

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 1976

ENVIRONMENTAL PROTECTION AGENCY,        )  
  )  
                          Complainant,     )  
  )  
                          v.                 )     PCB 76-151  
  )  
FORSYTH CARTERVILLE COAL COMPANY,        )  
  )  
  )  
                          Respondent.     )

Mr. Robert D. Barewin appeared on behalf of Complainant;  
Mr. Cedric Hustace appeared on behalf of 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 May 13, 1976. The complaint alleges that Forsyth Energy, Inc. was merged into Forsyth Carterville Coal Company with the name of the surviving corporation being Forsyth Carterville Coal Company; that Respondent at all times pertinent hereto, has owned and been the operator of a mined area on which coal mining has occurred, known as the Energy Mine, located in Sections 3 and 4, Township 9 South, Range 2 East, and Sections 33 and 34, Township 8 South, Range 2 East of the Third Principal Meridian, in the County of Williamson, Illinois; that Respondent since on or about February 5, 1973 has ceased mining activities at the Energy Mine without at that time or any time thereafter having been issued an abandonment permit by the Agency in violation of Rules 201 and 502 of the Chapter 4: Mine Related Pollution Regulations (Chapter 4); and that Respondent failed to notify the Agency within 30 days of the cessation of all mining activities in violation of Rule 501(a)(1) of Chapter 4.

The Board has before it two motions to dismiss this case. One is a renewed motion to dismiss for want of jurisdiction. This motion is based on an objection to the fact that the Attorney General is not representing the Agency. The representation of the parties involved does not affect the jurisdiction of the Board. The Board has stated in the past that

the Board would hear anyone designated by the Agency, EPA v. Lindgren Foundry Co., 1 PCB 11 (1970). This motion is denied. Respondent also has filed a motion to dismiss for failure to state a claim. The Board finds this motion to be without merit. The motion to dismiss for failure to state a claim is also denied.

A hearing in this matter was held in Marion, Illinois on September 23, 1976 and September 24, 1976. At the hearing Mr. Forsyth, Vice President of Forsyth Carterville Coal Company, testified that mining activity occurred until February 1973 but because of the condition of the cut no coal was actually being produced (R. 218). Also there was hauling of stockpiled coal (R. 218, 219). Mr. Forsyth stated that he attempted to use the tipple after this time but in fact did not use it (R. 223, 224). Mr. Forsyth further stated he was not aware that he needed an abandonment permit until he received notice from the Agency (R. 225). Notice from the Agency was sent in a letter dated March 22, 1974 (R. 224, Comp. Ex. 3). During this time Respondent was obligated by a contract with Southern Illinois Power Cooperative (SIPC) entered into on April 1, 1972 (R. 196). Under this agreement SIPC was to buy 300,000 tons of washed coal over a period of years (R. 197). During this time the power company had the option of making Respondent use their old tipple to wash the coal (R. 198). This contract was renegotiated as of January 1, 1973 (R. 201). At this time SIPC still had the option of the coal being washed at that tipple (R. 202). In the latter part of 1974 SIPC determined it would not want the coal washed (R. 203, 204). Respondent did receive a construction permit to effectuate an abandonment program in contemplation of receiving an abandonment permit (R. 28). This permit was issued on August 20, 1975 (R. 27). These items of work that needed to be accomplished were discussed at a compliance conference on January 8, 1975 (R. 49, 50). On several dates after January 8, 1975 Agency inspections showed little or no work had been done to bring the site into compliance and there was no evidence of coal mining activity (R. 55, 56, 60, 66, 67). Work did begin and moved slowly after May 20, 1976 (R. 66, 67).

The work required included plugging several drill holes, draining the lakes east of the tipple and properly covering them, removing the refuse from the ground around the tipple and burying it, diverting the Bear Creek flow around the present pits and removal of the slurry (Comp. Ex. 1). As of September 15, 1976 two of the three bore holes were filled, a fourth had been accidentally opened; the lakes were covered but

grading and seeding were not complete; the refuse around the tipples was covered but not to a sufficient depth; the Bear Creek diversion was finished; the status of the slurry ponds was confused because of a legal question of ownership (R. 166, 167, 168).

The Board finds that in this case there is enough evidence to find Respondent in violation of Rules 201, 501(a)(1) and 502 of Chapter 4. The facts are not clear as to an exact date of closing or lack of intention to mine again; however, it is clear that no thirty day notice was ever given and that even if the intention of mining was not given up until the latter part of 1974 an abandonment permit should have been obtained by the latter part of 1975. A permit to perform necessary work to receive an abandonment permit is not the same as the abandonment permit itself. Before the Board can fashion a remedy in this case it must consider the factors of Section 33(c) of the Act. Obviously in this situation the location is not in issue; a mine must be where the coal is. There are no water samples presented in evidence; however, the potential for water pollution from acidic coal runoff is great. Neighbors of the mine, Mr. Jenkins and Mr. Harris, were having problems with discharges from bore holes seeping through their fields (R. 59, 60). There is no question that a well run coal mine has social and economic value in providing employment and producing fuel; however, an abandoned mine polluting the waters of the State is of no value. The very fact that Respondent has slowly accomplished most of the necessary work is in itself evidence that this pollution abatement is economically and technologically feasible.

Respondent has been working on reclamation for the Department of Mines and Minerals as well as pollution abatement (R. 211). Respondent has spent from \$350,000 to \$400,000 to comply with the regulations of both Mines and Minerals and the Agency (R. 212, 213). Approximately \$50,000 of this sum has been for work concerning the Agency (R. 213).

After receipt of the August 20, 1975 construction permit Respondent also had a dispute with the United Mine Workers over the jurisdiction of the Forsyth-Energy property (R. 209). This caused delay as did bad weather when rubber tired scrapers could not run (R. 211). Mr. Forsyth has always indicated a willingness to comply with the requirements (R. 173).

The Board finds that while Respondent has had some legitimate reasons for delay there was a period from the latter part of 1974 to August 1975 during which Respondent was unexcusably dilatory. The Board further notes that after the filing of the complaint herein Respondent's efforts increased (R. 181, 182). In this case the Board finds that a penalty of \$3000 is necessary to aid in the enforcement of the Act. Respondent shall also be required to obtain an abandonment permit within 60 days of this order.

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

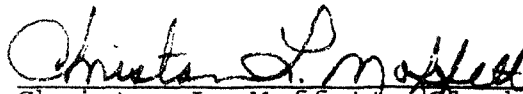
ORDER

It is the order of the Pollution Control Board that:

1. Respondent is found to be in violation of Rules 201, 501(a)(1) and 502 of the Chapter 4: Mine Related Pollution Regulations.
2. Respondent shall obtain an abandonment permit in compliance with the Regulations within 60 days of this order.
3. Respondent shall cease and desist any further violations of the Regulations and the Act.
4. Respondent shall pay a penalty of \$3000 within 35 days of this order. Payment shall be made by certified mail or money order payable to:

State of Illinois  
Fiscal Services Division  
Environmental Protection Agency  
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 2<sup>ND</sup> day of December, 1976 by a vote of 3-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board