

ILLINOIS POLLUTION CONTROL BOARD
May 24, 1979

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-234
)
CONSOLIDATION COAL COMPANY,)
A Delaware Corporation,)
)
Respondent.)

MR. BRIAN E. REYNOLDS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. RICHARD A. GREEN, 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 the complaint filed August 28, 1978 by the Environmental Protection Agency (Agency) against Respondent, Consolidation Coal Company (Consol), a Delaware Corporation doing business in Illinois. The complaint charges violations of Section 12 of the Environmental Protection Act (Act) and Board Rules, Chapter 3: Water Pollution and Chapter 4: Mine Related Pollution. The allegations concern water pollution on March 20, 1978, caused by discharges from a coal slurry pond at Consol's Burning Star #4 mine in Perry County. A hearing was held on April 27, 1979 at Pinckneyville, at which time the parties presented a stipulation and proposal for settlement. No members of the public attended and there was no objection to the settlement.

The following is a summary of the allegations of the complaint:

<u>Count</u>	<u>Act/Rule</u>	<u>Gravamen</u>
I	Section 12(a) Mine Rule 605(a) Water Rule 203(a)	Caused the waters to contain unnatural sludge, unnatural bottom deposits, floating debris, or unnatural color or turbidity.
II	Section 12(a) Mine Rule 605(a) Water Rule 203(f)	Violated water quality standards: Iron 1.0 mg/l Manganese 1.0 mg/l Sulfate 500. mg/l

III	Section 12(f) Water Rule 901	Caused or allowed the discharge without possessing an NPDES permit therefor.
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Consol has a bituminous coal mining, cleaning, crushing, screening and shipping operation at its mine. As part of the operation it maintains a coal slurry impoundment and a fresh-water pond. The slurry pond is about fifty acres in extent. On March 20, 1978 two decants separated from discharge pipes resulting in the release of about 260 acre feet of water containing coal slurry. Most of the slurry entered the fresh water pond and was then discharged into Rock Fork Branch and Galum Creek, which are tributary to Beaucoup Creek and the Big Muddy River. The spill affected about seventeen miles of Galum Creek and twenty-one miles of Beaucoup Creek and caused the waters of Galum Creek to exceed quality standards for iron for three days, manganese for two days and sulfate for one day. There was a one day iron violation in Beaucoup Creek. The coal slurry debris was evident in the water for about four days. The incident resulted in at least one citizen complaint from a farmer on whose bottom land coal sediment was deposited.

The stipulation sets forth that the violations were unintentional. The operation had been inspected by qualified personnel three days before the incident without indication of trouble. The decants were loosened by ice heaving and separated by wave action after the ice melted. The pond does not ordinarily freeze around the decants but did on this occasion because of unusually adverse weather conditions and reduced circulation during strike-caused curtailment of operations.

The parties agree that Consol acted promptly and diligently considering the accidental and unexpected nature of the discharge. Consol personnel first became aware of the spill at 9:30 a.m. Only supervisory personnel were available because of the strike. By 11:30 a.m. they erected an earthen dam across the spillway of the freshwater pond. By 12:15 p.m. they had a dam across Galum Creek, but were forced to breach it because of high flow conditions. Agency personnel arrived at 3:00 p.m. The west decant was plugged by 5:30 p.m. The north decant was partially plugged by 10:15 p.m., but not fully stopped until the next day. Another small discharge occurred on March 31, 1978. The agreement recites that most of the discharge was halted within two hours after it was noticed.

Consol has taken measures to prevent a similar occurrence in the future. The decants are now tied to the bank with angles. Cofferdams used in stopping the leaks are to be left in place. These are expected to help reduce the force on the decants. Wider bands than previously used were installed. The company has spent approximately \$16,000 on corrective measures.

In the stipulation, Consol admits the violations charged in Counts I and II. The parties are unable to agree on whether Consol's NPDES permit applied to the discharge in question. The parties agree that the discharge exceeded the NPDES permit limits. However, this is not alleged in the complaint. Accordingly, Count III is dismissed.

Section 33(c) must be considered in assessing a penalty. The parties stipulate that the accidental discharge constituted a potential interference with the general welfare and that the mine is of great social and economic value to the community. Location is not an issue because the mine must be situated where the coal exists. It is agreed that the measures taken were technically practicable and economically reasonable means to bring the operation into compliance. Considering all this, the Board finds that a penalty of \$1000 is necessary to aid enforcement of the Act.

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:

1. Respondent, Consolidation Coal Company, is in violation of Section 12(a) of the Act and Rules 203(a) and (f) of Chapter 3: Water Pollution and Rule 605(a) of Chapter 4: Mine Related Pollution as charged in Counts I and II.
2. Count III is dismissed.
3. Respondent shall comply with the terms of the settlement agreement which is incorporated herein by reference.
4. Respondent shall, by certified check or money order payable to the State of Illinois, pay a civil penalty of \$1000 which is to be sent to:

State of Illinois
Fiscal Services Division
Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 24th day of May, 1979 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board