

ILLINOIS POLLUTION CONTROL BOARD
December 6, 1973

ENVIRONMENTAL PROTECTION AGENCY)
COMPLAINANT)
)
)
V.) PCB 72-174
)
)
V-DAY COAL COMPANY)
RESPONDENT)
)

DENNIS K. MUNCY, ATTORNEY, law firm of MEYER, CAPEL, HIRSCHFIELD, & MUNCY, in behalf of the ENVIRONMENTAL PROTECTION AGENCY
LARRY LESSEN & WILLIAM HAAS, ATTORNEYS, with SEBAT, SWANSON & BANKS, in behalf of V-DAY COAL COMPANY

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

This action involves a complaint filed by the Environmental Protection Agency against V-Day Coal Company, Inc., Respondent, on April 27, 1972. The Complaint alleges that on September 15, October 13, November 3, December 7 and 15, 1971, and continuing through to January 6, 1972, the Respondent allowed the discharge of mine drainage from its gob piles into the south branch of Grape Creek, a tributary of the Vermilion River, in violation of Section 12 (a) of the Environmental Protection Act. The Complaint further alleges that the Respondent's discharges violated Sanitary Water Board - 14 Rule 1.03 (a) and (c) and Rule 1.08 (10) (b) (1) (3) continued effective pursuant to Section 49 (c) of the Act.

The V-Day Coal Company, Inc., is a corporation authorized to do business in the State of Illinois and owns and operates a coal mine on which there are gob piles and is located approximately one mile south of the city of Tipton, Vermilion County, Illinois.

A hearing was held on October 19, 1972. Members of the public were present at the hearing. The Board finds the following stipulated facts. The Environmental Protection Agency undertook an investigation of Grape Creek for possible pollution of that creek by V-Day Coal Company because citizen complaints were received complaining of the discoloration of Grape Creek, and odors emanating from the creek during hot, dry weather (R. 5). Laboratory analysis sheets were admitted into evidence covering samples of water taken from Grape Creek on September 15, 1971, by the Environmental Protection Agency indicating that the iron content of the water increased from 1.96 mg/l at a location 100 yards upstream from the Respondent's operation to 28 mg/l at a location downstream from the Respondent (R. 5-6). Photographs of Grape Creek showed the reddish color of the water downstream of the Respondent. Physical observations made

by the Environmental Protection Agency representative on that date were that the bank and stream bottom were orange and rusty colored. Drainage was seen coming from the Respondent's mining operation which was reddish in color and had an oily film on top. In addition, there was observed no rusty discoloration in the stream within 100 feet upstream of the Respondent (R. 7-8).

Laboratory analysis sheets were also admitted into evidence covering samples collected by the Agency on October 13, 1971. These sheets also indicated that the samples downstream from the Respondent were greater in contents of iron, ammonia, sulfate, and other substances than the samples upstream from the Respondent. Polluted seepage flow was also found from the Respondent's lagoon system into Grape Creek (R.8-9). Physical observations made by the Agency representative on that date were that there were orange bottom deposits downstream from the Respondent and also increased color and turbidity (R. 10). An investigation made by the Environmental Protection Agency on November 3, 1971, found substantially the same results as the earlier two investigations abovementioned (R. 11-12).

Evidence obtained at the Agency's December 7, 1971, investigation indicated, in addition to findings similar to the earlier investigations, that there was an overflow of the south lagoon on Respondent's property into Grape Creek; however, this may have been caused by recent heavy rain (R.12-15). A December 15, 1971, investigation found, in addition to the findings similar to the earlier investigations, that there was seepage from the north lagoon (R.16).

After the above stipulated facts were read into the record, testimony was elicited from witnesses for both parties. The following facts were elicited at the hearing. On October 4 and 17, 1972, Environmental Protection Agency biologist William J. Tucker testified that he made a survey of the Grape Creek near the Respondent's operation. Mr. Tucker observed reddish deposits in the creek downstream from the Respondent. He also stated that there were no plant organisms on the bottom of the creek (R.21). He also found no fish life in the creek because the deposits with high iron content and the low PH of the water suffocated the fish. He found no orange deposits upstream from the Respondent (R.19-22). He found the creek biologically polluted since no organisms were present (R.24).

Calvin Locker, an Environmental Protection Agency sanitarian, testified that there were other discharges into Grape Creek upstream from the Respondent. These discharges included those from the Hegeler community storm sewer and the Peterson Packaging and Filling (R.36).

