

ILLINOIS POLLUTION CONTROL BOARD
September 29, 1975

PEABODY COAL COMPANY,)
a Corporation,)
)
Complainant,)
)
)
v.) PCB 75-274
)
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by Mr. Dumelle):

The Motion to Dismiss filed by Respondent on August 4, 1975 is granted. Counts I and II are dismissed because of insufficiency in that Complainant has not included sufficient matter which will demonstrate that the mine activities will not violate Rule 605(a) of Chapter 4: Mine Related Pollution and Part 2 of Chapter 3: Water Pollution Regulations. Complainant's challenge of the regulation would better be directed in a regulatory amendment proceeding.

Count III is dismissed because the Board lacks jurisdiction in a permit appeal case to hear appeals concerning certification of National Pollution Discharge Elimination System (NPDES) permits by Respondent (see Chrysler v. EPA, PCB 74-366 and 74-466).

Count IV is dismissed without prejudice as an inadequate enforcement complaint. In dismissing, we do not hold that an appropriate enforcement case could not be heard. Respondent by misapplying the rules and regulations might be found in violation of an appropriate section of the Act or the rules and regulations.

Peabody is free to appeal the determination by the Agency that permit applications should be denied because Water Quality Standards of Chapter Three and Rule 605(a) of Chapter Four would be violated by the activity for which the permit is sought.

The Board is cognizant of Peabody's plight in regards to State and Federal permit programs. However, until Illinois has been delegated the NPDES permit program, the Board has no direct jurisdiction to review the actions of the Agency in certifying NPDES permits.

A petitioner can request a variance from the State rule in question. Should the Board grant the variance, such petitioner could request that the Agency modify the certification, or request the U.S. EPA to modify the NPDES permit to reflect the variance. If the Agency has erred in applying the State standards in the certification process, the Board could conceivably hold that petitioner did not need a variance because it was not subject to such a condition. Presumably, the Agency would then modify the certification, or the U.S. EPA would modify the NPDES permit if it has been issued with the erroneously applied State requirements.

The above captioned case is dismissed without prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 29th day of September, 1975 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board