

ILLINOIS POLLUTION CONTROL BOARD
April 8 , 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 75-284
)
HARRISBURG COAL COMPANY,)
)
Respondent.)

Mr. Barry Forman, Assistant Attorney General, Attorney for Complainant.
Mr. J. C. Mitchell, Mitchell & Armstrong, Ltd., Attorney for Respondent.

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

This case comes before the Board on a Complaint filed July 24, 1975 by the Environmental Protection Agency (Agency) alleging that Harrisburg Coal Company operated an underground coal mining facility, designated as Mine #1, from on or about November 25, 1972 at all times pertinent to this complaint without a permit granted by the Agency in violation of Section 12(b) of the Environmental Protection Act (Act). At the mine site (Sections 26 and 27, Township 9 South, Range 4 East in Williamson County, Illinois) a presently abandoned coal processing facility and a mine refuse area are located. From on or about July 1, 1970 continuing until an unknown date in June, 1973, Respondent deposited mine refuse at this site in such place and manner so as to create a water pollution hazard in violation of Section 12(d) of the Act. The mine site is adjacent to an unnamed tributary of Bankston Creek, a tributary of the middle fork of the Saline River which flows into the Ohio River. From on or about April 16, 1972 including, but not limited to, the following dates: May 2, 1972; May 30, 1972; July 24, 1973; July 26, 1973; February 20, 1974; August 30, 1974; December 23, 1974, Respondent is alleged to have caused or allowed unnatural bottom deposits, color and turbidity or matter in concentrations toxic or harmful to human, animal, plant or aquatic life to be present in the aforementioned tributary which is defined as waters of the State of Illinois (Section 3(o) of the Act) (Rule 104 of Chapter 3: Water Pollution) in violation of Rule 203(a) of Chapter 3 and thereby in violation of Section 12(a) of the Act.

Respondent is alleged to have caused or allowed the discharge of contaminants into the aforementioned tributary of Bankston Creek so as to cause violations of Illinois Water Quality Standards with regard to: pH less than 6.5, Rule 203(b); total iron greater than 1 mg/l, Rule 203(f); total manganese greater than 1 mg/l, Rule 203(f); sulfate greater than 500 mg/l, Rule 203(f); and total dissolved solids greater than 1000 mg/l, Rule 203(f). Each of the Chapter 3 Rule violations are also alleged violations of Section 12(a) of the Act.

Respondent, as a result of operations at Mine #1, from November 25, 1972 until an unknown date in June 1973 disposed of mine refuse without a permit from the Agency in alleged violation of Rule 201 of Chapter 4: Mine Related Pollution and Section 12(b) of the Act. In addition, by disposing of refuse in such a manner as to cause or allow pollution of the aforementioned tributary of Bankston Creek, Respondent is alleged to have violated Rule 401(a) (1) of Chapter 4.

Respondent is alleged to have ceased mine refuse disposal operations at Mine #1 at some unknown date in June 1973 without notifying the Agency within 30 days in violation of Rule 501(a) of Chapter 4, and had failed to timely grade and vegetate the mine refuse disposal area in violation of Rule 401(e) of Chapter 4. By failing to obtain a permit to abandon the mine refuse operation, Respondent is alleged to have violated Rules 201 and 502 of Chapter 4 and Section 12(b) of the Act.

The effluents from Mine #1 previously alleged to have caused violations of water quality standards (Chapter 3, Rules 203(a), 203(b), and 203(f)) are further alleged to cause violations of Rules 605(a), 605(b), 606(a) of Chapter 4 and thereby Section 12(a) of the Act.

At all times pertinent to the complaint, Respondent operated a coal preparation and processing plant known as the Barbara Kay Tipple located in Williamson County, in Section 18 of Township 9 South, Range 4 East of the Third Principal Meridian. Respondent is alleged to have operated the tipple and disposed of the mine refuse without an Agency permit in violation of Rule 201 of Chapter 4 and thereby in violation of Section 12(b) of the Act.

On October 20, 1975, Respondent, Harrisburg Coal Company, filed a pleading to the Board styled "Third Party Complaint" which was taken to be a motion to include Arlie King and LaVern King as third party Respondents. An interim order was passed by the Board on November 6, 1975 directing Arlie King and LaVern King to be named as third party Respondents.

Mr. Melroy B. Hutnick, Hearing Officer, by letter dated December 15, 1975 requested the intervention of the Board to cause a hearing to be held since the Attorney for Respondent did not answer a letter or return telephone calls made to attempt to set the hearing. An interim Order of the Board passed December 18, 1975 directed the hearing to be set in not less than 30 nor more than 45 days.

A hearing was held January 29, 1976 in Herrin at which time a Stipulation of Facts and Agreed Settlement was entered into by the parties. Complainant's Exhibits Nos. 1 through 9 were entered into evidence.

In addition to the Hearing Officer and Attorneys mentioned before, Mr. George W. Tinkham, Attorney, Enforcement Section, Water Pollution Control Division, Agency and Mr. Paul T. Austin, Attorney for Respondent, were present.