Cheri Speisok, Vice-President and Secretary of Respondent, testified that \$8,500 was spent by the Respondent in taking care of their pollution discharge problems and that \$3,500 of that sum was borrowed from the Small Business Administration (R.49-50). She indicated that

the Federal Bureau of Mines had shut them down on September 28, 1972, and that they were still closed, for safety reasons. An additional loan for \$66,000 was applied for on October 2, 1972, from the Small Business Administration. This loan is to allow reopening of the mine. If this loan is not obtained, Respondent has been advised by its attorney to file for bankruptcy (R.40). Respondent's Exhibit #7 was admitted into evidence showing that the Illinois State Water Survey had analyzed water samples provided by the Respondent showing no violation of the Regulations (R.52).

Lawrence Maxwell, Respondent's general maintenance man, testified concerning the construction of Respondent's dike system. He testified that since September, 1972, when the construction was completed, no overflow of the lagoons into the creek has resulted (R.65). Mrs. Speisok testified that a permit was obtained from the Sanitary Water Board for the construction of the dike system in March, 1970 (R.79).

The Board finds that there has in the past been a violation of the Act and the Water Regulations by the discharges emitted into the south branch of Grape Creek on the dates mentioned in the Complaint, with the exception of the January 6, 1972, date for which no evidence was submitted. The un rebutted evidence stipulated and elicited shows there were violations committed by the Respondent. The samples of water from Grape Creek taken immediately downstream from the Respondent in comparison with the samples taken immediately upstream from Respondent bear this conclusion out. In addition, there were physical observations of reddish water and bottom deposits immediately downstream of the Respondent but not upstream. Physical observations, and samples thereof, indicated that these pollutants came directly from the Respondent's mining operations. The water analysis which the Respondent provided is unconvincing. It was one isolated test taken without specifics in the record as to the conditions or the testing procedure. That test does not stand up against the weight of the evidence.

The testimony has been conflicting as to what the situation was immediately before the hearing on October 19, 1972. As late as July 21, 1972, an Environmental Protection Agency representative found violations of the Act and Regulations (R.80-81). However, since the September, 1972, completion of construction of the dike system no evidence was submitted by the Agency regarding Respondent's discharges.

The question remaining concerns the amount of money penalty to be levied against the Respondent. This action is similar to past actions brought before the Board. In both Environmental Protection Agency vs. Truax-Traer Coal Company and Consolidation Coal Company, PCB 70-10 and Environmental Protection Agency vs. Ayrshire Coal Company and American Metal Climax, Inc., PCB 71-323, violations of Section 12(A) of the Environmental Protection Act and of Sanitary Water Board - 14 were found. Penalties in these actions were imposed for violations determined. Respondent has provided its income tax returns from 1968 through 1971 in-

dicating that it is now operating at a loss. At least \$118,000 in loans have been obtained from the Small Business Administration in order to keep operating. The purpose of a money penalty is to penalize but not to force an industry out of business if the pollution can be abated in the future. It must further be remembered that Respondent's mine is presently not operating, and that the impact of a penalty is magnified greatly because the facilities are not generating income for Respondent. At this point a large monetary penalty would only serve to siphon off funds which could much better be applied to anti-pollution devices, if found necessary by the Environmental Protection Agency. Therefore the penalty imposed will be less than those imposed in the two above-mentioned similar cases.

The social value of the Respondent's facilities must also be considered. Respondent did supply to hundreds of families low sulphur coal for household heating use. It has been shown (R.42) that Respondent is the only supplier in Vermilion County of this type of coal at a reasonable price. Because of the financial situation presented by Respondent, the monetary penalty will be lower than would normally be imposed in this type of action.

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

ORDER

IT IS THE ORDER of the Pollution Control Board that V-Day Coal Company has been found in violation of Section 12(A) of the Environmental Protection Act and Rules 1.03(A) and (c), 1.08 (10)(b)(1),(3) of Sanitary Water Board - 14.

1. V-Day Coal Company shall pay to the State of Illinois the sum of \$500 within 35 days from the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.
2. V-Day Coal Company shall upgrade, operate and maintain its pollution abatement facilities in such a manner so as to insure compliance with all applicable rules and regulations. This order shall include applying for permits and meeting any conditions for said permits that the Environmental Protection Agency shall deem necessary to achieve compliance.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 6th day of December, 1973, by a vote of 3 to 0. Mr. Henss not present.

Christan L. Moffett