

ILLINOIS POLLUTION CONTROL BOARD

December 20, 1973

IN THE MATTER OF: )  
 )  
PEABODY COAL COMPANY ) R 72-20  
PROPOSAL TO AMEND RULES AND )  
REGULATIONS, CHAPTER 4, )  
SECTION 201 )

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Peabody Coal Company, on October 25, 1972, submitted a Proposal to Amend Rule 201 of Chapter 4, Mine Related Pollution. Peabody's Proposal was not supported by signatures of 200 persons and was of questionable merit. Therefore, under Section 28 of the Environmental Protection Act and Procedural Rule 204, the scheduling of hearings on the Proposal was discretionary with the Board. On December 5, 1972 the Board directed the Environmental Protection Agency to submit its analysis and comments respecting the Proposed Amendment. Pending receipt of the Agency comment, we withheld decision on whether to order hearing. As of the date of this Order the Agency has not filed anything in this matter whatsoever.

The Peabody Amendment would have changed Rule 201 to read as follows:

"It shall be unlawful for an operator, unless he holds a permit therefore from the Agency, to open, reopen or abandon any mine or refuse area, or, nine months after the effective date of these Regulations, to conduct any mining operation or to dispose of any mine refuse. Applications for permits under existing mines must be filed at least 90 days prior to that time. Application for subsequent permits and permits on new mines must be filed at least 90 days prior to first operations."

This Amendment would have given mine operators an additional three months to obtain operating permits after the May 25, 1972 adoption of the Chapter 4 Regulations. Rule 201 granted mine operators a six month period after the effective date of the Regulations in which to obtain permits to conduct their mining

operations. Peabody alleges that the Agency did not provide permit application forms until September 17, 1972. This delay in furnishing the application forms, according to Peabody, made it impossible to "meet the requirement for Agency action within 90 days...before November 25, 1972."

Section 39 of the Act provides that the Agency must adopt procedures to carry out its obligation to issue permits. It is further provided that the Agency shall have 90 days to act on permit applications. However, Peabody acknowledged that the Agency had verbally and informally agreed to act on permit applications within 30 days if such application was made by October 25, 1972. This was an Agency procedure which gave mine operators the opportunity to use Agency application forms and still meet the November 25, 1972 deadline for obtaining permits.

Further, we note that a mine operator who wished to file at an early date could have done so by furnishing the information required by Rule 204. There is no need to use an Agency application form until the Agency actually prepares the form. Early applications may be in such form as is sufficient to give the required information.

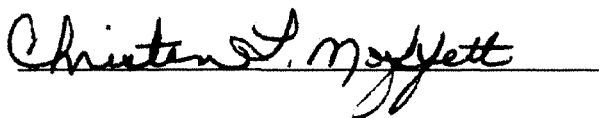
A third procedure would have been to request temporary variance from any Rule which could not be met due to Agency inaction.

Peabody's contention that it was impossible to meet the requirements of Rule 201 is simply without foundation. The mine operators did not need an additional three months in which to secure operating permits. This fact was clear enough when the proposal was filed and it is even more clear at this time. Neither party has filed anything relative to this issue for over one year. The problem which had been anticipated by Peabody apparently did not develop. The Peabody proposal is without merit and we choose not to schedule hearings on it.

ORDER

The Proposed Amendment to Rule 201 of Chapter 4, Mine Related Pollution is hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 20th day of December, 1973 by a vote of 5 to 0.

  
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