At the hearing all alleged violations were admitted (R.27). Applications for operating and construction permits were submitted on January 28, 1976 (R.9). Although the Agency had not had time to evaluate the applications, it was noted that"at this point that it may be inadequate in several respects" (R.9). It was agreed that all parties are bound to exercise reasonable and due diligence so that construction permits would be issued by May 1, 1976 (R.17,18). All parties agreed that no useful purpose would be served by shutting down the mine as long as due diligence was shown in obtaining of permits and attendant pollution abatement. The cost of abatement was agreed to be \$75,000 (R.10). It was agreed it has always been technologically feasible to abate pollution at both locations (R.10). Financial statements entered into evidence (R.40,41) for the years ending June 30 of 1972, 1973, 1974 show retained earnings of \$146,183.76 at the end of this period and no evidence of economic hardship. It was agreed that the

location of both facilities was appropriate and that there was social and economic value to the continuing operation of the Harrisburg Coal Mine (R.41)(Ex. 1).

The posting of a performance bond by Respondent with the Office of the Recorder of Williamson County in the amount of \$75,000 was agreed to assure diligence in compliance with the Regulations, and thus to assure completion of the pollution abatement (R.13). It was agreed that the completion date should be not later than six months from the date of the Board Order (R.12) and that monthly progress reports will be made to the Agency (R.35,36).

In clarification of the third party respondents, Arlie and LaVern King, it was agreed that they were included as part of Harrisburg Coal Company (R.34).

The Board accepts the Stipulated Facts, methods of compliance, and penalty agreed upon of \$15,000 (R.28). It further notes from the Exhibits (which include pictures and analysis of effluent waters) an all too familiar situation of highly polluting effluents from mine refuse areas entering and rendering some streams of the Saline River drainage system sterile of all naturally occurring living matter even to the extent of bank vegetation.

On the basis of the Stipulation and the foregoing, we find that Respondent did violate the Act and Regulations as charged in the Complaint by operating: (1) Mine #1, a source of water pollution, without the necessary permits from November 25, 1972 to at least the Hearing Date in violation of Section 12(b) of the Act; (2) a coal mine preparation facility and refuse area from July 1, 1970 to some date in June 1973 without the necessary permit in violation of Rule 201, Chapter 4 and thereby Section 12(b) of the Act; (3) a second coal preparation facility and mine refuse from some unknown date in June or July of 1973 continuing until at least the Hearing Date without an Agency permit in violation of Rule 201 of Chapter 4 and thereby of Section 12(b) of the Act; and (4) by abandoning aforementioned mine refuse site at Mine #1 without timely notifying the Agency or obtaining a permit to do so in violation of Rules 501(a), 201, and 502 of Chapter 4 and Section 12(b) of the Act and failing to timely grade and vegetate the abandoned refuse area in violation of Rule 401(e) of Chapter 4.

Other violations included pollution of waters of the State of Illinois by violation of Rules 203(a), 203(b) and four different violations of 203(f) of Chapter 3; each violation of Rule 203 is also a violation of Section 12(a) of the Act. The effluent waters from the mine refuse area did cause violations of Rules 605(a), 605(b) and 606(a) of Chapter 4 and thereby violations of Section 12(a) of the Act, the deposition of mine refuse in such place and manner so as to create a water pollution hazard in violation of Section 12(d) of the Act.

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

ORDER

1. Respondent, Harrisburg Coal Company has operated the aforesaid facilities in violation of: Section 12(a), 12(b) and 12(d) of the Environmental Protection Act; Rules 203(a), 203(b) and 203(f) of the Water Pollution Regulations; and Rules 201, 401(a)(1), 401(e), 501(a), 502, 605(a), 605(b) and 606(a) of Mine Related Pollution Regulations and shall pay a penalty of \$15,000 for such violations. Penalty payment by certified check or money order, payable to the State of Illinois shall be made within 60 days of the date of this Order to: State of Illinois, Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

2. Within 30 days of the date of this order Respondent shall submit, in a form acceptable to the Environmental Protection Agency, a performance bond in the amount of \$75,000 covering the conditions outlined in the foregoing Opinion to achieve compliance with all Regulations; such performance bond shall be placed with the Office of the Recorder of Williamson County, Illinois; release of such bond shall be effected by the Environmental Protection Agency upon compliance with all Regulations.

3. Respondent will submit monthly progress reports on the first of each month subsequent to the date of this Order; such reports shall be sent to the Illinois Environmental Protection Agency, Division of Water Pollution Control, Variance and Technical Analysis Section, 2200 Churchill Road, Springfield, Illinois 62706.

4. Respondent shall exercise due diligence so as to obtain all necessary permits in a period not greater than six months from the date of this order and required construction permits will be obtained by May 1, 1976.

5. Respondent shall, within 35 days of the date of this Order, submit to the Environmental Protection Agency, Manager, Permits Section, Division of Water Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706 and to this Board, a Certificate of Acceptance in the following form:

I (We), _____, having read the Order of the Pollution Control Board in Case No. PCB 75-284, understand and accept said order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Signed _____

Title _____

Date _____

Mr. James Young abstained.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 8th day of April, 1976 by a vote of 4-0.

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