

ILLINOIS POLLUTION CONTROL BOARD  
May 17, 1973

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 71-377  
 )  
 FREEMAN COAL MINING COMPANY, )  
 )  
 Respondent. )

Larry R. Eaton, Assistant Attorney General, on behalf of  
Environmental Protection Agency;  
Reese Elledge on behalf of Freeman Coal Mining Company.

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD  
(by Samuel T. Lawton, Jr.):

On March 15, 1973, the Board entered an Order in this case, hoping that the case was, at long last, resolved. Freeman subsequently filed a Motion for Reconsideration of the Board's Order, asserting that the Order was, in some respects, beyond the scope of the record in the case, and in some respects, beyond the scope of the Act. Except for one of the assertions, we disagree.

Freeman claims that paragraph 1 of the Order, which directs it to cease and desist from various SWB-14 violations found by the Board, is improper because SWB-14 has been repealed. We agree, and paragraph 1 will be modified in the Order following the Supplemental Opinion.

The change in the Order in paragraph 1 of the Order will direct Freeman to cease and desist, not from the various SWB-14 violations, but from those same provisions as embodied in the Board's Water Pollution Regulations dealing with Water Quality Standards. The cease and desist order for violations of Sections 12(a) and (d) of the Act will also remain in effect.

Freeman's other assertions have been considered by the Board, and the Board believes that its position, as embodied in the March 15, 1973 Opinion and Order, remains correct.

Freeman's assertion that the requirements of a performance bond is beyond the authority of the Board and this Act is refuted by Freeman's own Motion for Reconsideration. In its motion, Freeman admits that it does not know precisely when it will be able to comply with the Board Order, and, therefore, to require a bond to ensure timely compliance is well within the scope of authority granted to the Board under Section 33(b) of the Act.

Freeman's assertion that it cannot control the rain may be accurate but is totally irrelevant. Freeman has, at no time, been asked to control precipitation. Freeman has been asked to control the highly contaminated run-off from the highly contaminated, extremely large refuse pile that it, and no one else, created.

Regarding the penalty imposed in the March 15, 1973 Opinion and Order, the Board does not feel that the penalty was excessive or improper, but that the penalty was, in fact, reasonable.

Finally, if Freeman is unable to comply with that part of the March 15, 1973 Opinion and Order describing the mixing zone, the appropriate remedy is for Freeman to file a variance from that part of the Board order.

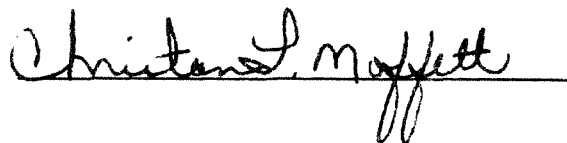
This opinion constitutes the findings of fact and conclusions of law of the Board.

IT IS THE ORDER of the Pollution Control Board that:

Paragraph 1 of the Order in the March 15, 1973 Opinion and Order of the Board in the case entitled EPA v. Freeman Coal Mining Company is amended to read as follows:

"Freeman shall cease and desist from violation of Sections 12(a) and (d) of the Act, and Rules 203(a) and (b) of Chapter 3: Water Pollution Regulations, Part 2: Water Quality Standards, as the same incorporate those provisions of SWB-14 found to have been violated."

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Supplemental Opinion and Order was adopted by the Board on the 11<sup>th</sup> day of May, 1973, by a vote of 4 to 0.

  
Christan I. Moffett