

ILLINOIS POLLUTION CONTROL BOARD
December 16, 1976

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 76-141
)	
EDWARD OUTLAW d/b/a E & L COAL)	
COMPANY,)	
)	
Respondent.)	

Mr. Robert Barewin, Illinois Environmental Protection Agency, appeared on behalf of the Complainant.
Mr. Edward Outlaw appeared pro se.

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

This matter comes before the pollution Control Board upon a complaint filed on May 12, 1976 by the Environmental Protection Agency (Agency). The complaint alleges that Respondent has been or is engaged in operating a coal strip mine, known as the E & L Mine #2, located in Section 5, Township 11 South, Range 4 West of the 3rd Principal Meridian, in Johnson County, Illinois. It is further alleged the Respondent has in the operation and control of E & L Mine caused or allowed contaminated runoff to enter an unnamed branch of Sugar Creek in violation of Sections 12(a) and 12(b) of the Environmental Protection Act (Act) and of certain regulations of Chapter 3: Water Pollution (Chapter 3) and Chapter 4: Mine Related Pollution (Chapter 4). Specifically alleged are violations of a permit condition in violation of Section 12(b) of the Act; violations of Rule 605(a) of Chapter 4 and Rules 203(a) and 204(f) of Chapter 3; violations of Rule 605(b) of Chapter 4 and Section 12(a) of the Act; and violations of Rule 606(a) of Chapter 4 and Section 12(a) of the Act. It is alleged that Respondent agreed to a compliance plan and schedule on December 10, 1975 to be completed by July 1, 1976 and that Respondent has failed to complete any of the required steps.

Two hearings were held in this matter. The first hearing was held on July 23, 1976. The second hearing was held on October 15, 1976. At the first hearing several portions of the complaint were stipulated to as being correct allegations. The stipulated facts are that the E & L Mine is located as alleged and drains into an unnamed branch of Sugar Creek, which is a tributary to the South Fork of the Saline River. It is

further stipulated that Respondent has since on or before October 9, 1973 operated E & L Mine in such a manner so as to cause or allow discharges into an unnamed branch of Sugar Creek in violation of his permit and Section 12(b) of the Act.

The water upstream from the mine was within the standards of the regulation of the Board (R. 36, 37, Comp. Ex. 1, and 4G). The water samples taken in areas of drainage from the mine and downstream showed violations of total iron, manganese, pH, sulfate and total dissolved solids (R. 13, Comp. Ex. 2A-2G and Comp. Ex. 4A-4F). All of the downstream samples also had an amber discoloration and contained orange deposits and coal fines (Comp. Ex. 2A-2E, 4A-4D). One of two flooded pits was cut to allow the water to drain out (R. 17). At one sampling location (B-3 on Comp. Ex. 1) there is a sub-surface discharge into the stream (R. 20, 21). At this point part of the seepage is from a pooled area which is a result of the abandoned mining operation (R. 21). There is a second source which is seepage from another abandoned mine in the area (R. 21).

The Board finds that Respondent is in violation of all the allegations as alleged in the complaint. Prior to a final determination in this cause the Board must consider the factors of Section 33(c) of the Act. The tested samples show clearly that the water polluted from the mine area greatly exceeds the allowable standards for total iron, manganese, pH, sulfate and dissolved solids (Comp. Ex. 2A-2G, 4A-4F). These impurities must then be dealt with at a cost to the people downstream from the mine. Uncorrected this problem can continue indefinitely. Currently the mine has no social or economic value. The mine has not been used for over a year (R. 61). An abandoned mine has no use unless it is properly reclaimed. The location of the site is not in issue. Mr. Outlaw does have the proper permits for mining from both the Agency and the Department of Mines and Minerals (Mines and Minerals) (Comp. Ex. 7, R. 57). In order to receive a permit from Mines and Minerals Mr. Outlaw posted a bond of \$1,000 per acre (R. 58). Mines and Minerals is currently in the process of requiring forfeiture of \$4,000 of the bond in order for that Department to do reclamation work at the mine (R. 58). The fact that work will be done by Mines and Minerals although not being necessarily in compliance with Board regulations is indicative that the necessary reclamation is technically and economically feasible.

Mr. Outlaw appears to be unable to afford the necessary work. Mines and Minerals is asking forfeiture of the bond, which Mr. Outlaw is not opposing, in order to expedite the process (R. 72). Mr. Outlaw rather than hire an attorney spent the money he had to cover part of the coal that was causing acid water (R. 60). Mr. Outlaw's operation went broke (R. 61). His equipment, a dragline, a loader, and a C-pull, have been repossessed (R. 62). Two lending institutions had liens on the equipment (R. 63). The land itself is leased on a royalty basis so nothing is now being paid on the land (R. 63). The Internal Revenue Service has a \$10,000 lien on Respondent's property (R. 61). Fabick Machinery Company has a judgment against Respondent for \$14,000 (R. 65). The Bank of Egypt has a judgment against Respondent for \$14,000 plus attorney's fees and costs (R. 66). A judgment in excess of \$7,000 is also held by the Bank of Harrisburg (R. 66). There are also some other pending court cases not yet reduced to judgment (R. 67). Respondent has \$1.65 at the Bank of Egypt and four to six dollars at the Bank of Goreville (R. 69). Mr. Outlaw, who is 61, is attempting to obtain Social Security benefits, compensation for having Black Lung, and a Veteran's Pension (R. 69). He lives with his wife, who is not employed (R. 70). He has borrowed money from personal friends and does not have the money to file bankruptcy (R. 80). Mr. Outlaw did make a trip to Springfield to see if there was any way the bond could be released sooner so that the necessary work could be done (R. 60, Resp. Ex. A).

Larry Bishop of the Agency attended a meeting with Mr. Outlaw, Mr. Medvick of Mines and Minerals and several others (R. 86). At this meeting it was stated that it could possibly take one to two years before the money could be used to reclaim the property (R. 87). Mr. Bishop had also been at the site two days prior to the hearing (R. 82). Some coal which had previously been exposed had been covered; however, there was much other work yet to be done (R. 83).

It is clear Mr. Outlaw has violated the conditions of his permit and several water quality standards. It is also apparent Mr. Outlaw has neither the money nor the means to correct the situation. The Board finds that the violations in this case are such that would normally call for a substantial penalty. However, because of Mr. Outlaw's difficult financial situation and the fact that the bond with Mines and Minerals will be forfeited to provide funds for reclamation work, no penalty will be assessed. Respondent shall cease and desist any further violation of the Act.

This Opinion concludes 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. Edward Outlaw is found to be in violation of Sections 12(a) and 12(b) of the Environmental Protection Act, Rules 203(a) and 204(f) of the Chapter 3: Water Quality Standards, and thereby Rule 605(a) of the Chapter 4: Mine Waste Regulations and Rules 605(b) and 606(a) of Chapter 4.

2. Respondent shall cease and desist further violations of the Regulations and the Act.

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 16th day of December, 1976 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board