

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1972

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-72
)
KIENSTRA CONCRETE INC.,)
)
 Respondent.)

Thomas J. Immel, Assistant Attorney General for the EPA
R. Emmett Fitzgerald, Attorney for Respondent

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

Respondent Kienstra Concrete Inc. operates a concrete plant on 23 acres at Edwardsville, Illinois. Respondent first leased the property in 1959 then purchased it from Chicago and Northwestern Railway Co. in 1964. More than 25 years prior to Kienstra's ownership of the property it had been used for an underground coal mine, and during that time coal mine wastes were deposited on the land. The resulting slag pile or gob pile existed on the property when it was acquired by Kienstra.

The Environmental Protection Agency now alleges that Respondent caused, threatened or allowed the discharge of mine waste runoff and acids so as to cause water pollution. Kienstra is also charged with depositing concrete waste matter upon the land in such manner as to create a water pollution hazard.

A Stipulation for Settlement reveals that Kienstra's handling of concrete waste water constituted a relatively minor violation. It had been the custom of Respondent's employees to wash out concrete trucks near a creek which flows through the property, and some of the waste water drained into the creek. Respondent now dumps concrete waste water into a pit which has been dug for that purpose. The parties refer to this violation as "occasional or technical" and state that it has been "adequately corrected" by construction and use of the dumping pit.

The slag pile however, has been a major source of water pollution. The unnamed creek which flows near the slag pile empties into the Cahokia Creek which in turn empties into the Mississippi River. Below Respondent's property the creek is highly turbid, a milky white or yellow-orange in color, subject to foaming and does not support aquatic life. These conditions do not exist in the creek above Respondent's property. An EPA

investigator observed heavy deposits of a white-orange marbled material in the bed of the stream just below Respondent's land. Analysis of water samples taken at several places above and below the slag pile show that the creek receives heavy concentrations of acid and iron from Respondent's land. The Stipulation states that these violations of the Environmental Protection Act were "created and caused more than 25 years ago by the old mining operations on the lands owned by Respondent and were not caused by any direct acts of Respondent".

In an attempt to remedy the conditions and fully settle the controversy, Kienstra has agreed to cover the mine slag with earth and then plant vegetation to prevent erosion. This will be accomplished by December 31, 1972. It is agreed that the earth cover will be brought from an area a substantial distance from the slag pile and will be deposited to a sufficient depth that future rain and other moisture in the area will not contaminate the creek.

Kienstra "assumes the responsibility for the work actually correcting and remedying the violations." The cost of the project will be between \$15,000 and \$20,000. Respondent will supply the EPA with a performance bond in the amount of \$15,000 and will make monthly progress reports to the EPA.

We are asked to approve the Stipulation; find that Respondent without wrongful intention violated the Environmental Protection Act; and, in assessing a penalty, consider that the problem was created by a previous owner, and that Respondent will have expense in correcting the situation.

We do approve the Stipulation. A penalty in the amount of \$100 will be imposed for the careless disposal of concrete waste. This violation was relatively minor, of short duration and has been voluntarily corrected by the Respondent.

No monetary penalty will be assessed against Kienstra for the mine waste pollution. The mine wastes were apparently a major source of pollution for many years but Kienstra was not at fault in accumulating the slag pile and has shown real cooperation in the clean up effort. Respondent's expenditure to cover the mine wastes with earth and vegetation will be substantial.

We condemn those who lay waste to our natural resources but commend the subsequent property owners who will spend their cash to abate a pollution source they did not create. It will take more of this spirit of cooperation to clean up the mining country. Our decision not to impose a penalty here will perhaps be an inducement for others to undertake similar abatement programs.

Our goal is environmental improvement. Monetary penalties will be imposed where necessary to achieve that goal, and they will be omitted when we believe environmental quality will be enhanced by such a course.

The Stipulation is approved in all respects.

ORDER

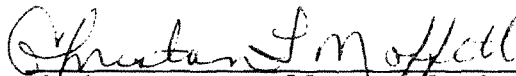
It is ordered that:

1. Respondent secure sufficient earthen cover from a tract away from the area in which the old mine slag pile is presently located and use it to completely and thoroughly cover the mine slag and other sources of contamination to a sufficient depth that future rain and other moisture in the area will not, either alone or in combination with matter from other sources, contaminate the subject unnamed tributary of Cahokia Creek. Said earthen cover will be supplied either from an adjacent tract owned by Illinois Terminal Railroad Company or from a portion of the tract owned by Respondent but located a substantial distance from the mine waste storage area.
2. Respondent promptly plant appropriate vegetation upon the said earthen cover so used in such manner as to prevent wash and erosion.
3. Respondent fully accomplish the acts referred to in Paragraphs 1 and 2 above on or before December 31, 1972 all at the expense of Respondent.
4. Respondent perform the above mentioned work under the direction or supervision of Civil Engineer Willard G. Flagg, Edwardsville, Illinois, who will make monthly reports to the Environmental Protection Agency as to the progress of the work.
5. Respondent warrant to the Environmental Protection Agency that Respondent will have the work performed in a workmanlike manner and assume the responsibility for the work actually correcting and remedying the violations.
6. Respondent supply the Environmental Protection Agency with a performance bond in the amount of \$15,000 to

guarantee the performance of the acts referred to in Paragraphs 1 and 2 of this Order, with a commercial bonding company as surety on the performance bond.

7. Respondent shall pay to the State of Illinois by December 31, 1972 the sum of \$100 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois, shall be made to: Fiscal Services Division, Illinois EPA, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board certify that the above Opinion and Order was adopted on the 8th day of November, 1972, by a vote of 5 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board