

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1971

ENVIRONMENTAL PROTECTION AGENCY)
)
)
v.) #70-10
)
TRUAX-TRAER COAL COMPANY AND)
CONSOLIDATION COAL COMPANY)

OPINION AND CONSENT ORDER

OPINION OF THE BOARD (BY MR. LAWTON):

Complaint was filed by the ENVIRONMENTAL PROTECTION AGENCY against Respondents, TRUAX-TRAER COAL COMPANY and CONSOLIDATION COAL COMPANY, alleging that during the period from May 25, 1970 through June 3, 1970, Respondents were observed to be polluting the waters of the Little Muddy River and the Big Muddy River Watershed, by discharging into those waterways polluted water from the Truax-Traer coal mines, in violation of the Sanitary Water Board Act and Regulation SWB-14 of the State Sanitary Water Board. The complaint asked for the entry of an order directing Respondents to cease and desist polluting the waters of the Little Muddy River and the Big Muddy River Watershed and for the assessment of the following penalties: (1) a penalty in the amount of \$5,000, plus \$200 for each day such violation shall be shown to have continued; and (2) the value of fish or aquatic life shown to have been destroyed.

Rule 1.03(d) of Sanitary Water Board Regulation SWB-14, applicable to the Big Muddy and Little Muddy Rivers, prohibits municipal, industrial or other discharges in concentrations or combinations which are toxic or harmful to human, animal, plant or aquatic life. Chap. 19, Par. 145.13, Ill. Rev. Stat. (1969) being the Sanitary Water Board Act, now repealed but in force on the dates of the alleged violations, provided for a penalty of \$5,000 and not in excess of \$200 a day for violation of the Act or determinations of the State Sanitary Water Board. The Act also provided for the imposition of a penalty in the amount of the reasonable value of fish killed as a consequence of water pollution. The enactment of the Environmental Protection Act, Chap. 111-1/2, Par. 1049 and Par. 1050, Ill. Leg. Ser. 1970 Laws #2, repealed the State Sanitary Water Board Act, but kept in full force and effect all regulations promulgated by the Sanitary Water Board and vested in the Pollution Control Board power to enforce these regulations. All proceedings respecting acts done before the effective date of the Environmental Protection Act were to be determined in accordance with the law and regulations in force at the time such acts occurred.

Respondent filed a special limited appearance challenging the jurisdiction of the Pollution Control Board and an answer and amendment thereto. Hearings were conducted by the Hearing Officer in Carbondale on October 29, December 3 and December 4, 1970, on which latter date a settlement agreement entered into between the Agency and Respondents was submitted to the Pollution Control Board for approval. The Chairman of the Board and the Hearing Officer conducted a settlement conference with counsel for the respective parties at Edwardsville on January 6, 1971, pursuant to which conference the parties entered into a stipulation and agreement more fully embodied in this opinion and order.

The evidence introduced at the various hearings and the stipulation of the parties sustain the following facts which constitute findings of the Pollution Control Board:

Consolidation Coal Company is the legal title holder of Burning Star Slope Coal Mine located in Jackson County, Illinois. Truax-Traer Coal Company is an operating division of said company.

On March 1, 1970, the Truax-Traer Coal Company submitted to the State Sanitary Water Board a report setting forth a proposed plan for abatement of polluttional discharges from the Burning Star Slope Coal Mine, which report was accepted by the State Sanitary Water Board on April 8, 1970. Both Respondents have engaged in activities pursuant to the terms and provisions of the report, with the objective of achieving such abatement. However, on or about May 25, 1970, as a consequence of the cave-in of portions of the abandoned Burning Star Slope Coal Mine, a polluttional mine water discharge was generated resulting in pollution of the Little Muddy River, which polluttional discharge Respondents admit. The evidence introduced indicates that mine water discharges contain iron oxide, iron sulphate and are of high acidity.

As a result of this polluttional discharge, a substantial fishkill occurred in the Little Muddy River, which fishkill is acknowledged by Respondent as resulting from the polluttional discharge emanating from the Burning Star Slope Coal Mine. This fishkill constitutes a violation of Chap. 10, Par. 145.13, Ill. Rev. Stat. (1969), which statute was in force and effect on the dates of such violation as set forth above.

Evidence introduced by the Environmental Protection Agency and stipulation of the parties, support the finding that the reasonable value of the fish killed as a result of the polluttional discharge is \$3,750 which amount Respondent Consolidation Coal Company, agrees

to pay to the Illinois Department of Conservation within a reasonable time after the entry of this order. The Board believes this penalty to be reasonable in consideration of the total quantity of dead fish observed and the estimate of the total number of fish killed as a result of the polluttional discharge, together with the absence of intent on the part of Respondents and the actions being taken by them to prevent a recurrence of such polluttional discharge and fishkill.

The entry of this order settling and disposing of the violations alleged relative to the fishkill and the agreement by Respondent Consolidation Coal Company, to pay the penalty as aforesaid, will render unnecessary for decision the allegations of Respondents relative to jurisdiction of the Pollution Control Board set forth in their special limited appearance.

Notwithstanding the settlement and disposition by the Board relative to the specific polluttional discharge and fishkill which were the basis of the complaint in this proceeding, the potential for further pollution from the abandoned mine continues. It is the view of the Board, in which the parties concur, that this proceeding should remain open for the consideration and possible entry of a cease and desist or other orders as shall be appropriate with respect to a program to minimize the likelihood of a recurrence of potential mine water discharge from the subject properties. The parties shall file such further pleadings as are appropriate to achieve this result. The Respondents may file a petition for variation which, if filed, will be consolidated with the pending proceeding. The Board shall conduct such further hearings as are necessary to assure compliance with the relevant statutory provisions and regulations.

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD:

- (1) A penalty in the amount of \$3,750 be and is hereby assessed against Consolidation Coal Company and Truax-Traer Coal Company for the killing of fish in the Little Muddy River, resulting from the polluttional discharge from the Burning Star Slope Mine owned by Respondents. Said penalty shall be paid to the Illinois Department of Conservation within twenty days from the date hereof. No other penalties shall be assessed against Respondents as a consequence of the polluttional discharge occurring between May 25 and June 3, 1970.

- (2) This proceeding shall remain open for consideration of a possible order relative to a program to minimize the likelihood of any recurrence of polluttional discharge from the Burning Star Slope Mine. Any variance petition filed by Respondent shall be consolidated in this cause. The Pollution Control Board retains jurisdiction of this proceeding for the holding of such further hearings and for the entry of such cease and desist and other orders as shall be appropriate to assure compliance with all relevant statutory provisions and regulations.
- (3) Respondents by this Consent Order are not foreclosed from challenging the propriety of any future order entered by the Pollution Control Board.
- (4) The parties hereto shall submit to the Board within thirty days from the date hereof, their proposals for abatement and control of any polluttional discharges from the Burning Star Slope Mine. The Board will schedule such further hearings upon notice to the parties as shall be appropriate in the premises.

I, Regina E. Ryan, certify that the Board has approved the above Opinion and Consent Order this 17th day of February, 1971.


 Regina E. Ryan
 Clerk of the Board

We consent to the entry of the foregoing Opinion and Consent Order:

ENVIRONMENTAL PROTECTION AGENCY

By (s) Howard M. McLeod

TRUAX-TRAER COAL COMPANY and
 CONSOLIDATION COAL COMPANY

By (s) Bill E. Green
 Their Attorneys