

ILLINOIS POLLUTION CONTROL BOARD  
February 6, 1973

ENVIRONMENTAL PROTECTION AGENCY )  
 )  
 ) #72-256  
 v. )  
 )  
 WHITE BROTHERS EQUIPMENT COMPANY )

DELBERT HASCHEMEYER, ASST. ATTORNEY GENERAL, APPEARED ON  
BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY  
JAMES W. SANDERS, APPEARED ON BEHALF OF WHITE BROTHERS EQUIPMENT  
COMPANY

OPINION AND INTERIM ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Complaint was filed against White Brothers Equipment Company by the Environmental Protection Agency alleging violations of Sections 12(a) and (d) of the Environmental Protection Act and Rules 103(a), (c) and (d) and 105(b) of SWB-14, resulting from Respondent's carbon removal and pumping operations from a strip pit in Saline County during 1971 and 1972, which operation resulted in polluttional discharges into an unnamed tributary of the South Fork of the Saline River and the South Fork of the Saline River.

The offenses charged are a result of operations conducted by Respondent in its efforts to remove carbon from an open pit which had been flooded for many years prior to Respondent's operation. The procedure is described in the transcript of hearing (R. 4 and following).

A crane was installed to remove carbon from the flooded pit. To accomplish this, water was pumped out of the pit with a pressure pump having a capacity of 10,000 gallons a minute. Approximately 45,000 tons of carbon were removed. It is not clear who the owner of the property is but there is no dispute that Respondent is responsible for the operations involved in the proceeding. When carbon was removed, it was piled up and allowed to dry. Environmental Protection Agency inspection reports confirm the acid content of water entering the South Fork of the Saline River as a result of Respondent's pumping operations demonstrating violations of the statute and regulations as alleged. (Exhibits 1 through 9 inclusive). Exhibit 9 indicates the points where sampling is taken.

In substance, polluttional discharges consequential to Respondent's operation result from a combination of three separate but interrelated circumstances:

1. The pumping operation itself;
2. The recurring flooding and overflow of the mine pit independent of the pumping; and
3. Possible polluttional impact from piles residue emplaced after the carbon removal.

In addition, undoubtedly some pollution results from run-off over abandoned refuse piles that have been created independent of Respondent's operation. It is difficult to tell which particular circumstance results in the polluttional discharge to any one time or place. However, it is evident that the pumping operation is the most severe and continuing source of polluttional discharge and the easiest to ascertain and to abate.

Accordingly, we will enter an interim order directing Respondent to cease and desist its pumping operation, creating a polluttional discharge into the South Fork of the Saline River. We will defer any further decision with respect to flooding consequences and the imposition of a penalty until we are in receipt of suggestions as to a proposed final order from the Agency and the Respondent which we direct to be filed within 45 days from the date hereof. We have previously held that even though the Respondent is not responsible for the conditions that initially created the polluttional discharge while it has control and dominion of the property in question, it is incumbent upon it to take affirmative steps to eliminate polluttional discharges, see Environmental Protection Agency v. Meadowlark Farms, Inc., #72-343. In the present case, the polluttional discharge is not only a consequence of natural land run-off but directly attributable to Respondent's operations in the pumping of the strip pit involved.

This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board:

1. That Respondent cease and desist its pumping operation at the abandoned strip pit location as described in the complaint herein unless such pumping operation ceases to cause polluttional discharge into the waters of the State.
2. The Environmental Protection Agency and White Brothers Equipment Company are directed to file, either jointly or severally, within 45 days from the date hereof, their proposals for a final order with respect to definitive abatement procedures covering the entire operation including abatement of polluttional discharges as a consequence of flooding and recommendation for penalty.



