

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-49
)
)
 PHILLIP KANE and ROY LANE, d/b/a)
 Shawnee Mining Company,)
)
 Respondent.)

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

This case involves a two count complaint filed February 3, 1975 alleging numerous violations of the Environmental Protection Act (Act) and of Chapters Three (Water Pollution) and Four (Mine Related Pollution) of the Board Rules and Regulations.

Respondents, Phillip Kane and Roy Lane, d/b/a Shawnee Mining Company (hereafter Shawnee), are charged with conducting a strip mining operation by removing the overburden on property located near Eddyville in Pope County. This activity is alleged to have occurred from October 7, 1974 until December 4, 1974, except for a brief period beginning October 18, 1974 and ending on an unknown date.

Count One of the complaint cites Shawnee for operating without a permit from the Environmental Protection Agency, in violation of Rule 201 of Chapter Four and Sections 12(a) and (b) of the Act. Count Two alleges violations of Rules 203(a) (general standards) and 208 (non-degradation) of Chapter Three, and of Rule 301(a) (depositing of spoil) of Chapter Four. Each of the above violations is also alleged to constitute a separate violation of Section 12(a) of the Act. Finally, Shawnee is also alleged to have violated Section 12(d) of the Act by depositing contaminants upon land so as to create a water pollution hazard. These alleged violations involve the water quality of Lusk Creek and an unnamed intermittent stream tributary thereto.

A hearing was held on March 21, 1975 at which a Stipulation of Facts and Proposal For Settlement were entered. Shawnee admitted that it violated all section and rules of the Act and regulations as alleged in the complaint. The parties agreed to a penalty of \$2,000 for these violations. The Stipulation further provides that Shawnee obtained a proper permit on February 3, 1975 and that the violations had ceased.

On the basis of the Stipulation, which constitutes the complete record in this matter, we find that Shawnee did violate the Act and regulations as alleged. We further find that the stipulated settlement of \$2,000 constitutes a reasonable penalty for these violations. In consideration of Section 33 of the Act we find there are insufficient facts to determine the degree of inquiry, the social and economic value, or the suitability of the pollution source to the area in which it is located. The practicability and reasonableness of reducing or eliminating the discharge is indicated by the fact that the violations have now ceased.

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

ORDER

Respondent, Phillip Kane and Roy Lane, d/b/a/ Shawnee Mining Company, shall pay a penalty of \$2,000 for the violations of the Environmental Protection Act and of Chapters 3 and 4 of the Board Rules and Regulations found herein. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

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 10th day of July, 1975 by a vote of 5-0.


Christan L. Moffett, ~~clerk~~
Illinois Pollution Control Board