

ILLINOIS POLLUTION CONTROL BOARD

January 23, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
 Complainant,)
)
 v.)
)
FRANK L. WHITE AND DAVID L. WHITE,)
both individually and d/b/a WHITE)
BROTHERS EQUIPMENT COMPANY, INC.,)
a/k/a WHITE BROTHERS EQUIPMENT)
COMPANY, ELK COAL COMPANY or)
CENTRAL STATES MINING COMPANY, INC.,)
)
 Respondents.)

PCB 74-292

Mr. Larry R. Eaton, attorney for Complainant.
Mr. James W. Sanders, attorney for Respondents.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On August 7, 1974, the Environmental Protection Agency (Agency) filed a Complaint against the Respondents with the Pollution Control Board (Board). The Complaint alleged that from May 23, 1972, through August 7, 1974, Respondents violated various sections of the Environmental Protection Act (Act) and Illinois Mine Waste Regulations (Chapter Four) in carrying out strip mining operations at a facility (Elk Mine #1) located in the NW 1/4, Section 17, Township 7 South, Range 1 West of the Third Principal Meridian, northwest of Elkville in Jackson County, Illinois. Specifically the Complaint charged that:

1. From November 23, 1972, through August 7, 1974, Respondents conducted their coal operation in a manner that allowed discharges of inadequately treated industrial wastes to drain into numerous open fields, and small, unnamed lakes in violation of Section 12(a) of the Act. The wastes contain excessive amounts of iron, manganese, sulfate, and acidic chemicals.
2. From November 23, 1972, through August 7, 1974, Respondents operated their facility without an Agency permit in violation of Section 12(b) of the Act and Rule 201 of Chapter Four.
3. From May 23, 1972, through August 7, 1974, Respondents allowed mine waste effluent containing excessive settleable solids and obvious levels of color to drain from Elk Mine #1 in violation of Rule 605(b) of Chapter Four.

4. From May 23, 1972, through August 7, 1974, Respondents caused or allowed mine waste effluent containing iron contaminants exceeding 7 mg/l and effluent whose total acidity exceeded its total alkalinity to drain from their facility in violation of Rule 606(a) of Chapter Four.

A hearing was held at Carbondale on Friday, November 8, 1974, at which time a Stipulation was entered into evidence. We find that the Stipulation establishes that:

1. From November 23, 1972, until August 7, 1974, Respondents operated their facility without a permit in violation of Section 12(b) of the Act and Rule 201 of Chapter Four.

2. On May 2, 1973, and February 7, 1974, waste water effluent discharged from Respondents' mine contained settleable solids and color levels in excess of the standards of Rule 605 (b), all in violation of Section 12(a) of the Act and Rule 605(b) of Chapter Four.

3. On May 21, 1973, and February 7, 1974, test results showed iron concentrations of 86 mg/l and 130 mg/l. The standard under Rule 606(a) is 7 mg/l. This establishes a violation of Section 12(a) of the Act and Rule 606(a) of Chapter Four for those two test dates.

4. On May 21, 1973, and February 7, 1974, test results establish that total acid was in excess of total alkalinity in violation of Section 12(a) of the Act and Rule 606(a) of Chapter Four.

5. On February 7, 1974, test results show that waste water effluent was measured at pH 3.3 and pH 3.9, both of which go beyond the limit of pH 5.0 set out in Rule 606(a). This data establish a violation of Section 12(a) of the Act and Rule 606(a) for this date.

The Stipulation indicated that the Respondents had submitted a permit application to the Agency on October 25, 1974; the Agency has not yet acted on the application. Respondents agreed in the Stipulation to discontinue all mine waste discharges until they could be carried out in conformance with the Act and regulations. The proposed Order required Respondents to immediately cease and desist from all violations, post a performance bond, and pay a penalty of \$1,500.

No members of the public objected to the Stipulation at the time of the hearing.

We accept the Stipulation agreed upon by the parties. The Stipulation provides for immediate cessation of environmental damage. The penalty and the immediate mandatory compliance requirements provide sufficient deterrence to others to dissuade them from violating the Act. Finally, where the parties have dealt at arms length and reached a settlement, we are reluctant to disturb it unless we find that the public interest has not been sufficiently protected. This Stipulation represents a satisfactory resolution to the long-standing violations in this case.

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. Respondents immediately cease and desist from violating Sections 12(a) and (b) of the Act and Rules 201, 605(b), and 606(a) of Chapter Four.


2. Respondents immediately cease all mining activities at the mining site (Elk Mine #1) until proper permits are procured from the Agency for the said operations.

3. Respondents immediately cease discharging mine waste water from their premises while such discharges violate the Act and Chapter Four.

4. Respondents post within 30 days of the adoption of this Order a performance bond in the amount of \$10,000 in a form satisfactory to the Agency. Such bond is necessary to assure full compliance with this Order; the bond shall terminate upon completion of compliance activities, and notification from the Agency to the Board of such compliance.

5. Respondents, jointly and severally liable, shall pay within 30 days of the adoption of this Order a monetary penalty of \$1,500.00 for the violations found in the Opinion. The check or money order shall be payable to the State of Illinois, and addressed to the Environmental Protection Agency, Fiscal Services Section, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 23rd day of January, 1975, by a vote of 3 to 0.


Christan L. Moffett