (20) days after service of the request for admissions the facts requested are deemed admitted. Thus the Board deems admitted all the facts contained in the Requests for Admission of Facts. These facts include:

Admissions of March 4.

On or about March 26, 1975 Western commenced opening a coal mine on property located in the Southwest Quarter of Section 34, Township 10 South, Range 4 East of the Third Principal Meridian, in the County of Williamson, Illinois (hereinafter, "mine site").

Western operated the mine site without an operating permit issued by the Agency on each of the following dates:

April 11, 1975	April 17, 1975
April 15, 1975	April 21, 1975

Western continuously operated the mine site without an operating permit issued by the Agency from March 26, 1975 to April 30, 1975.

Western was warned by the Agency of the necessity of obtaining an operating permit for the mine site on the following dates:

March 27, 1975	March 31, 1975
March 28, 1975	April 11, 1975
March 29, 1975	April 25, 1975

On April 30, 1975, in case number 75-CH-26, a preliminary injunction was issued by the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, ordering Western to desist and refrain from opening its mine without all necessary permits from the Agency.

On May 6, 1975 Western was issued Chapter 4 permit number 1975-MD-503-OP for the mine site by the Agency.

Western has constructed two settling lagoons at the mine site to capture and contain mine runoff.

There is no treatment of the mine runoff prior to its discharge from the settling lagoons.

On August 5, 1975 there occurred a discharge from one of the lagoons which contained the following concentrations: iron, 22 mg/l; pH, 3.6; total acidity, 170 mg/l; alkalinity, 0 mg/l.

The accumulation of mine runoff in the two settling lagoons without treatment allows and threatens the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois.

Western's continuing failure to treat mine runoff constitutes a continuing violation of Section 12(a) of the Act.

On or before June 25, 1975, Western abandoned the mine site.

Western never notified the Agency of the cessation of its mining and mine refuse disposal operations.

Western has abandoned the site without making any efforts to reclaim the site.

The mine site as abandoned, and presently existing causes and threatens environmental damage.

A hearing was held in Marion, Illinois on April 6, 1976. Respondent did not appear at the hearing and was not represented by any party at this proceeding. The Hearing Officer noted that he had sent notice of the hearing and that Respondent appeared to be in default. Procedural Rule 320 provides:

"Failure of a party to appear on the date set for hearing, or failure to proceed as ordered by the Board, shall constitute a default. The Board shall thereafter enter such order as appropriate based upon the evidence introduced at the hearing."

The Board does find Respondent, Western Mining Corporation, in default and based on the admitted facts in violation of all allegations of both complaints as amended at the hearing. (As allowed by Procedural Rule 328).

The Agency produced testimony from two witnesses concerning the violations and the environmental and economic factors involved. Mr. Larry L. Bishop testified concerning the samples he took at the mine (Comp. Ex. 1,2,4). The overflow from the west settling pond had iron, 22 mg/l; pH, 3.6; total acidity, 170 mg/l; alkalinity, 0 mg/l (Ex. 1). The discharge from the east settling pond had pH, 4.2; total acidity 100 mg/l; total alkalinity 0 mg/l (Ex. 1). Mine Rule 606(a) allows iron 7 mg/l; pH, 5-10; and total acidity cannot exceed total alkalinity. The discharges from these ponds were clearly in violation of the Rules. Mr. Bishop testified that he observed on his visits that the land adjoining the mine area was hilly, semi-wooded with good vegetation (R.17). Mr. Bishop described in detail the condition of the mine area.

"The site is typical of an old strip mine area in that it has not been reclaimed. There is spoil, overburden material which--that has not been leveled out, seeded or reclaimed in any way. The analysis collected of water impoundments located within the mine area indicates there is acid producing material exposed. And there is a potential threat of pollution.

"The drainage stream below the west settling basin is starting to accumulate an orangish--yellow-orangish colored deposit indicative of iron deposits as the result of mine drainage.

"The west settling basin is deteriorated and the overflow pipe has fallen approximately four to six feet, thereby lowering the water level in the pond and its capacity to serve as it was originally intended.

. . . .

"The east settling basin, although still intact, shows erosion below the outflow and will most likely go through the same deterioration. (R.16). In addition there is a large amount of erosion on the subject mine site." (R.17).

What little vegetation Bishop observed was volunteer and not planted by the company (R.16).

Mr. Marvin M. King, an aquatic biologist working for the Agency, also testified. The discharges from the mine area flow into Pond Creek to Grassy Creek to the South Fork Saline River. Mr. King stated that the waters that would receive runoff from the mine were clear and grassy and that the water quality in the vicinity was above average for the area (R.27). Mr. King further stated that acidic mine waste would alter the biota of the stream (R.28).

Respondent under Section 31(c) has the burden of showing that compliance would impose an arbitrary or unreasonable hardship as related to Section 33(c) of the Act. Respondent by not appearing waives the right to present these factors. The Board must rely on the information provided by the Agency.

Mr. Bishop testified that from his investigations he has concluded that the Respondent was not of good reputation in the community. He had been told that after deserting the mine, Respondent did not meet its last payroll or pay its royalties and that a similar situation existed at Respondent's mine in Pope County (R.20,21). Bishop further observed that the mine was not suited to the location (R.22). It is a contour mine, stripping around a hill. Even after the coal was exposed, it was proven to be very low quality, low grade coal (R.22). Bishop has seen similar coal mines with similar water pollution problems which have taken care of the problems and still remained in business (R.23).

In this case Respondent has shown blatant disregard for its environmental responsibilities. Respondent operated its mine without a permit, indifferent to warnings by the Agency until Respondent was enjoined from further operation by the Circuit Court of the First Judicial District, Williamson County, Illinois. After receiving a permit Respondent proceeded to violate the special conditions of the permit which required treating the water to prevent pollution. Now Respondent has polluted the water and abandoned the mine. The day of the hearing the waters were still in violation of Rule 606(a) of the Mine Rules (Ex. 4). Until remedied in some manner this damage will continue and multiply, destroying the quality of some of Illinois' cleaner water. The Agency pointed out that in Respondent's own permit the Respondent set forth a means of alleviating the pollution at this site and that it is obvious that Respondent failed to take the steps that it itself deemed reasonable and practicable (R.31). The Board finds that this irresponsible action warrants a heavy penalty. The Board finds that Western Mining is in violation on each of the five separate alleged violations. The potential fine is \$10,000 for each violation and an additional \$1,000 for each day during which violation continues, Section 42(a) of the Act. A penalty of \$12,000 to be paid within thirty (30) days of this order is assessed for the aforementioned violations.

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

Mr. James Young abstained.

ORDER

It is the order of the Pollution Control Board that:

1. Western Mining Corporation is in violation of Rule 606(a) of the Mine Related Pollution Regulations and Section 12(a) of the Act and in violation of Rules 201 and 501(a) of the Mine Related Pollution Regulations and Section 12(b) of the Act.

2. Western Mining Corporation shall pay a penalty of \$12,000 for the violations within thirty days of this order. Payment shall be by certified check or money order made 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 18th day of June, 1976 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board