

ILLINOIS POLLUTION CONTROL BOARD

January 31, 1974

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 71-308  
 )  
 KENNETH MARTIN, JR. and MICHAEL )  
 MARTIN, )  
 )  
 Respondents. )

Delbert Haschemeyer and Larry Eaton, Assistant Attorneys General  
for the EPA  
Charles W. Phillips, Attorney for Respondents

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

The Environmental Protection Agency filed a Complaint against Kenneth and Michael Martin on October 6, 1971 alleging that Respondents, as owners of an abandoned coal mine, had caused or allowed the discharge of contaminants into Harco Branch, Brushy Creek, Bankston Creek and the middle fork of the Saline River. These discharges and the resulting water pollution were alleged to be violations of Sections 12(a) and (d) of the Environmental Protection Act and Rules 1.03(a), (c) and (d), 1.05(b) and (d), and 1.07 of SWB-14. The mine in question is located at Harco in Saline County and is known as Peabody Number 47.

Nine days after the filing of this Complaint against the Martins, the Agency filed a Motion for Stay. The Martin case was not activated again until November 29, 1972 when it was consolidated with an enforcement action which had been brought against Peabody Coal Company (PCB 72-328). The enforcement action against Peabody was for pollution occurring at the Will Scarlet Mine located in Saline and Williamson Counties.

The first proposal for settlement of these two prosecution cases was rejected by the Board in our Opinion and Order dated May 24, 1973. We have now been presented with another Stipulation and Agreement for Settlement of the Martin case and will address the issues in the Martin action separately from those involving the Will Scarlet Mine.

The settlement proposal and the public hearing on August 27, 1973 brought forth new information regarding ownership and control of the abandoned mine located at Harco. The 228 acres of land involved in this case was acquired by Kenneth Martin, Sr. from Peabody Coal Company by quit claim deed dated July 28, 1959. However, Peabody retained ownership of the coal and other minerals "on or underlying" the premises and the right to remove these minerals. Peabody conveyed the property "excepting all coal, oil, gas and other minerals on or underlying all of said premises, together with the right to drill for, mine, produce and remove the same without liability for injury or damage of any kind to said premises..." (Attachment II of the Stipulation). Peabody is now negotiating to reclaim about 130 acres of this abandoned mine.

All active mining operations at Peabody No. 47 were terminated prior to July 28, 1959. The pollution is caused by a coal slurry field and a gob pile which were located on the surface of the land when it was acquired by the Martins. These pollution sources were accumulated on the surface of the land during the Peabody mining operation. The Martins have not performed any mining operation or caused any mining operations nor have they deposited coal fines on the land, nor caused the accumulation of any of the pollution sources which have resulted in air and water pollution in the area. The Martins state that they have not attempted to abate these pollution sources because they are financially unable to do so.

The Environmental Protection Agency has entered into this settlement agreement with the Martins which requires very little, if any, action on their part to abate these large pollution sources. No monetary penalty is to be assessed against the Martins and the Martins in turn agree to allow Peabody to come on to the property to abate the pollutional discharge if Peabody desires to do so. The Martins also are willing to forego any profits from removal of the coal slurry. The Martins have entered into a contract with a coal reclaiming company for the removal of this coal slurry but will make the profits available to Peabody in order to help pay for Peabody's abatement program.

We believe that the settlement is fair to the Martins. The Martins are not responsible for creating the gob pile or the coal slurry field and are without the financial ability to abate the pollution which is on property they now own. The Martins have agreed that they do have a responsibility "for allowing" the pollution but that responsibility is certainly very technical and we would not impose a penalty on the Martins. We agree that the Martins could not be asked to do more than cooperate with the reclamation program, allowing access to the property and furnishing such reports as may be necessary regarding the project.

We reject the settlement since it does not assure the abatement of the pollution which occurs at Peabody No. 47. We believe that it

will not be possible to require the abatement of this pollution unless Peabody is made a party. Peabody caused the situation in the first place and still owns all minerals on the property. Our interpretation of the deed is that Peabody retains ownership of the coal slurry field and the right to remove it. Depending upon the content of the gob pile, there is the strong possibility that Peabody also owns the gob pile and the right to remove it. Since these are the pollution sources, we think it obvious that this case should not be concluded in the absence of Peabody. A settlement based upon the nominal and technical liability of the Martins will accomplish nothing.

This is the second settlement proposal submitted to us in this matter. We would like to see a conclusion to this case but a complete disposition cannot be had unless all owners are included in the proceeding. We will allow the Agency 40 days in which to amend its Complaint by adding additional Respondents. If the Complaint has been amended within that period of time so that all owners are before us the case will proceed to hearing. If the Agency has failed to make the necessary amendment within the time allowed this action will be dismissed.

ORDER

The current settlement document is rejected. The Environmental Protection Agency is granted 40 days from the date of this Order within which to file amendments to the Complaint or an Amended Complaint adding a respondent or additional respondents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 31<sup>st</sup> day of January, 1974 by a vote of 5 to 0.

Christan L. Moffett