

ILLINOIS POLLUTION CONTROL BOARD
August 5 , 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-5
)
 JOSEPH D. THOMAS, d/b/a THOMAS)
 EXCAVATING,)
)
 Respondent.)

Mr. Steven Watts, Assistant Attorney General, appeared for the Complainant.
Mr. John A. Lambright appeared for the Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Pollution Control Board (Board) upon a complaint filed by the Environmental Protection Agency (Agency) on January 6, 1976. The complaint alleges that Joseph D. Thomas d/b/a Thomas Excavating has operated since November 23, 1972 a coal mine without a permit in violation of Rule 201, Chapter 4: Mine Related Pollution (Mine Rules) and Section 12(b) of the Environmental Protection Act (Act).

A hearing was held in this matter on April 26, 1976. Respondent's attorney made two motions to dismiss at the hearing. The first motion was to dismiss the complaint because of a newspaper account concerning this matter. Respondent claims bias and/or prejudice on the part of the Agency and that the Agency is sitting in judgment concerning its own actions (R. 6-9). Respondent's motion is based on a misconception that the Agency and the Board are the same entity (R. 8). The Environmental Protection Agency and the Pollution Control Board are two complete and separate agencies as provided for by the Environmental Protection Act, Ill. Rev. Stat. Ch. 111 1/2, §§ 1001-1051 (1975). The second motion to dismiss was a claim that the Agency failed to present a prima facie case (R. 92,93). The Board finds this motion to be without merit. Both of the motions are denied.

At the hearing it was stipulated that Mr. Thomas owned the land in question, Lot 76 in School Division of Section 16, Township 19 North, Range 11 West of the Second Principal Meridian in Vermilion County, Illinois (R. 6,7). It was also stipulated that the Agency's interrogatories and Respondent's answers would be introduced into the record without objection (R. 36,37).

Respondent's site in Vermilion County is run as a landfill (R. 21). The site was purchased approximately six years ago (R. 100). The previous owner had strip mined the land and on completion of the mining operation he operated a landfill in the strip mine area. (R. 101, 102). The running of the landfill itself is not in question in this case.

Mr. Thomas discovered coal on the landfill site in approximately April of 1975 (R. 21). He removed coal from the seam from the latter part of June 1975 to the middle of December 1975 (R. 22, 118). Thomas estimates he removed between 4,500 and 5,500 tons of coal from the site during this time (R. 22). The coal was sold to various buyers at a price varying from fifteen to twenty-two dollars a ton (R. 22,23). Respondent estimates total sales were approximately \$60,000 (R. 26). Mr. Thomas stated that on one occasion he did have a problem with leachate (R. 31). Respondent dug a trench to drain the water to the southeast; this would eventually flow into the Vermilion River (R. 33,34).

Two Agency witnesses, Gilbert E. Stauffer and John Diefenback, testified that they had seen the coal in question and its removal. On August 27, 1975 Mr. Stauffer visited the site to inspect the landfill (R. 41). At that time he observed standing water in the excavation that was red in color (R. 42). He had been told that the water was red because it actually stood on the coal (R. 43). Stauffer estimated the quantity of water to be approximately 10,000 gallons (R. 43). There was a trench from the standing water which drains to the east (R. 44). Mr. Stauffer talked to Respondent on September 4, 1975 concerning permits (R. 45). Stauffer stated Thomas could not get an operating permit for the landfill (he has a development permit) until he received a mine permit from the Division of Water Pollution Control (R. 45,46). Stauffer was at the site on November 6, 1975 (R. 48). He did not see any mining per se but did see equipment that could be used for

the landfill or mining (R. 49). He and Mr. Thomas had a discussion concerning the potential problems of the coal in the landfill (R. 50).

John Diefenback testified that he had visited the site on December 4, 1974 and on that occasion had seen coal at the site (R. 69). Diefenback was at the site on August 19, 1975 and again saw the coal seam (R. 70). On a visit on September 17, 1975 he witnessed a dump truck full of coal leave the site (R. 71).

Rule 103(m) of the Mine Rules defines mining as "the extraction from material deposits of coal, . . . or other minerals by the use of any mechanical operation or process; or the recovery of said minerals from a mine refuse area but does not include dredging operations or drilling for oil or natural gas. The term includes both surface and underground mining." Clearly Mr. Thomas was extracting minerals from the ground. The Board does find Respondent in violation of Mine Rule 201 and Section 12(b) of the Act.

Before the Board can fashion a remedy in a case the factors of Section 33(c) of the Act must be considered. Mr. Thomas is running a landfill. He does have a development permit and as yet does not have an operating permit (R. 34,45,46). The permit section of the Division of Land Pollution Control could not issue an operating permit until a mine permit was issued by the Division of Water Pollution Control (R. 45,46). The Division of Water Pollution Control could not issue a permit until Respondent obtained a permit from the Illinois Department of Mines and Minerals (R. 126). Respondent did get a permit from the Department of Mines and Minerals in April 1976 (R. 121,122). He has not received an Agency permit because he has not built a settling pond (R. 137). Respondent, after mining the coal in question, does not know how much remaining coal there is nor where it is and, therefore, alleges he can neither determine the size nor the location for the settling pond required. Respondent's main business is the landfill. Finding the small coal seam in the landfill gave him the options to remove it or to work around it. Respondent chose to remove the coal. Removing the coal created environmental problems that are not controlled by the same considerations as those of a landfill. Although the Agency presented no evidence concerning violations of the

water standards, the water turning red from the coal and draining eventually into the waters of the State can cause pollution and compound other existing problems. The lack of forethought concerning the environment is why the permit system exists. It is necessary to protect the environment before the damage is done.

Mr. Thomas has covered the coal and is no longer removing it (R. 118). The Agency has made no allegations of damage to the environment. The mining operation was run only a short time, June through December 1975. Since December Mr. Thomas has been covering the coal seam as the landfill progresses. The Board finds that a penalty is necessary in this case to maintain the integrity of the permit system and to protect against further environmental damage. A penalty of \$500 is assessed. Mr. Thomas shall refrain from future violations of the Act.

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:

1. Joseph D. Thomas d/b/a Thomas Excavating was in violation of Rule 201 of the Chapter 4: Mine Related Pollution Rules and Section 12(b) of the Act.
2. Respondent shall cease and desist from future violations of the Rules and the Act.
3. Respondent shall pay a penalty of \$500 within 35 days of this Order. Payment shall be by certified mail or money order payable to:

State of Illinois
Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 5th day of August, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board