

ILLINOIS POLLUTION CONTROL BOARD
October 9, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-203
)
 HARRY VON ABEL and ALEXANDER W. HUTCHINGS,)
 d/b/a COAL CONVERSION LTD.,)
)
 Respondent.)

MR. FRED BENSON, Assistant Attorney General, appeared for the complainant;
MR. HARRY VON ABEL, Pro Se, appeared for the respondent.

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

The Illinois Environmental Protection Agency (Agency) filed a complaint on May 14, 1975 against Mr. Harry Von Abel and Mr. Alexander W. Hutchings, d/b/a Coal Conversion Ltd. (Respondents). Respondents own and operate a mining facility designed to recover coal from mine refuse located in Jackson County, Illinois.

The Agency alleged that Respondents conducted their mining operation at the site prior to December 10, 1974, and continuing to the date of the filing of the complaint, without an operating permit from the Agency in violation of Section 12(b) of the Illinois Environmental Protection Act (Act), and Rule 201 of Chapter 4, Mine Related Pollution Regulations (Mine Rules). A hearing was held on August 7, 1975. The record indicates that on June 5, 1974 the Agency submitted to the Board and to Respondents a Request for Admission of Facts. This request called upon Respondent to admit as true that Respondents had operated the facility from prior to December 10, 1974 without an Agency operating permit, and that Respondents collectively, were notified on six occasions by the Agency of the need to secure an operating permit, (the dates being March 6, 1975, (two notices), March 7, 1975, April 3, 1975, April 7, 1975, and April 8, 1975). The record of the hearing establishes that the Request for Admission

was received by Respondents, and that Respondents failed to submit an answer. Failure to answer a Request for Admission is deemed an affirmative admission of the facts, under the Board's Procedural Rule 314.

In addition, Mr. Von Abel's testimony at the hearing independently confirms his March 6, 1975 notification by the Agency as to the necessity for a permit. On that same day Mr. Von Abel received an agency permit application form (R. 12-13). Mr. Von Abel also testified that Respondents submitted a permit application on July 11, 1975 (R. 16). The permit application was submitted some four months after being first notified of the permit requirement (R. 16), and two months after the May 14, 1975 filing of the Complaint by the Agency.

The record clearly shows that the Respondent at no time during their mining operation possessed an operating permit from the Agency. Furthermore, while Respondents now seek such a permit and have filed an application, their operation continued from the date of their being notified as to the need for a permit, until after the complaint was filed.

The Board could find that Respondents, Harry Von Abel, and Alexander W. Hutchings, d/b/a Coal Conversion Ltd. violated Section 12(b) of the Act and Rule 201 of the Mine Rules by failing to secure an Agency operating permit.

However, in its assessment of a decision and penalty, if any, the Board must take into account Section 33(c) of the Environmental Protection Act. The record is silent upon many of these factors and it is difficult to make an informed judgment upon this record. The case is remanded to the Hearing Officer for such additional testimony on each of the factors listed in Section 33(c) as the parties can provide. A hearing shall be held within 90 days of the date of this Opinion.

ORDER

1. The cause is remanded to the Hearing Officer for additional testimony upon the factors of Section 33(c).
2. A hearing shall be held in this cause within 90 days of the date of this Opinion.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order were adopted on the 9th day of October, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board