ILLINOIS POLLUTION CONTROL BOARD

February 27, 1973

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
vs.	)	PCB 72-63
TRUAX-TRAER COAL COMPANY, a division of CONSOLIDATION COAL COMPANY, Respondent.	)	
ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
vs.	)	PCB 72-153
CONSOLIDATION COAL COMPANY, Respondent.	)	

Frederick C. Hopper, Assistant Attorney General for the EPA
William F. Green, Attorney for Respondents

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Case No. 72-63 is an enforcement action against Truax-Traer Coal Company, a division of Consolidation Coal Company, alleging that Respondent had caused air pollution by allowing the emission of coal dust and other particulate matter in violation of Section 9(a), Environmental Protection Act. It is alleged that Truax-Traer Coal Company owns, controls,"or is responsible for" a 57 acre abandoned slurry field consisting mainly of coal fines located south of Pinckneyville in Perry County, Illinois.

Case No. 72-153 is an enforcement action against Consolidation Coal Company and involves the same property. The EPA alleges that Respondent owns and controls the discontinued strip mine operation of some 600 acres (the Pyramid Mine). The EPA charges that Respondent deposited contaminants in the form of a gob pile and other refuse on the land so as to create a water pollution hazard, allowed the discharge of contaminants so as to cause water pollution, bottom deposits of coal fines in Chicken Creek, and has created a nuisance from the color and odor of the discharges in Chicken Creek.

Respondents filed various Motions attacking the constitutionality of the Environmental Protection Act and of the proceeding generally. Respondent claimed that the Statute is unconstitutional under the doctrine of separation of powers (Article II, Section 1, Illinois Constitution), constitutes an unlawful delegation of legislative power to an administrative agency (Article IV, Section 1, Illinois Constitution), and is an unlawful attempt to confer judicial powers on an administrative agency (Article IV, Sections 1 and 9, Illinois Constitution). We have previously considered these constitutional questions in EPA vs. Granite City Steel, PCB 70-34; EPA vs. Modern Plating Company, PCB 70-38 and PCB 71-6 and will adhere to our earlier decisions. These Motions to Dismiss are denied.

Respondent claims that evidence submitted at the hearing was either inadmissable or insufficient to prove the allegations of the Complaint. We do not rule upon all of these objections for the reason that a Stipulation for Settlement was submitted, and we will consider the testimony only as it relates to that Stipulation. We will not consider the evidence for any other purpose since the EPA had failed to comply with our discovery rules. Some 3 1/2 months prior to hearing, Respondent propounded interrogatories to the Complainant requesting the names of witnesses who had observed emissions of particulate matter, who had collected samples and run tests and therefore had knowledge of the quantity and type of emissions and the names of those witnesses who had suffered injury or unreasonable interference with their property as a result of emissions from the Respondent's property. Respondent also asked the EPA to state whether it had photographs, reports or tests relating to the alleged air pollution. Our Rule 313 states that "the hearing officer shall order the following discovery upon written request of any party: list of witnesses who may be called at the hearing". Respondent's counsel objected strenuously to proceeding without the list of witnesses but upon the date of hearing did agree to waive the objection for the purpose of permitting testimony in support of the settlement agreement. In view of that Stipulation we accept the record for settlement purposes. At the same time we take this opportunity to emphasize that our discovery rules shall be enforced. In a contested hearing, witnesses who are not disclosed pursuant to properly submitted interrogatories shall not be permitted to testify. Oral disclosure of witnesses on the date of hearing is no guarantee against surprise and is not compliance with the discovery rule.

The material submitted in support of the settlement stipulation indicates that the Truax-Traer Coal Company no longer exists. This Corporation at one time actively mined the area in question but discontinued active mining operations in 1959 and dismantled its plant in 1960. Consolidation Coal Company purchased all of the

stock of Truax-Traer Coal Company in 1962. Subsequently, Truax-Traer was dissolved. Consolidation Coal Company has never mined coal from the land in question and has no present or future plans to mine coal from it. Consolidation Coal Company continues to deny that it has any liability under the Environmental Protection Act but nevertheless, has entered into an agreement with the Environmental Protection Agency for the purpose of cleaning up the property.

During the time the property was being actively mined, coal was mechanically washed of dirt, coal fines and other materials, and the waste products were deposited on the land in the form of slurry piles. The slurry field, at the present time, contains an estimated one million tons of deposited material. This material is blown about during a strong wind and is deposited upon the property of persons living in the area. Material from the slurry pile has covered porches and automobiles, has seeped through windows into homes and, it is claimed, has pitted aluminum material.

An EPA employee visited the mine and collected water samples which were delivered to the State laboratory in Carbondale for analysis. During the visit he observed seepage coming from the dam around the slurry pond and followed the seepage to its entrance into Chicken Creek. The flow in the ditch was slightly turbid and had a slight amber discoloration. Coal fines, coal refuse and a rusty orange deposit were observed in the stream bed--a violation of SWB-14 Rule 1.03(a). The stream bed is covered with approximately 2 to 3 feet of coal refuse and coal fines for approximately 1/4 mile downstream. Stipulated photograhs show these conditions of contamination quite clearly. The samples collected by the EPA investigator revealed that the discharge to Chicken Creek had a pH of 4.8 in violation of SWB-14 Rule 1.05(b). The Standard is 6 to 9 pH.

