

ILLINOIS POLLUTION CONTROL BOARD

February 6, 1973

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 vs. ) PCB 72--258  
 )  
 BELL AND ZOLLER COAL COMPANY )  
 (now Ziegler Coal Company), )  
 (Ziegler Mine #4), )  
 )  
 Respondent. )

Delbert Haschemeyer, Assistant Attorney General for the EPA  
J. Roy Browning, Attorney for Respondent

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

Ziegler Coal Company, formerly Bell and Zoller Coal Company, owns and operates coal mining facilities near Johnston City, Williamson County, known as Ziegler Mine #4. On June 23, 1972, the Environmental Protection Agency filed a Complaint alleging that Ziegler had: a) allowed the discharge of gob pile drainage (acid water, iron and coal fines) so as to cause or tend to cause pollution of Lake Creek, an unnamed tributary of Pond Creek and Pond Creek in violation of Section 12(a) of the Environmental Protection Act; b) added to the gob piles and a large red water impoundment so as to create a water pollution hazard; c) caused or allowed the discharge of coal fines and iron, which will form bottom deposits that may be detrimental to bottom biota in violation of Rule 1.03(a) of Sanitary Water Board; d) allowed the discharge of substances that produced a color or odor nuisance; e) caused or allowed the discharge of acid water in concentrations which are toxic to human, animal, plant or aquatic life; and f) allowed these discharges at points where water is withdrawn for agricultural or stock watering purposes.

Respondent filed an Answer admitting ownership and operational control of the mining facilities but denying any violation of the Statute and Regulations. Respondent also challenged the Board's power to order payments of penalties, stating that Section 42 of the Act granting the Board this power violates the rights of the Respondent guaranteed by the State and Federal Constitutions. The Constitutional question has been previously considered in PCB 70-34, EPA vs. Granite City Steel, and PCB 70-38 and 71-6 involving the EPA and Modern Plating Company. We adhere to our earlier decisions and deny Respondent's Motion.

At the public hearing and in a Fact Stipulation Respondent admitted all allegations of the EPA Complaint. The parties have now submitted a compliance program to abate any further water pollution from the facility.

Respondent's drainage problems appear to emanate from two separate sources, a water reservoir located on the south side of the facility and a gob pile located on the north side. Agency memoranda, pictures, and laboratory reports from July 31, 1970 to March 6, 1972 reveal past incidents of water pollution and a serious potential for further violations. An Agency memorandum dated November 11, 1971 states that the Villages of Royalton and Hurst draw their water supply from the Big Muddy River at a point downstream of the confluence of that river and Pond Creek. Therefore the possibility exists of contamination of raw water supply for the two villages.

Ziegler Coal has been aware of its pollution potential for quite some time. A letter from the Sanitary Water Board on October 27, 1965 notified Respondent to report accidental discharges by letter. The record indicates that, although some measures were employed to alleviate water pollution problems, this was at best only stop-gap action with little being done toward long range solutions.

Beginning in September, 1972 Respondent initiated a program to control its water pollution through a closed loop system. The goal is to provide for retention of all affected water within a closed system, and to provide treatment of the water to such a degree that it can be recycled as processed water. Phase I of the program will involve the grading and covering of the refuse pile with nonacidic cover material which will be fertilized and seeded to provide a vegetative cover. The slope is to be undercut and backfilled with material impervious to water to prevent any seepage. The top of the pile is to be graded to direct water runoff toward the south area of the facility where the water will be collected in a secondary settling basin. Phase I was estimated to cost \$25,823 and required 90 working days from September 6, 1972.

Phase II of the program involves the treatment of effluent from the coal washing facilities by utilizing five ponds or impoundment areas already on the site. The coal dust and clay laden water will flow through a series of slurry ponds utilized for the settling of solids and thence to a primary settling basin. Overflow from the primary settling basin will be treated with anhydrous ammonia as it enters the secondary settling basin where neutralization and flocculation is to be accomplished. Finally, the overflow from the secondary settling basin will go to a fresh water lake and be recycled to the preparation plant. The level of the fresh water lake is to be maintained at a point below the overflow to accommodate the runoff from the watershed. Drainage water from the mine yard area is to be collected by ditches and culverts and directed to the

primary settling basin which is utilized to hold the effluent from the processing plant. Phase II was estimated to cost approximately \$39,300 and would require 119 working days immediately after the completion of Phase I.

The parties have recommended that the Board issue an Order containing the following provisions: a) that the Respondent shall comply with all provisions of the compliance program as outlined, b) that within 30 days Respondent shall post with the Agency a Performance Bond of \$72,000 which shall be forfeited to the State of Illinois in the event that the conditions of the Order are not met, c) that the Respondent submit bi-monthly reports detailing the progress with the compliance program, d) that no penalty be assessed pending a determination to be made as to the Respondent's participation in other pollution abatement projects presently under discussion, e) that in the event the said discussions regarding other pollution abatement projects prove to be fruitless, the Agency shall so notify the Pollution Control Board at which time the Board shall schedule further hearings on the issue of penalty in this case.

Apparently the parties in this case are negotiating for pollution abatement on a number of other sites. One such site, although not clearly defined, seems to involve an area of about 200 acres of which 119 acres is a gob pile. This gob pile resulted from operation of a shaft mine which closed around 1947. Respondent did not own, mine or operate this site at any time and the site is presently owned by a local farmer who purchased the land to provide water for his livestock operation. The Attorney General's office has been informed that the pollution abatement project for this site will cost approximately \$741,000 upon completion. No further details of this project have been provided for the Board's consideration.

We have no objection to Paragraphs (d) and (e) of the Proposed Order since submitted as voluntary procedure by the parties. In EPA vs. Kienstra Concrete (PCB 72-72) we omitted a monetary penalty in a case where the Respondent had undertaken the abatement of pollution from an old slag pile created by another owner. Whether such a result could again be achieved will, of course, have to await the final hearing in this matter. However, we reiterate that "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." PCB 72-72

ORDER

It is the Order of the Board that:

1. Respondent shall comply with all provisions of the Compliance Program as outlined in Group Exhibits 30 and 31.
2. That within 30 days of the issuance of this Order Respondent shall post with the Environmental Protection Agency a Performance Bond in a form satisfactory to the Agency in the amount of \$72,000 which amount shall be forfeited to the State of Illinois in the event that the conditions of this Order are not met.
3. Respondent shall submit bi-monthly reports detailing the progress or lack of progress with the Compliance Program and the reasons therefore.
4. That no penalty be assessed pending the determination to be made as to the Respondent's participation in other pollution abatement projects presently under discussion.
5. That in the event Respondent chooses not to participate in a manner acceptable to the Agency in other pollution abatement projects now under discussion or in the event said discussions prove to be fruitless the Agency shall so notify the Pollution Control Board at which time the Pollution Control Board shall schedule further hearings on the issue of penalty in this case.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 6<sup>th</sup> day of February, 1973 by a vote of 3 to 6.

Christan L. Moffett