

ILLINOIS POLLUTION CONTROL BOARD
November 13, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 72-328
)
)
 PEABODY COAL COMPANY,)
 (Will Scarlet Mine),)
)
 Respondent.)

MR. LARRY E. EATON, appeared on behalf of Complainant;
MR. DANIEL M. HALL, appeared on behalf of Respondent.

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

This enforcement case has an extended history before the Board. We previously entered an Order rejecting a proposed settlement on May 24, 1973. On February 7, 1974 the Board approved a settlement submitted by the parties. However, the parties felt that we had incorrectly modified the proposed settlement. Respondent therefore appealed the Board's decision. The Board, together with the parties, entered into a settlement which was presented to the court which would have the court vacate the Board's Order and remand for further hearings or appropriate proceedings. On March 14, 1975 the Fifth Appellate District vacated the Board's Order and remanded for further hearings. On March 26, 1975 we entered an Order setting the matter for a hearing on the merits. A hearing was held on July 24, 1975. The parties submitted a stipulated summary of the record and proposed order on September 16, 1975.

Rather than repeat the prior Opinion of the Board in approving the settlement, we hereby incorporate that Opinion as it discusses the facts presented (EPA v. Peabody Coal Company, (Will Scarlet Mine), PCB 72-328, 11 PCB 157, (February 7, 1974)). Complainant has charged respondent with numerous violations of Section 12(a), (c) and (d) of the Environmental Protection Act, certain sections of the Sanitary Water Board Regulations, and Chapters 3 and 4 of the Pollution Control Board Rules and Regulations. These violations were alleged to have occurred

because of mine discharges to an unnamed creek, Sugar Creek and the south fork of the Saline River.

A limited amount of new evidence was presented at the latest hearing. It is apparent that Complainant has terminated the mining operations at the mine referred to as "Pit 8" during the fall of 1974. This has resulted in the termination of discharges from Pit 8. However, at least three times since February 7, 1974 there have been some discharges from Pit 8 (R. 13). Respondent has undertaken a program to abate the violations alleged in the complaint. Respondent has transferred its mining operations to an area referred to as "Pit 14" which is not the subject of this enforcement case.

Certain modifications have been instigated in the abatement procedure contemplated by the prior settlement proposal. Respondent has replaced the continuous treatment with a batch treatment system at Pit 11 because of problems associated with employee safety (R. 24 and 33). The parties previously agreed that the payment of a penalty should be stayed pending the development of a possible abatement program on property not owned by the respondent. Respondent has cited that it would be unable to carry out the alternative abatement work because of a depressed financial condition (R. 28). Therefore, the parties have stipulated that a penalty should be assessed. The parties agreed to a penalty of \$17,500 for the violations rather than the \$15,000 previously submitted and approved by the Board.

Based on the record presented at the July 1975 hearing, and the previous record we find that the settlement and proposed order submitted by the parties is acceptable.

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

ORDER

We find that Peabody Coal Company has violated the Act and Regulations as alleged in the Complaint. It is ordered that:

1. Respondent shall complete reclamation of Pit #8 in accord with applicable law, applicable regulations of the Department of Mines and Minerals, and applicable regulations of the Pollution Control Board.

2. Respondent shall continue to treat all discharges of runoff from Pit #11, and other subject portions of the premises of Will Scarlet Mine in a manner so as to comply with all applicable provisions of the Act and Regulations, continuing the existing batch treatment process, or any method as effective.

3. Respondent shall perform normal inspection and adequate maintenance of the retaining dam near Bulltown Bridge, and levee located near the mine garage, so as to maintain necessary impoundment of surface runoff.

4. Respondent shall continue to maintain the treatment plant and appurtenant facilities at Pit #10 so as to maintain impoundment and to maintain treatment efficiency to its best operational level.

5. Respondent shall submit quarterly reports to the Agency detailing activities conducted in relation to the foregoing portion of this Order. The Agency may elect to reduce such reports to a semi-annual basis or to combine such reports with reports of other activities lawfully required at the Will Scarlet Mine.

6. Respondent shall provide to the Agency all available data on discharge from the treatment plant under any permit or other legal requirement.

7. Respondent shall, within 35 days from the date of this Order, pay a penalty of \$17,500 to the "State of Illinois" and send to:

ENVIRONMENTAL PROTECTION AGENCY
Fiscal Services Division
2401 West Jefferson
Springfield, Illinois 62706

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13th day of November, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board