The evidence clearly indicates that property now owned by Respondent Consolidation Coal Company is a source of both air pollution and water pollution in the area. Respondent claims that it did not cause the gob pile or slurry field to be deposited upon the land and has not "allowed" the emissions from these sources. Nevertheless, Respondent is willing to enter into a Stipulation for the abatement of the pollution. The Stipulation includes a short term proposal to immediately eliminate the pollution hazard and a long term proposal to develop a permanent solution for the disposition of this gob pile and slurry field.

Stage 1 of the settlement provides for:

1. Continued maintenance of a previously constructed $49,000 levee located between the open strip pit and public waters to minimize runoff and seepage.

2. The pumping of water from the strip pit to the slurry area to completely saturate the slurry area and thereby prevent the blowing of dust. (Cost of pump, pipe and fittings $8900.)

3. A system for patroling the levees, monitoring the air and water, analyzing seepage, and reporting findings to the EPA at agreed periods.

4. Installation of a snow fence (cost $1,749) to break up the air flow and reduce the blowing of particulate matter.

All of Stage 1 was to be completed by October 31, 1972 and presumably is now in effect. Respondent has agreed not to discontinue the maintenance of the temporary program without obtaining the consent of the EPA.

Stage 2 of the proposed settlement provides for use of the property in a training program and is intended to result eventually in the complete reclamation of the site. The plan is to convey the land to another corporation, the Southern Illinois Land and Human Resource Development Corporation, to develop a program of training minority and nonskilled people from Southern Illinois in skills associated with the reclaiming and developing of waste lands in that part of the State. Southern proposes to reclaim the coal fines and the slurry pile for use in Southern Illinois and possibly other areas as a partial means of off-setting operation costs.

Many questions may be raised regarding this pilot project. Nothing has been submitted to us at this point to indicate whether the project is feasible from a financial or ecological standpoint. The quality of the coal fines in question may not be high enough to market. In the record there are indications that the heat content of this slurry material lies somewhere between 9,000 and 9,800 BTU/lbs. which is 2,000-3,000 BTU/lbs. less than that generally used by power plants. The material, therefore, may have a low heat content and at the same time, it may have a high sulfur and ash content. The demand for material of this type is presently very low. More data is needed to indicate whether the use of this fuel would result in a violation of our Regulations.

The most recent information does not show any firm source of funding for Southern. The Office of Economic Opportunity has apparently rejected the Corporation's application for funds. With an uncertain market and without OEO financial backing the project may be in trouble from the beginning. It is far from clear to us that the parties have arrived at a permanent solution for the use of this land.

However, we believe the parties should proceed with their planning. We cannot anticipate what final plans may be developed and will not at this point indicate our approval or disapproval. We will retain jurisdiction in this matter and reserve the power to review and pass upon the plan for final reclamation and the contracts, conveyances and other documents proposed to transfer the property to the not-for-profit organization and to carry out the permanent program. Stage one of the plan will put an end to the air and water pollution and provide the parties with the time so that they may thoroughly explore a more permanent program. We approve the temporary abatement program and we hold our final decision in abeyance while the parties proceed to make further plans for the development of the permanent program. There will be no financial penalty. We see no need to press for financial penalties under these circumstances and are very eager to provide that atmosphere which will lead to a voluntary cleaning up of the mine waste areas of Illinois.

ORDER

It is ordered that:

1. Phase 1 of the settlement proposal be and it is hereby approved in all respects. Respondent shall continue maintenance of the levee in such condition as to prevent direct leakage through the levee and to minimize the runoff from the strip pit and areas surrounding the strip pit. Respondent will pump water from the pit onto the surface of the slurry area and ensure that the surface of the slurry area is completely saturated during all weather conditions, and will also install a 48 inch high snow fence across the entire slurry area perpendicular to the prevailing wind to reduce the blowing of fine particulate matter. The Respondent will set up a system for monitoring the air and water as specified in this Opinion, the details, however, to be agreed upon between the Environmental Protection Agency and the Respondent.

2. The action specified in paragraph 1 will be taken as soon as possible and shall not be discontinued by Respondent without the consent of the Agency.

3. Respondent and the EPA should continue with the planning for Phase 2 of the settlement as specified in this Opinion, and report progress to this Board when substantial progress has been made, but in no event later than six months from the date of this Order. The parties shall not consummate Phase 2 of the settlement plan without revealing its details to this Board and without the approval of this Board. We retain jurisdiction and the power to review and pass upon the plan for final reclamation and the contracts, conveyances and other documents proposed to transfer the property to the not-for-profit organization and to carry out the permanent program.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 27th day of February, 1973 by a vote of 3 to 0.

Christan L. Moffett