

ILLINOIS POLLUTION CONTROL BOARD
January 4 , 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
 v.) PCB 78-64
 MOUSHON CONSTRUCTION COMPANY,)
 INC., a Nevada corporation,)
)
 Respondent.)

MR. DOUGLAS P. KARP, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. GARY ORR, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board upon a complaint filed on March 10, 1978 by the Environmental Protection Agency (Agency). The complaint alleges that Respondent has operated a sand and gravel mine without a permit in violation of Rule 201 of Chapter 4: Mine Related Pollution Regulations (Chapter 4) and Section 12(b) of the Environmental Protection Act (Act). The complaint further alleges a violation of Rule 301 of Chapter 4. A hearing was held on September 14, 1978.

An Agency inspector, James E. Kammueler, testified to seeing on August 5, 1976 heavy equipment, a classifier, a weigh scale for trucks and several piles of sand and gravel (R. 37, Ex. 5). No people were observed at the site. On November 10, 1977 the site was essentially unchanged except for some change in the amount of sand and gravel piled up (R. 51). No evidence of mining in the stream bed was observed (R. 72).

A second Agency employee, Jay Rankin, visited the site on April 7, 1978 (R. 111). He observed sand and gravel stockpiled (R. 113). He saw no mining equipment (R. 113).

The Agency relies heavily on a statement by Mr. Moushon made over the telephone that he had mined the stream bed of Farm Creek; however, the time of this mining was not established (R. 91). Mr. Moushon states he did take gravel from the creek bed prior to 1950 (R. 128, 131). Neither Mr. Moushon nor Moushon Construction Company, Inc. owns the land in question (R. 124). Moushon Construction Company, Inc. was

issued a mining permit in May, 1978 (R. 106). There has been mining equipment stored on the site; however, it was removed in the latter part of November, 1977 (R. 125). The Corps of Engineers did the original mining in approximately 1938-1940 (R. 140). Stockpiles on the site were left from that time (R. 156). Material was hauled in, blended, stockpiled and re-loaded out during the time period of the complaint (R. 154).

The Agency also relies on the representation made to Mr. Rankin by Mr. Bettler, Respondent's engineer, that the permit application needed quick action because the mine was currently in operation (R. 110). Considering the facts before the Board it is uncertain whether this referred to mining or blending; however, it is irrelevant because the statement was made in April, 1978 (R. 110) and the time period of the complaint ends with the date of filing, March 10, 1978.

Mining as defined in Chapter 4 is "the extraction from natural deposits of coal, clay, fluorspar, gravel, lead, sand, stone, zinc or other minerals . . . or the recovery of said minerals from a mine refuse area. . . ." The evidence does not show extraction has taken place or that this is a mine refuse area. After the Attorney General's closing argument the fact that there were unanswered admissions was raised (R. 177). All the areas of inquiry requested to be admitted were covered in the evidence presented. The admissions were unanswered; however, the Board does note the Respondent's apparent confusion as to the definition of mining (R. 149, 154, 167, 168). Although unanswered admissions are deemed admitted under Procedural Rule 314 the Board will not find violations based on the admissions given the evidence presented. The Board finds that the evidence is not sufficient to find the violations alleged. The complaint is dismissed.

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

ORDER

It is the Order of the Pollution Control Board that the allegations of violations of Rules 201 and 301 of Chapter 4: Mine Related Pollution and Section 12(b) of the Environmental Protection Act as alleged in the complaint of March 10, 1978 are dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 4th day of January, 1979 by a vote of 4-0.

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